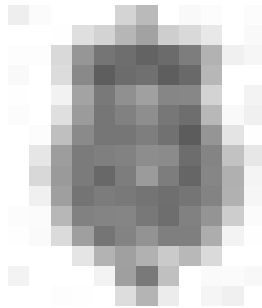


2001 No. 3352

**INSOLVENCY, ENGLAND AND WALES
COMPANIES, ENGLAND AND WALES**

The Railway Administration Order Rules 2001

<i>Made - - - - -</i>	<i>6th October 2001</i>
<i>Coming into force - -</i>	<i>7th October 2001</i>
<i>Laid before Parliament</i>	<i>8th October 2001</i>



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Whereas the only provision made by the following Rules is provision applying rules made under section 411 of the Insolvency Act 1986^(a), with modifications, for the purposes of provision made by sections 59 to 65 of, and Schedules 6 and 7 to, the Railways Act 1993^(b);

The Lord Chancellor, in exercise of his powers under section 411 of the Insolvency Act 1986 and section 59(5) of the Railways Act 1993, with the concurrence of the Secretary of State, hereby makes the following Rules:

(a) 1986 c. 45.

(b) 1993 c. 43; sections 60, 61 and 62 and Schedules 6 and 7 were amended by the Transport Act 2000 (c. 38).

PART 1

INTRODUCTORY PROVISIONS

Citation and commencement

1.1 These Rules may be cited as the Railway Administration Order Rules 2001 and shall come into force on 7th October 2001.

Construction and interpretation

1.2—(1) In these Rules—

“the 1986 Act” means the Insolvency Act 1986;

“the 1993 Act” means the Railways Act 1993;

“the Companies Act” means the Companies Act 1985(a);

“CPR” means the Civil Procedure Rules 1998(b) and “CPR” followed by a Part or rule number means the Part or rule with that number in those Rules;

“the Department” means the Department of Trade and Industry;

“the Insolvency Rules” mean the Insolvency Rules 1986(c)

“RSC” followed by an Order and number means the Order with that number set out in Schedule 1 to the CPR; and

“the Rules” means the Railway Administration Order Rules 2001

(2) References in the Rules to *ex parte* hearings shall be construed as references to hearings without notice being served on any other party; references to applications made *ex parte* as references to applications made without notice being served on any other party and other references which include the expression “*ex parte*” shall be similarly construed.

(3) References to provisions of the 1986 Act are references to those provisions as applied by sections 59 to 62 and 65 of, and Schedule 6 to, the 1993 Act.

(4) Subject to paragraphs (1), (2) and (3), Part 10 of the Rules has effect for their interpretation and application.

Extent

1.3 The Rules apply in relation to protected railway companies which the courts in England and Wales have jurisdiction to wind up.

PART 2

RAILWAY ADMINISTRATION PROCEDURE

Affidavit to support petition

2.1 Where it is proposed to apply to the court by petition for a railway administration order to be made in relation to a protected railway company, an affidavit complying with Rule 2.3 below must be prepared and sworn, with a view to its being filed in court in support of the petition.

Independent report on company’s affairs

2.2—(1) There may be prepared, with a view to its being exhibited to the affidavit in support of the petition, a report by an independent person to the effect that the appointment of a special railway administrator for the protected railway company is expedient.

(a) 1985 c. 6.
(b) S.I. 1998/3132.
(c) S.I. 1986/1925.

(2) The report may be by the person proposed as special railway administrator, or by any other person having adequate knowledge of the affairs of the protected railway company, not being a director, secretary, manager, member, or employee of the company.

Contents of affidavit

2.3—(1) The affidavit shall state that the company is a protected railway company within the meaning of Part I of the 1993 Act.

(2) The affidavit shall state one or more of the following—

- (a) the deponent's belief that the protected railway company is, or is likely to become, unable to pay its debts and the grounds of that belief;
- (b) that the Secretary of State has certified that it would be appropriate for him to petition for the winding up of the protected railway company under section 124A of the 1986 Act (petition for winding up on grounds of public interest) and that it would be just and equitable, as mentioned in that section, for the company to be wound up;
- (c) that an agreement between the Secretary of State and a relevant rail link undertaker has been determined.

(3) There shall in the affidavit be provided a statement of the protected railway company's financial position, specifying (to the best of the deponent's knowledge and belief) assets and liabilities of the company, including contingent and prospective liabilities.

(4) Details shall be given of any security known or believed to be held by creditors of the protected railway company, and whether in any case the security is such as to confer power on the holder to appoint an administrative receiver. If an administrative receiver has been appointed, that fact shall be stated.

(5) So far as within the immediate knowledge of the deponent, the affidavit shall contain details of—

- (a) any petition which has been presented for the winding up of the protected railway company;
- (b) any application for leave of the court to pass a resolution for the voluntary winding up of the protected railway company;
- (c) any application for an administration order under Part II of the 1986 Act in relation to the protected railway company;
- (d) any notice served in accordance with section 62(7) of the 1993 Act by any person intending to enforce any security over a protected railway company's property; and
- (e) any step taken to enforce any such security.

(6) If there are other matters which, in the opinion of the person intending to present the petition for a railway administration order, will assist the court in deciding whether to make such an order, those matters (so far as lying within the knowledge or belief of the deponent) shall also be stated.

(7) If a report has been prepared for the protected railway company under Rule 2.2, that fact shall be stated.

Form of petition

[Form 1] **2.4—**(1) The petition shall state by whom it is presented and the address for service.

(2) Where it is presented by the Authority, the petition shall contain a statement that it relates to a protected railway company which is the holder of a passenger licence and is presented with the consent of the Secretary of State.

[Form 1] (3) The petition shall specify the name and address of the person proposed to be appointed as special railway administrator; and it shall be stated that, to the best of the petitioner's knowledge and belief, the person proposed to be appointed as special railway administrator is qualified to act as an insolvency practitioner in relation to the protected railway company.

(5) There shall be exhibited to the affidavit in support of the petition—

- (a) a copy of the petition;
 - (b) a written consent by the proposed special railway administrator to accept appointment, if a railway administration order is made; and
 - (c) if a report has been prepared under Rule 2.2, a copy of it.
- [Form 2]*

Filing of petition

2.5—(1) The petition and affidavit shall be filed in court, with a sufficient number of copies for service and use as provided by Rule 2.6.

(2) Each of the copies delivered shall have applied to it the seal of the court and be issued to the petitioner; and on each copy there shall be endorsed the date and time of filing.

(3) The court shall fix a venue for the hearing of the petition and this also shall be endorsed on each copy of the petition issued under paragraph (2).

(4) After the petition is filed, it is the duty of the petitioner to notify the court in writing of any winding-up petition presented against the protected railway company, as soon as he becomes aware of it.

Service of petition

2.6—(1) In the following paragraphs of this Rule, references to the petition are to a copy of the petition issued by the court under Rule 2.5(2) together with the affidavit in support of it and the documents (other than the copy petition) exhibited to the affidavit.

(2) The petition shall be served—

- (a) on any person who has appointed an administrative receiver of, or who has applied to the court for an administration order under Part II of the 1986 Act in relation to, the protected railway company;
- (b) if an administrative receiver has been appointed, on him;
- (c) if there is pending a petition for the winding up of the protected railway company, on the petitioner (and also on the provisional liquidator, if any);
- (d) on the person proposed as special railway administrator;
- (e) on the protected railway company;
- (f) where the petitioner is the Secretary of State, on the Authority; and
- (g) where the petitioner is the Authority, on the Secretary of State.

Notice to sheriff, etc

2.7—(1) The petitioner shall forthwith after filing the petition give notice of its presentation to—

- (a) any sheriff or other officer who to his knowledge is charged with an execution or other legal process against the protected railway company or its property, and
- (b) any person who to his knowledge has distrained against the protected railway company or its property.

(2) In the application of paragraph (1) of this Rule in a case where the protected railway company is a foreign company, within the meaning of Part II of Schedule 6 to the 1993 Act, the reference to property shall be taken as a reference to property situated within England and Wales.

Manner in which service of petition is to be effected

2.8—(1) Service of the petition in accordance with Rule 2.6 shall be effected by the petitioner, or his solicitor, or by a person instructed by him or his solicitor, not less than two days before the date fixed for the hearing.

(2) Service shall be effected as follows—

- (a) on the protected railway company (subject to paragraph (3) below), by delivering the documents to its registered office;
- (b) on any other person (subject to paragraph (4)), by delivering the documents to his proper address;
- (c) in either case, in such manner as the court may direct.

(3) If delivery to the protected railway company's registered office is not practicable or if the protected railway company is an unregistered company, service may be effected by delivery to the company's last known principal place of business in England and Wales.

(4) Subject to paragraph (5), for the purposes of paragraph (2)(b), a person's proper address is any which he has previously notified as his address for service; but if he has not notified any such address, service may be effected by delivery to his usual or last known address.

(5) In the case of a person who—

- (a) is an authorised institution or a former authorised institution within the meaning of the Banking Act 1987(a),
- (b) has appointed, or is or may be entitled to appoint, an administrative receiver of the protected railway company, and
- (c) has not notified an address for service,

the proper address is the address of an office of that person where, to the knowledge of the petitioner, the protected railway company maintains a bank account or, where no such office is known to the petitioner, the registered office of that person, or, if there is no such office, his usual or last known address.

(6) Delivery of the documents to any place or address may be made by leaving them there, or sending them by first class post.

Proof of service

[Form 3]

2.9—(1) Service of the petition shall be verified by affidavit, specifying the date on which, and the manner in which, service was effected.

(2) The affidavit, with a sealed copy of the petition exhibited to it, shall be filed in court forthwith after service, and in any event not less than one day before the hearing of the petition.

The hearing

2.10—(1) At the hearing of the petition, any of the following may appear or be represented—

- (a) the Secretary of State;
- (b) the Authority;
- (c) the protected railway company;
- (d) any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the protected railway company;
- (e) if an administrative receiver has been appointed, that administrative receiver;
- (f) any person who has presented a petition for the winding up of the protected railway company;
- (g) any person who has applied to the court for an administration order under Part II of the 1986 Act in relation to the protected railway company;
- (h) the person proposed for appointment as special railway administrator; and
- (i) with the leave of the court, any other person who appears to have an interest justifying his appearance.

[Form 4]

(2) If the court makes a railway administration order, the costs of the petitioner, and of any person appearing whose costs are allowed by the court, are payable as an expense of the administration.

Notice and advertisement of railway administration order

[Form 5]

2.11—(1) If the court makes a railway administration order, it shall forthwith give notice to the person appointed as special railway administrator.

[Form 6]

(2) Forthwith after the order is made, the special railway administrator shall advertise its making once in the Gazette, and once in such newspaper as he thinks most appropriate for ensuring that the order comes to the notice of the protected railway company's creditors.

(3) The special railway administrator shall also forthwith give notice of the making of the order—

- (a) to the Secretary of State;
- (b) to the Rail Regulator;
- (c) to the Authority;

(a) 1987 c. 22.

- (d) to any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the protected railway company;
- (e) if an administrative receiver has been appointed, to him;
- (f) if there is pending a petition for the winding up of the protected railway company, to the petitioner (and to the provisional liquidator, if any);
- (g) to any person who has applied to the court for an administration order under Part II of the 1986 Act in relation to the protected railway company; and
- (h) to the registrar of companies.

[Form 7]

[Form 8]

(4) Two sealed copies of the order shall be sent by the court to the special railway administrator, one of which shall be sent by him to the registrar of companies in accordance with section 21(2) of the 1986 Act.

(5) Paragraphs 3(h) and (4) shall not apply where the protected railway company is an unregistered company which is not subject to a requirement imposed under or by virtue of section 691(1) or 718 of the Companies Act to deliver any documents to the registrar of companies.

(6) If under section 9(4) of the 1986 Act the court makes any other order, it shall give directions as to the persons to whom, and how, notice of it is to be given.

PART 3

STATEMENT OF AFFAIRS AND PROPOSALS TO CREDITORS

Notice requiring statement of affairs

[Form 9]

3.1—(1) Where the special railway administrator determines to require a statement of the protected railway company's affairs to be made out and submitted to him in accordance with section 22 of the 1986 Act, he shall send notice to each of the persons whom he considers should be made responsible under that section, requiring them to prepare and submit the statement.

- (2) The persons to whom the notice is sent are referred to in this Part as "the deponents".
- (3) The notice shall inform each of the deponents—
 - (a) of the names and addresses of all others (if any) to whom the same notice has been sent;
 - (b) of the time within which the statement must be delivered; and
 - (c) of the effect of section 22(6) of the 1986 Act (penalty for non-compliance); and
 - (d) of the application to him, and to each of the other deponents, of section 235 of the 1986 Act (duty to provide information, and to attend on the special railway administrator if required).

(4) The special railway administrator shall, on request, furnish each deponent with the forms required for the preparation of the statement of affairs.

Verification and filing

[Form 10]

3.2—(1) The statement of affairs shall be in Form 10, shall contain all the particulars required by that form and shall be verified by affidavit by the deponents (using the same form).

(2) The special railway administrator may require any of the persons mentioned in section 22(3) of the 1986 Act to submit an affidavit of concurrence, stating that he concurs in the statement of affairs.

(3) An affidavit of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the affidavit is not in agreement with the deponents, or he considers the statement to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it.

(4) The statement of affairs shall be delivered to the special railway administrator by the deponent making the affidavit of verification (or by one of them, if more than one), together with a copy of the verified statement.

(5) Every affidavit of concurrence shall be delivered by the person who makes it, together with a copy.

(6) The special railway administrator shall file the verified copy of the statement, and the affidavits of concurrence (if any) in court.

Limited disclosure

3.3—(1) Where the special railway administrator thinks that it would prejudice the conduct of the railway administration for the whole or part of the statement of affairs to be disclosed, he may apply to the court for an order of limited disclosure in respect of the statement, or any specified part of it.

(2) The court may on the application order that the statement or, as the case may be, the specified part of it, be not filed in court, or that it is to be filed separately and not be open to inspection otherwise than with leave of the court.

(3) The court's order may include directions as to the delivery of documents to the registrar of companies and the disclosure of relevant information to other persons.

Release from duty to submit statement of affairs; extension of time

3.4—(1) The power of the special railway administrator under section 22(5) of the 1986 Act to give a release from the obligation imposed by that section, or to grant an extension of time, may be exercised at the special railway administrator's own discretion, or at the request of any deponent.

(2) A deponent may, if he requests a release or extension of time and it is refused by the special railway administrator, apply to the court for it.

(3) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the deponent has had an opportunity to attend the court for an *ex parte* hearing, of which he has been given at least 7 days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the deponent accordingly.

(4) The deponent shall, at least 14 days before the hearing, send to the special railway administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which he (the deponent) intends to adduce in support of it.

(5) The special railway administrator may appear and be heard on the application; and whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the attention of the court.

If such a report is filed, a copy of it shall be sent by the special railway administrator to the deponent, no later than five days before the hearing.

(6) Sealed copies of any order made on the application shall be sent by the court to the deponent and to the special railway administrator.

(7) On any application under this Rule, the applicant's costs shall be paid in any event by him and, unless the court otherwise orders, no allowance towards them shall be made out of the assets of the protected railway company.

Expenses of statement of affairs

3.5—(1) A deponent making the statement of affairs and affidavit shall be allowed, and paid by the special railway administrator out of his receipts, any expenses incurred by the deponent in so doing which the special railway administrator considers reasonable.

(2) Any decision by the special railway administrator under this Rule is subject to appeal to the court.

(3) Nothing in this Rule relieves a deponent of any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to the special railway administrator.

Statement to be annexed to proposals

3.6—(1) There shall be annexed to the special railway administrator’s proposals sent, under section 23 of the 1986 Act, to the relevant persons a statement by him showing—

- (a) details relating to his appointment as special railway administrator;
- (b) the names of the directors and secretary of the protected railway company;
- (c) an account of the circumstances giving rise to the application for a railway administration order;
- (d) if a statement of affairs has been submitted, a copy or summary of it, with the special railway administrator’s comments, if any;
- (e) if no statement of affairs has been submitted, details of the financial position of the protected railway company at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that of the railway administration order);
- (f) the manner in which the affairs and business of the protected railway company—
 - (i) have, since the date of the special railway administrator’s appointment, been managed and financed, and
 - (ii) will continue to be managed and financed; and
- (g) such other information (if any) as the special railway administrator thinks necessary.

(2) Where the Secretary of State, the Authority or the special railway administrator intends to apply to the court under section 18 of the 1986 Act for a railway administration order to be discharged at a time before the special railway administrator has sent a statement of his proposals to the relevant persons, he shall, at least 10 days before he makes such an application, send to the relevant persons (so far as he is aware of their addresses) a report containing the information required by paragraph (1)(a)—(f)(i) of this Rule.

(3) In this Rule “the relevant persons” means the persons referred to in paragraphs (a) to (e) of section 23(1) of the 1986 Act.

Notice to members of proposals to creditors

3.7 For the purposes of section 23(2)(b) of the 1986 Act, the notice shall be published once in the Gazette and once in the newspaper in which the making of the railway administration order was advertised.

PART 4 MEETINGS

Creditors’ meetings generally

4.1—(1) This Rule applies to creditors’ meetings summoned by the special railway administrator under section 14(2)(b) of the 1986 Act or pursuant to a direction of the court under section 17(3)(b) of that Act.

(2) In fixing the venue for the meeting, the special railway administrator shall have regard to the convenience of creditors.

(3) The meeting shall be summoned for commencement between 10.00 and 16.00 hours on a business day, unless the court otherwise directs.

[Form 11]

(4) At least 21 days’ notice of the meeting shall be given to all creditors who are known to the special railway administrator and who had claims against the protected railway company at the date of the railway administration order. The notice shall specify the purpose of the meeting and contain a statement of the effect of Rule 4.3 (entitlement to vote).

[Form 23]

(5) With the notice summoning the meeting there shall be sent forms of proxy.

(6) If within 30 minutes from the time fixed for the commencement of the meeting there is no person present to act as chairman, the meeting shall stand adjourned to the same time and place in the following week or, if that day is not a business day, to the business day immediately following.

(7) The meeting may from time to time be adjourned, if the chairman thinks fit, but not for more than 14 days from the date on which it was fixed to commence.

The chairman at meetings

4.2—(1) At any meeting of creditors summoned by the special railway administrator, either he shall be chairman, or a person nominated by him in writing to act in his place.

(2) A person so nominated must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the protected railway company, or
- (b) an employee of the special railway administrator or his firm who is experienced in insolvency matters.

Entitlement to vote

4.3—(1) Subject as follows, at a meeting of creditors in railway administration proceedings a person is entitled to vote only if—

- (a) he has given to the special railway administrator not later than 12.00 hours on the business day before the day fixed for the meeting, details in writing of the debt which he claims to be due to him from the protected railway company, and the claim has been duly admitted under the following provisions of this Rule, and
- (b) there has been lodged with the special railway administrator any proxy which he intends to be used on his behalf.

Details of the debt must include any calculation for the purposes of Rules 4.5 to 4.8.

(2) The chairman of the meeting may allow a creditor to vote, notwithstanding that he has failed to comply with paragraph (1)(a), if satisfied that the failure was due to circumstances beyond the creditor's control.

(3) The special railway administrator or, if other, the chairman of the meeting may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim.

(4) Votes are calculated according to the amount of a creditor's debt as at the date of the railway administration order, deducting any amounts paid in respect of the debt after that date.

(5) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.

Admission and rejection of claims

4.4—(1) At any creditors' meeting the chairman has power to admit or reject a creditor's claim for the purpose of his entitlement to vote; and the power is exercisable with respect to the whole or any part of the claim.

(2) The chairman's decision under this Rule, or in respect of any matter arising under Rule 4.3, is subject to appeal to the court by any creditor.

(3) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained.

(4) If on appeal the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that another meeting be summoned, or make such other order as it thinks just.

(5) Neither the special railway administrator nor any person nominated by him to be chairman is personally liable for costs incurred by any person in respect of an appeal to the court under this Rule, unless the court makes an order to that effect.

Secured creditors

4.5 At a meeting of creditors, a secured creditor is entitled to vote only in respect of the balance (if any) of his debt after deducting the value of his security as estimated by him.

Holders of negotiable instruments

4.6 A creditor shall not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing—

- (a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the protected railway company, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in his hands, and
- (b) to estimate the value of the security and, for the purpose of his entitlement to vote, to deduct it from his claim.

Retention of title creditors

4.7 For the purpose of entitlement to vote at a creditors' meeting in railway administration proceedings, a seller of goods to the protected railway company under a retention of title agreement shall deduct from his claim the value, as estimated by him, of any rights arising under that agreement in respect of goods in the possession of the protected railway company.

Hire-purchase, conditional sale and chattel leasing agreements

4.8—(1) Subject as follows, an owner of goods under a hire-purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable to him by the protected railway company as at the date of the railway administration order.

(2) In calculating the amount of any debt for this purpose, no account shall be taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the presentation of the petition for a railway administration order or any matter arising in consequence of that, or of the making of the order.

Resolutions and minutes

4.9—(1) Subject to paragraph (2), at a creditors' meeting in railway administration proceedings, a resolution is passed when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of it.

(2) Any resolution is invalid if those voting against it include more than half in value of the creditors to whom notice of the meeting was sent and who are not, to the best of the chairman's belief, persons connected with the protected railway company.

(3) The chairman of the meeting shall cause minutes of its proceedings to be entered in the protected railway company's minute book.

(4) The minutes shall include a list of the creditors who attended (personally or by proxy).

Report to creditors

4.10—(1) Within 14 days of the end of every period of 6 months beginning with the date of appointment of the special railway administrator the special railway administrator shall send to all creditors of the protected railway company a report on the progress of the administration.

(2) On vacating office the special railway administrator shall send to creditors a report on the administration up to that time.

This does not apply where the railway administration is immediately followed by the protected railway company going into liquidation, nor when the special railway administrator is removed from office by the court or ceases to be qualified as an insolvency practitioner.

Venue and conduct of members' meeting

4.11—(1) Where the special railway administrator summons a meeting of members of the protected railway company, he shall fix a venue for it having regard to their convenience.

(2) The chairman of the meeting shall be the special railway administrator or a person nominated by him in writing to act in his place.

- (3) A person so nominated must be either—
- (a) one who is qualified to act as an insolvency practitioner in relation to the protected railway company, or
 - (b) an employee of the special railway administrator or his firm who is experienced in insolvency matters.
- (4) If within 30 minutes from the time fixed for commencement of the meeting there is no person present to act as chairman, the meeting stands adjourned to the same time and place in the following week or, if that day is not a business day, to the business day immediately following.
- (5) Subject as above, the meeting shall be summoned and conducted as if it were a general meeting of the protected railway company summoned under the company's articles of association, and in accordance with the applicable provisions of the Companies Act.
- (6) The chairman of the meeting shall cause minutes of its proceedings to be entered in the protected railway company's minute book.

PART 5

THE SPECIAL RAILWAY ADMINISTRATOR

Fixing of remuneration

- 5.1—**(1) The special railway administrator is entitled to receive remuneration for his services as such.
- (2) The remuneration shall be fixed either—
- (a) as a percentage of the value of the property with which he has to deal, or
 - (b) by reference to the time properly given by the insolvency practitioner (as special railway administrator) and his staff in attending to matters arising in the administration.
- (3) The remuneration of the special railway administrator may be fixed by a resolution of a meeting of creditors, determining both whether the remuneration is to be fixed under paragraph (2) (a) or (b) and, if under paragraph (2)(a), any percentage to be applied as there mentioned.
- (4) In arriving at that determination, the meeting of creditors shall have regard to the following matters—
- (a) the complexity (or otherwise) of the case,
 - (b) any respects in which, in connection with the protected railway company's affairs, there falls on the special railway administrator any responsibility of an exceptional kind or degree,
 - (c) the effectiveness with which the special railway administrator appears to be carrying out, or to have carried out, his duties as such, and
 - (d) the value and nature of the property with which he has to deal.
- (6) If not fixed as above, the special railway administrator's remuneration shall, on his application, be fixed by the court.
- (7) The court may, if it appears to be a proper case, order the costs of the special railway administrator's application to be paid as an expense of the railway administration.
- (8) Where there are joint special railway administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred to the court for settlement by order.
- (9) If the special railway administrator is a solicitor and employs his own firm, or any partner of that firm, to act on behalf of the protected railway company, profit costs shall not be paid unless this is authorised by the court.

Recourse to the court

5.2—(1) If the special railway administrator considers that the remuneration fixed for him by resolution of the creditors is insufficient, he may apply to the court for an order increasing its amount or rate.

(2) The special railway administrator shall give at least 14 days' notice of his application to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented, and to be heard, on the application.

(3) The court may, if it appears to be a proper case, order the costs of the special railway administrator's application, including the costs of any creditors appearing or being represented, to be paid as an expense of the railway administration.

Creditors' claim that remuneration is excessive

5.3—(1) Any creditor of the protected railway company may, with the concurrence of at least 25 per cent in value of the creditors (including himself), apply to the court for an order that the special railway administrator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

(2) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application; but it shall not do so unless the applicant has had an opportunity to attend the court for an *ex parte* hearing, of which he has been given at least seven days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly.

(3) The applicant shall, at least 14 days before the hearing, send to the special railway administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

(4) If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

(5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable as an expense of the administration.

Disposal of charged property, etc

5.4—(1) The following applies where the special railway administrator applies to the court under section 15(2) of the 1986 Act for authority to dispose of property of the protected railway company which is subject to a security, or goods in the possession of the protected railway company under an agreement, to which that subsection relates.

(2) The court shall fix a venue for the hearing of the application, and the special railway administrator shall forthwith give notice of the venue to the person who is the holder of the security or, as the case may be, the owner under the agreement.

(3) If an order is made under the said section 15(2), the special railway administrator shall forthwith give notice of it to that person or owner.

(4) The court shall send two sealed copies of the order to the special railway administrator, who shall send one of them to that person or owner.

Abstract of receipts and payments

5.5—(1) The special railway administrator shall—

(a) within 2 months after the end of 6 months from the date of his appointment, and of every subsequent period of 6 months, and

(b) within 2 months after he ceases to act as special railway administrator,

send the requisite accounts of the receipts and payments of the protected railway company to the court, and to the registrar of companies except where the protected railway company is an unregistered company which is not subject to a requirement imposed under or by virtue of section 691(1) or 718 of the Companies Act to deliver any documents to the registrar of companies.

(2) The court may, on the application of the special railway administrator, extend the period of two months mentioned above.

(3) The accounts are to be in the form of an abstract showing—

(a) receipts and payments during the relevant period of 6 months, or

(b) where the special railway administrator has ceased to act, receipts and payments during the period from the end of the last 6 month period to the time when he so ceased (alternatively if there has been no previous abstract, receipts and payments in the period since his appointment as special railway administrator).

[Form 12]

(4) The special railway administrator is guilty of an offence if he makes default in complying with this Rule and is liable on summary conviction to a fine not exceeding one fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

(5) In this Rule “the statutory maximum” means the prescribed sum under section 32 of the Magistrates Courts Act 1980(a).

Resignation

5.6—(1) The special railway administrator may give notice of his resignation on grounds of ill health or because—

(a) he intends ceasing to be in practice as an insolvency practitioner, or

(b) there is some conflict of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by him of the duties of special railway administrator.

[Form 13]

(2) The special railway administrator may, with the leave of the court, give notice of his resignation on grounds other than those specified in paragraph (1).

[Form 14]

(3) The special railway administrator must give to the persons specified below at least 7 days’ notice of his intention to resign, or to apply for the court’s leave to do so,—

(a) the Secretary of State;

(b) the Authority;

(c) any continuing special railway administrator of the protected railway company, and

(d) if there is no such continuing special railway administrator, to the protected railway company and its creditors.

Special Railway Administrator deceased

5.7—(1) Subject as follows, where the special railway administrator has died, it is the duty of his personal representative to give notice of the fact to the court, specifying the date of death.

This does not apply if notice has been given under any of the following paragraphs of this Rule.

(3) If the deceased special railway administrator was a partner in a firm, notice of the death may be given by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Secretary of State for the authorisation of insolvency practitioners.

(3) Notice of the death may be given by any person producing to the court the relevant death certificate or a copy of it.

Order filling vacancy

5.8 Where the court makes an order filling a vacancy in the office of special railway administrator, the same provisions apply in respect of giving notice of, and advertising, the order as in the case of the railway administration order.

(a) 1980 c. 43.

PART 6
COURT PROCEDURE AND PRACTICE
CHAPTER 1
APPLICATIONS

Preliminary

6.1 This Chapter applies to any application made to the court in railway administration proceedings, except a petition for a railway administration order.

Interpretation

6.2—(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.

[Forms 19 and 20].

Form and contents of application

6.3—(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 1986 Act, the 1993 Act 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.

Filing and service of application

6.4—(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 as follows in this Rule and in the next, 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 of 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 1986 Act, the 1993 Act or the Rules;
(b) that the giving of notice to any person be dispensed with;
(c) that notice be given in some way other than that specified in paragraph (3).

(5) Unless the provision of the 1986 Act, the 1993 Act or the Rules under which the application is made provides otherwise, and subject to the next paragraph, the application must be served at least 14 days before the date fixed for the hearing.

(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.

Other hearings ex parte

6.5—(1) Where the relevant provisions of the 1986 Act, the 1993 Act 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 6.4(2).

(3) Alternatively, the court may fix a venue for the application to be heard, in which case Rule 6.4 applies (so far as relevant).

Hearing of application

6.6—(1) Unless allowed or authorised to be made otherwise, every application before the registrar shall, and every application before the judge may, be heard in chambers.

(2) Unless either—

(a) the judge has given a general or special direction to the contrary, or

(b) it is not within the registrar's power to make the order required,

the jurisdiction of the court to hear and determine the application may be exercised by the registrar, and the application shall be made to the registrar in the first instance.

(3) Where the application is made to the registrar he may refer to the judge any matter which he thinks should properly be decided by the judge, and the judge may either dispose of the matter or refer it back to the registrar with such direction as he thinks fit.

(4) Nothing in this Rule precludes an application being made directly to the judge in a proper case.

Use of affidavit evidence

6.7—(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.

Filing and service of affidavits

6.8—(1) Unless the provisions of the 1986 Act, the 1993 Act or the Rules under which the application is made provide 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 date fixed for the hearing, 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 date fixed for the hearing.

(2) Any affidavit may be sworn by the applicant or by the respondent or by some other person possessing direct knowledge of the subject matter of the application.

Use of reports

6.9—(1) A report may be filed in court instead of an affidavit, unless the application involves other parties or the court otherwise orders, by the special railway administrator.

(2) In any case where a report is filed instead of an affidavit, the report shall be treated for the purpose of Rule 6.8(1) and any hearing before the court as if it were an affidavit.

Adjournment of hearing: directions

6.10—(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;
- (b) whether particulars of claims 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 registrar on the hearing in court or in chambers, of any deponents to affidavits; and
 - (iii) any report to be given by the special railway administrator; and
- (d) the matters to be dealt with in evidence.

CHAPTER 2

SHORTHAND WRITERS

Appointment and remuneration of shorthand writers

[Form 21]

6.11—(1) In the High Court the judge may in writing nominate one or more persons to be official shorthand writers to the court.

[Forms 21 and 22]

(2) The court may, at any time in the course of railway administration proceedings, appoint a shorthand writer to take down the evidence of a person examined in the course of those proceedings.

(3) The remuneration of a shorthand writer appointed in railway administration proceedings shall be paid by the party at whose instance the appointment was made, or out of the assets of the protected railway company, or otherwise, as the court may direct.

(4) Any question arising as to the rates of remuneration payable under this Rule shall be determined by the court in its discretion.

CHAPTER 3

ENFORCEMENT PROCEDURES

Enforcement of court orders

6.12 In any railway administration proceedings, orders of the court may be enforced in the same manner as a judgment to the same effect.

Orders enforcing compliance with the Rules

6.13—(1) The court may, on application by the special railway administrator, make such orders as it thinks necessary for the enforcement of obligations falling on any person in accordance with section 22 (statement of affairs to be submitted to the administrator) or section 235 (duty to co-operate with office-holder) of the 1986 Act.

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

Warrants under section 236 of the 1986 Act

6.14—(1) A warrant issued by the court under section 236 of the 1986 Act shall be addressed to such officer of the High Court as the warrant specifies, or to any constable.

(2) The persons referred to in section 236(5) of the 1986 Act as the prescribed officer of the court are the tipstaff and his assistants of the court.

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

(4) When a person is arrested under a warrant issued under section 236 (inquiry into insolvent company's dealings) of the 1986 Act, the officer arresting him shall forthwith bring him before the court issuing the warrant in order that he may be examined.

(5) If he cannot immediately be brought up for examination, the officer shall deliver him into the custody of the governor of the prison named in the warrant, who shall keep him in custody and produce him before the court as it may from time to time direct.

(6) After arresting the person named in the warrant, the officer shall forthwith report to the court the arrest or delivery into custody (as the case may be) and apply to the court to fix a venue for the person's examination.

(7) The court shall appoint the earliest practicable time for the examination, and shall—

(a) direct the governor of the prison to produce the person for examination at the time and place appointed, and

(b) forthwith give notice of the venue to the person who applied for the warrant.

(8) Any property in the arrested person's possession which may be seized shall be—

(a) lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or

(b) kept by the officer seizing it pending the receipt of written orders from the court as to its disposal,

as may be directed by the court.

CHAPTER 4

COURT RECORDS AND RETURNS

Title of proceedings

6.15 Every railway administration proceeding shall, with any necessary additions, be intitled "IN THE MATTER OF ...(naming the protected railway company to which the proceedings relate) AND IN THE MATTER OF THE INSOLVENCY ACT 1986 AND THE RAILWAYS ACT 1993".

Court records

6.16 The court shall keep records of all railway administration proceedings, and shall cause to be entered in the records the taking of any step in the proceedings, and such decisions of the court in relation thereto, as the court thinks fit.

Inspection of records

6.17—(1) Subject to paragraphs (2) and (3), the court's records of railway administration proceedings shall be open to inspection by any person.

(2) If in the case of a person applying to inspect the records the registrar is not satisfied as to the propriety of the purpose for which inspection is required, he may refuse to allow it. That person may then apply forthwith and *ex parte* to the judge, who may refuse the inspection or allow it on such terms as he thinks fit.

(3) The decision of the judge under paragraph (2) is final.

File of court proceedings

6.18—(1) In respect of all railway administration proceedings, the court shall open and maintain a file for each case; and (subject to directions of the registrar) all documents relating to such proceedings shall be placed on the relevant file.

(2) No railway administration proceedings shall be filed in the Central Office of the High Court.

Right to inspect the file

6.19—(1) In the case of any railway administration proceedings, the following persons have the right, at all reasonable times, to inspect the court's file of the proceedings—

- (a) the Secretary of State;
- (b) the Authority;
- (c) the special railway administrator;
- (d) any person stating himself in writing to be a creditor of the protected railway company to which the railway administration proceedings relate; and
- (e) every person who is, or at any time has been, a director or officer of the protected railway company to which the railway administration proceedings relate and every person who is a member of that company.

(2) The right of inspection conferred on any person by paragraph (1) may be exercised on his behalf by a person properly authorised by him.

(3) Any person may, by special leave of the court, inspect the file.

(4) The right of inspection conferred by this Rule is not exercisable in the case of documents, or parts of documents, as to which the court directs, either generally or specially, that they are not to be made open to inspection without the court's leave.

(5) An application under paragraph (4) for a direction of the court may be made by the special railway administrator or by any party appearing to the court to have an interest.

(6) If, for the purpose of powers conferred by the 1986 Act or the Rules or the Insolvency Rules the Secretary of State, the Department or the official receiver wishes to inspect the file of any railway administration proceedings, and requests the transmission of the file, the court shall comply with such request (unless the file is for the time being in use for the court's purposes).

(7) Paragraphs (2) and (3) of Rule 6.17 apply in respect of the court's file of any proceedings as they apply in respect of court records.

Filing of Gazette notices and advertisements

6.20—(1) In any court in which railway administration proceedings are pending, an officer of the court shall file a copy of every issue of the Gazette which contains an advertisement relating to those proceedings.

(2) Where there appears in a newspaper an advertisement relating to railway administration proceedings pending in any court, the person inserting the advertisement shall file a copy of it in that court.

The copy of the advertisement shall be accompanied by, or have endorsed on it, such particulars as are necessary to identify the proceedings and the date of the advertisement's appearance.

(3) An officer of any court in which railway administration proceedings are pending shall from time to time file a memorandum giving the dates of, and other particulars relating to, any notice published in the Gazette, and any newspaper advertisements, which relate to proceedings so pending.

The officer's memorandum shall be prime facie evidence that any notice or advertisement mentioned in it was duly inserted in the issue of the newspaper or the Gazette which is specified in the memorandum.

CHAPTER 5

COSTS AND DETAILED ASSESSMENT

Application of the Civil Procedure Rules

6.21 Subject to provision to inconsistent effect made as follows in this Chapter CPR Part 43 (scope of costs rules and definitions), Part 44 (general rules about costs), Part 45 (fixed costs), Part 47 (procedure for detailed assessment of costs and default provisions) and Part 48 (costs—special cases) shall apply to railway administration proceedings with any necessary modifications.

Requirement to assess costs by the detailed procedure

6.22—(1) Subject as follows, where the costs, charges or expenses of any person are payable out of the assets of the protected railway company, the amount of those costs, charges or expenses shall be decided by detailed assessment unless agreed between the special railway administrator and the person entitled to payment, and in the absence of such agreement the special railway administrator may serve notice in writing requiring that person to commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions) in the court to which the railway administration proceedings are allocated or, where in relation to a protected railway company there is no such court, in any court having jurisdiction to wind up the protected railway company.

(2) Where the amount of the costs, charges or expenses of any person employed by a special railway administrator in railway administration proceedings are required to be decided by detailed assessment or fixed by order of the court this does not preclude the special railway administrator from making payments on account to such person on the basis of an undertaking by that person to repay immediately any money which may, when detailed assessment is made, prove to have been overpaid, with interest at the rate specified in section 17 of the Judgments Act 1838(a) on the date payment was made and for the period from the date of payment to that of repayment.

(3) In any proceedings before the court, including proceedings on a petition, the court may order costs to be decided by detailed assessment.

Procedure where detailed assessment required

6.23—(1) Before making a detailed assessment of the costs of any person employed in railway administration proceedings by a special railway administrator, the costs officer shall require a certificate of employment, which shall be endorsed on the bill and signed by the special railway administrator.

(2) The certificate shall include—

- (a) the name and address of the person employed;
- (b) details of the functions to be carried out under the employment; and
- (c) a note of any special terms of remuneration which have been agreed.

(3) Every person whose costs in railway administration proceedings are required to be decided by detailed assessment shall, on being required in writing to do so by the special railway administrator, commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions).

(4) If that person does not commence detailed assessment proceedings within three months of the requirement under paragraph (3), or within such further time as the court, on application, may permit, the special railway administrator may deal with the assets of the protected railway company without regard to any claim by that person, whose claim is forfeited by such failure to commence proceedings.

(5) Where in any such case such a claim lies additionally against a special railway administrator in his personal capacity, that claim is also forfeited by such failure to commence proceedings.

(a) 1838 c. 110 (1 & 2 Vict).

Costs paid otherwise than out of the assets of the protected railway company

6.24 Where the amount of costs is decided by detailed assessment under an order of the court directing that the costs are to be paid otherwise than out of the assets of the protected railway company, the costs officer shall note on the final costs certificate by whom, or the manner in which, the costs are to be paid.

Award of costs against special railway administrator

6.25 Without prejudice to any provision of the 1986 Act, the 1993 Act, the Insolvency Rules or the Rules by virtue of which the special railway administrator is not in any event to be liable for costs and expenses, where a special railway administrator is made a party to any proceedings on the application of another party to the proceedings, he shall not be personally liable for costs unless the court otherwise directs.

Applications for costs

6.26—(1) This Rule applies where a party to, or person affected by, any railway administration proceedings—

- (a) applies to the court for an order allowing his costs, or part of them, incidental to the proceedings, and
- (b) that application is not made at the time of the proceedings.

(2) The person concerned shall serve a sealed copy of his application on the special railway administrator.

(3) The special railway administrator may appear on the application.

(4) No costs of or incidental to the application shall be allowed to the applicant unless the court is satisfied that the application could not have been made at the time of the proceedings.

Costs and expenses of witnesses

6.27—(1) Except as directed by the court, no allowance as a witness in any examination or other proceedings before the court shall be made to an officer of the protected railway company to which the railway administration proceedings relate.

(2) A person presenting a petition in railway administration proceedings shall not be regarded as a witness on the hearing of the petition, but the costs officer may allow his expenses of travelling and subsistence.

Final costs certificate

6.28—(1) A final costs certificate of the costs officer is final and conclusive as to all matters which have not been objected to in the manner provided for under the rules of the court.

(2) Where it is proved to the satisfaction of a costs officer that a certificate of taxation has been lost or destroyed, he may issue a duplicate.

CHAPTER 6

PERSONS INCAPABLE OF MANAGING THEIR AFFAIRS

Introductory

6.29—(1) The Rules in this Chapter apply where in railway administration proceedings it appears to the court that a person affected by the proceedings is one who is incapable of managing and administering his property and affairs either—

- (a) by reason of mental disorder within the meaning of the Mental Health Act 1983(a), or
- (b) due to physical affliction or disability.

(2) The person concerned is referred to as “the incapacitated person”.

(a) 1983 c. 20.

Appointment of another person to act

6.30—(1) The court may appoint such person as it thinks fit to appear for, represent or act for the incapacitated person.

(2) The appointment may be made either generally or for the purpose of any particular application or proceeding, or for the exercise of particular rights or powers which the incapacitated person might have exercised but for his incapacity.

- (3) The court may make the appointment either of its own motion or on application by—
- (a) a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the incapacitated person, or
 - (b) any relative or friend of the incapacitated person who appears to the court to be a proper person to make the application, or
 - (c) the official receiver, or
 - (d) the special railway administrator.

(4) Application under paragraph (3) may be made *ex parte*, but the court may require such notice of the application as it thinks necessary to be given to the person alleged to be incapacitated, or any other person, and may adjourn the hearing of the application to enable the notice to be given.

Affidavit in support of application

6.31—(1) Except where made by the official receiver, an application under Rule 6.30(3) shall be supported by an affidavit of a registered medical practitioner as to the mental or physical condition of the incapacitated person.

(2) In the excepted case, a report made by the official receiver is sufficient.

Service of notices following appointment

6.32 Any notice served on, or sent to, a person appointed under Rule 6.30 has the same effect as if it had been served on, or given to, the incapacitated person.

CHAPTER 7

GENERAL

Principal court rules and practice to apply

6.33—(1) The CPR and the practice and procedure of the High Court (including any practice direction) apply to railway administration proceedings, with necessary modifications, except so far as inconsistent with the Rules.

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

Right of audience

6.34—(1) Official receivers and deputy official receivers have right of audience in railway administration proceedings.

(2) Subject as above, rights of audience in railway administration proceedings are the same as obtain in insolvency proceedings.

(3) In this Rule “insolvency proceedings” has the same meaning as in the Insolvency Rules.

Right of attendance

6.35—(1) Subject as follows, in railway administration proceedings, any person stating himself in writing, in records kept by the court for that purpose, to be a creditor or member of the protected railway company is entitled, at his own cost, to attend in court or in chambers at any stage of the proceedings.

(2) Attendance may be by the person himself, or his solicitor.

(3) A person so entitled to attend may request the court in writing to give him notice of any step in the railway administration proceedings; and, subject to his paying the costs involved and keeping the court informed as to his address, the court shall comply with the request.

(4) If the court is satisfied that the exercise by a person of his rights under this Rule has given rise to costs for the assets of the protected railway company which would not otherwise have been incurred and ought not, in the circumstances, to be paid out of those assets, the court may direct that the costs be paid by the person concerned, to an amount specified.

The rights of that person under this Rule shall be in abeyance so long as those costs are not paid.

(5) The court may appoint one or more persons to represent the creditors or the members of a protected railway company, or any class of them, to have the rights conferred by this Rule, instead of the rights being exercised by any or all of them individually.

If two or more persons are appointed under this paragraph to represent the same interest, they must (if at all) instruct the same solicitor.

Special railway administrator's solicitor

6.36 Where in railway administration proceedings the attendance of the special railway administrator's solicitor is required, whether in court or in chambers, the special railway administrator himself need not attend, unless directed by the court.

Formal defects

6.37 No railway administration proceedings shall be invalidated by any formal defect or by any irregularity, unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court.

Restriction on concurrent proceedings and remedies

6.38 Where in railway administration proceedings the court makes an order staying any action, execution or other legal process against the property of a protected railway company, service of the order may be effected by sending a sealed copy of the order to whatever is the address for service of the claimant or other party having the carriage of the proceedings to be stayed.

Affidavits

6.39—(1) Subject to the following paragraphs of this Rule, the practice and procedure of the High Court with regard to affidavits, their form and contents, and the procedure governing their use, are to apply to all railway administration proceedings.

(2) Where in railway administration proceedings an affidavit is made by the official receiver or the special railway administrator, the deponent shall state the capacity in which he makes it, the position which he holds and the address at which he works.

(3) A creditor's affidavit of debt may be sworn before his own solicitor.

(4) The official receiver, any deputy official receiver, or any officer of the court duly authorised in that behalf, may take affidavits and declarations.

(5) Subject to paragraph (6), where the Rules provide for the use of an affidavit, a witness statement verified by a statement of truth may be used as an alternative.

(6) Paragraph (5) does not apply to Rules 3.2, 8.3 and 8.4.

(7) Where paragraph (5) applies, any form prescribed by Rule 9.6 shall be modified accordingly.

Security in court

6.40—(1) Where security has to be given to the court (otherwise than in relation to costs), it may be given by guarantee, bond or the payment of money into court.

(2) A person proposing to give a bond as security shall give notice to the party in whose favour the security is required, and to the court, naming those who are to be sureties to the bond.

(3) The court shall forthwith give notice to the parties concerned of a venue for the execution of the bond and the making of any objection to the sureties.

(4) The sureties shall make an affidavit of their sufficiency (unless dispensed with by the party in whose favour the security is required) and shall, if required by the court, attend the court to be cross-examined.

Payment into court

6.41 The CPR relating to payment into and out of court of money lodged in court as security for costs apply to money lodged in court under the Rules.

Further information and disclosure

6.42—(1) Any party to railway administration proceedings may apply to the court for an order—

- (a) that any other party
 - (i) clarify any matter which is in dispute in the proceedings, or
 - (ii) give additional information in relation to any such matter, in accordance with CPR Part 18 (further information); or
- (b) to obtain disclosure from any other party in accordance with CPR Part 31 (disclosure and inspection of documents).

(2) An application under this Rule may be made *ex parte*.

Office copies of documents

6.43—(1) Any person who has under the Rules the right to inspect the court file of railway administration proceedings may require the court to provide him with an office copy of any document from the file.

(2) A person's right under this Rule may be exercised on his behalf by his solicitor.

(3) An office copy provided by the court under this Rule shall be in such form as the registrar thinks appropriate, and shall bear the court's seal.

PART 7

PROXIES AND COMPANY REPRESENTATION

Definition of Proxy

7.1—(1) For the purposes of the Rules, a proxy is an authority given by a person ("the principal") to another person ("the proxy-holder") to attend a meeting and speak and vote as his representative.

(2) Proxies are for use at creditors' meetings summoned or called by the special railway administrator under section 14(2)(b) of the 1986 Act or summoned by him pursuant to a direction made by the court under section 17(3)(b) of that Act.

(3) Only one proxy may be given by a person for any one meeting at which he desires to be represented; and it may only be given to one person, being an individual aged 18 years or over. But the principal may specify one or more other such individuals to be proxy-holder in the alternative, in the order in which they are named in the proxy.

(4) Without prejudice to the generality of paragraph (3), a proxy for a particular meeting may be given to whoever is to be the chairman of the meeting, and such chairman cannot decline to be the proxy-holder in relation to that proxy.

(5) A proxy requires the holder to give the principal's vote on matters arising for determination at the meeting, or to abstain, or to propose, in the principal's name, a resolution to be voted on by the meeting, either as directed or in accordance with the holder's own discretion.

Issue and use of forms of proxy

7.2—(1) When a notice is given of a meeting to be held in railway administration proceedings and forms of proxy are sent out with the notice, no form so sent out with the notice shall have inserted in it the name or description of any person.

(2) No form of proxy shall be used at any meeting except that which is sent with the notice summoning the meeting, or a substantially similar form.

[Form 23]

(3) A form of proxy shall be signed by the principal, or by some person authorised by him (either generally or with reference to a particular meeting). If the form is signed by a person other than the principal, the nature of the authority of that person shall be stated.

Use of proxies at meetings

7.3—(1) A proxy given for a particular meeting may be used at any adjournment of that meeting.

(2) Where the special railway administrator holds proxies for use by him as chairman of a meeting, and some other person acts as chairman, that other person may use the proxies of the special railway administrator as if he were himself proxy-holder.

(3) A proxy-holder may propose any resolution which, if proposed by another, would be a resolution in favour of which by virtue of the proxy he would be entitled to vote.

(4) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, preclude the proxy-holder from voting at his discretion on resolutions put to the meeting which are not dealt with in the proxy.

Retention of proxies

7.4—(1) Subject as follows, proxies used for voting at any meeting shall be retained by the chairman of the meeting.

(2) The chairman shall deliver the proxies forthwith after the meeting to the special railway administrator, where that is someone other than himself.

Right of inspection

7.5—(1) The special railway administrator shall, so long as proxies lodged with him are in his hands, allow them to be inspected, at all reasonable times on any business day by—

- (a) all creditors who have submitted in writing a claim to be creditors of the protected railway company,
- (b) that company's members, in the case of proxies used at a meeting of that company, and
- (c) the directors of that company.

(2) The reference in paragraph (1) to creditors does not include a person whose claim has been wholly rejected for the purposes of voting, dividend or otherwise.

(3) Any person attending a meeting in railway administration proceedings is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents (including proofs) sent or given, in accordance with directions contained in any notice convening the meeting, to the chairman of that meeting or to any other person by a creditor or member of the protected railway company for the purpose of that meeting.

Proxy-holder with financial interest

7.6—(1) A proxy-holder shall not vote in favour of any resolution which would directly or indirectly place him, or any associate of his, in a position to receive any remuneration out of the assets of the protected railway company, unless the proxy specifically directs him to vote in that way.

(2) Where a proxy-holder has signed the proxy as being authorised to do so by his principal and the proxy specifically directs him to vote in the way mentioned in paragraph (1), he shall nevertheless not vote in that way unless he produces to the chairman of the meeting written authorisation from his principal sufficient to show that the proxy-holder was entitled so to sign the proxy.

(3) This Rule applies also to any person acting as chairman of a meeting and using proxies in that capacity under Rule 7.3, and in its application to him, the proxy-holder is deemed an associate of his.

(4) In this Rule “associate” shall have the same meaning as in section 435 of the 1986 Act.

Company representation

7.7—(1) Where a person is authorised under section 375 of the Companies Act to represent a corporation at a meeting of creditors called in railway administration proceedings, he shall produce to the chairman of the meeting a copy of the resolution from which he derives his authority.

(2) The copy resolution must be under the seal of the corporation, or certified by the secretary or a director of the corporation to be a true copy.

(3) Nothing in this Rule requires the authority of a person to sign a proxy on behalf of a principal which is a corporation to be in the form of a resolution of that corporation.

PART 8

EXAMINATION OF PERSONS IN RAILWAY ADMINISTRATION PROCEEDINGS

Interpretation and Application

8.1—(1) The Rules in this Part relate to applications to the court, made by the special railway administrator, for an order under section 236 of the 1986 Act (inquiry into protected railway company’s dealings when it is, or is alleged to be, insolvent).

(2) The following definitions apply—

- (a) the person in respect of whom an order is applied for is “the respondent”;
- (b) “section 236” means section 236 of the 1986 Act.

Form and contents of application

8.2—(1) The application shall be in writing, and be accompanied by a brief statement of the grounds on which it is made.

(2) The respondent must be sufficiently identified in the application.

(3) It shall be stated whether the application is for the respondent—

- (a) to be ordered to appear before the court, or
- (b) to be ordered to clarify any matter which is in dispute in the proceedings or to give additional information in relation to any such matter and if so CPR Part 18 (further information) shall apply to any such order, or
- (c) to submit an affidavit (if so, particulars are to be given of the matters to which he is required to swear), or
- (d) to produce books, papers or other records (if so, the items in question are to be specified),

or for any two or more of those purposes.

(4) The application may be made *ex parte*.

Order for examination, etc

8.3—(1) The court may, whatever the purpose of the application, make any order which it has power to make under section 236.

(2) The court, if it orders the respondent to appear before it, shall specify a venue for his appearance, which shall be not less than 14 days from the date of the order.

- (3) If he is ordered to submit affidavits, the order shall specify—
- (a) the matters which are to be dealt with in his affidavits, and
 - (b) the time within which they are to be submitted to the court.

(4) If the order is to produce books, papers or other records, the time and manner of compliance shall be specified.

(5) The order must be served forthwith on the respondent; and it must be served personally, unless the court otherwise orders.

Procedure for examination

8.4—(1) At any examination of the respondent, the special railway administrator may attend in person, or be represented by a solicitor with or without counsel, and may put such questions to the respondent as the court may allow.

(2) If the respondent is ordered to clarify any matter or to give additional information, the court shall direct him as to the questions which he is required to answer, and as to whether his answers (if any) are to be made on affidavit.

(3) Where an application has been made under section 236 on information provided by a creditor of the protected railway company, that creditor may, with the leave of the court and if the special railway administrator does not object, attend the examination and put questions to the respondent (but only through the special railway administrator).

(4) The respondent 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.

(5) 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 respondent and signed by him at a venue fixed by the court.

(6) The written record may, in any proceedings (whether under the 1986 Act or otherwise), be used as evidence against the respondent of any statement made by him in the course of his examination.

Record of examination

8.5—(1) Unless the court otherwise directs, the written record of the respondent's examination, and any response given by him to any order under CPR Part 18, and any affidavits submitted by him in compliance with an order of the court under section 236, shall not be filed in court.

(2) The written record, responses and affidavits shall not be open to inspection, without an order of the court, by any person other than the special railway administrator.

(3) Paragraph (2) applies also to so much of the court file as shows the grounds of the application for an order under section 236 and to any copy of any order sought under CPR Part 18.

(4) The court may from time to time give directions as to the custody and inspection of any documents to which this Rule applies, and as to the furnishing of copies of, or extracts from, such documents.

Costs of proceedings under section 236

8.6—(1) Where the court has ordered an examination of a person under section 236, and it appears to it that the examination was made necessary because information had been unjustifiably refused by the respondent, it may order that the costs of the examination be paid by him.

(2) Where the court makes an order against a person under section 237(1) or section 237(2) of the 1986 Act (court's enforcement powers under section 236), the costs of the application for the order may be ordered by the court to be paid by the respondent.

(3) Subject to paragraphs (1) and (2), the special railway administrator's costs shall, unless the court otherwise orders, be paid out of the assets of the protected railway company.

(4) A person summoned to attend for examination under this Part shall be tendered a reasonable sum in respect of travelling expenses incurred in connection with his attendance. Other costs falling on him are at the court's discretion.

PART 9

MISCELLANEOUS AND GENERAL

Power of Secretary of State to regulate certain matters

9.1—(1) Pursuant to paragraph 27 of Schedule 8 to the 1986 Act the Secretary of State may, subject to the 1986 Act, the 1993 Act and the Rules, make regulations with respect to any matter provided for in the Rules as relates to the carrying out of the functions of a special railway administrator of a protected railway company.

- (2) Regulations made pursuant to paragraph (1) may—
- (a) confer discretion on the court;
 - (b) make non-compliance with any of the regulations a criminal offence;
 - (c) make different provision for different cases, including different provision for different areas; and
 - (d) contain such incidental, supplemental and transitional provisions as may appear to the Secretary of State necessary or expedient.

Notices

9.2—(1) All notices required or authorised by or under the 1986 Act or the Rules to be given must be in writing, unless it is otherwise provided, or the court allows the notice to be given in some other way.

(2) Where in any railway administration proceedings a notice is required to be sent or given by the special railway administrator, the sending or giving of it may be proved by means of a certificate by him, or his solicitor, or a partner or an employee of either of them, that the notice was duly posted.

(3) In the case of a notice to be sent or given by a person other than the special railway administrator, the sending or giving of it may be proved by means of a certificate by that person that he posted the notice, or instructed another person (naming him) to do so.

(4) A certificate under this Rule may be endorsed on a copy or specimen of the notice to which it relates.

(5) This Rule is without prejudice to the provisions of section 149 of the 1993 Act.

Quorum at creditors' meetings

9.3—(1) Any meeting of creditors called or summoned by a special railway administrator is competent to act if a quorum is present.

(2) Subject to the next paragraph, a quorum is at least one creditor entitled to vote.

(3) For the purposes of this Rule, the reference to the creditor necessary to constitute a quorum is to those persons present or represented by proxy by any person (including the chairman) and includes persons duly represented under section 375 of the Companies Act.

(4) Where at any meeting of creditors—

- (a) the provisions of this Rule as to a quorum being present are satisfied by the attendance of—
 - (i) the chairman alone, or
 - (ii) one other person in addition to the chairman, and

(b) the chairman is aware, by virtue of proofs and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote, the meeting shall not commence until at least the expiry of 15 minutes after the time appointed for its commencement.

Evidence of proceedings at meeting

9.4—(1) A minute of proceedings at a meeting (held under the 1986 Act or the Rules) of the creditors or the members of a protected railway company called or summoned by the special railway administrator, signed by a person describing himself as, or appearing to be, the chairman of that meeting is admissible in railway administration proceedings without further proof.

- (2) The minute is prime facie evidence that—
- (a) the meeting was duly convened and held,
 - (b) all resolutions passed at the meeting were duly passed, and
 - (c) all proceedings at the meeting duly took place.

Documents issuing from Secretary of State

9.5—(1) Any document purporting to be, or to contain, any order, directions or certificate issued by the Secretary of State shall be received in evidence and deemed to be or (as the case may be) contain that order or certificate, or those directions, without further proof, unless the contrary is shown.

(2) Paragraph (1) applies whether the document is signed by the Secretary of State himself or an officer on his behalf.

(3) Without prejudice to the foregoing, a certificate signed by the Secretary of State or an officer on his behalf and confirming—

- (a) the making of an order,
- (b) the issuing of any document, or
- (c) the exercise of any discretion, power or obligation arising or imposed under the 1986 Act, the 1993 Act or the Rules,

is conclusive evidence of the matters dealt with in the certificate.

Forms for use in railway administration proceedings

9.6—(1) The forms contained in the Schedule to the Rules shall be used in, and in connection with, railway administration proceedings.

(2) The forms shall be used with such variations, if any, as the circumstances may require.

Special railway administrator's security

9.7—(1) Wherever under the Rules any person has to appoint, or proposes the appointment of, a person to the office of special railway administrator, he is under a duty to satisfy himself that the person appointed or to be appointed has security for the proper performance of his functions.

(2) In any railway administration proceedings the cost of the special railway administrator's security shall be defrayed as an expense of the proceedings.

Time-limits

9.8—(1) The provisions of CPR rule 2.8 (time) apply, as regards computation of time, to anything required or authorised to be done by the Rules.

(2) The provisions of CPR rule 3.1(2)(a) (the court's general powers of management) apply so as to enable the court to extend or shorten the time for compliance with anything required or authorised to be done by the Rules.

Service by post

9.9—(1) Section 149 of the 1993 Act applies as regards the service of documents in railway administration proceedings.

(2) Where a document is served by post, the document is treated as served, where first class post is used on the second business day after the date of posting, and where second class post is used on the fourth business day after the date of posting, unless the contrary is shown.

(3) The date of posting is presumed, unless the contrary is shown, to be the date shown in the post-mark on the envelope in which the document is contained.

General provisions as to service and notice

9.10 Subject to section 149 of the 1993 Act, Rule 9.9 and (subject to Rule 9.11(1)) CPR Part 6 (service of documents) applies as regards any matter relating to the service of documents and the giving of notice in railway administration proceedings.

Service outside the jurisdiction

9.11—(1) Section III of CPR Part 6 (special provisions about service out of the jurisdiction) does not apply in railway administration proceedings.

(2) Where for the purposes of railway administration proceedings any process or order of the court, or other document, is required to be served on a person who is not in England and Wales, the court may order service to be effected within such time, on such person, at such place and in such manner as it thinks fit, and may also require such proof of service as it thinks fit.

(3) An application under this Rule shall be supported by an affidavit stating—

- (a) the grounds on which the application is made, and
- (b) in what place or country the person to be served is, or probably may be found.

Confidentiality of documents

9.12—(1) Where in railway administration proceedings the special railway administrator considers, in the case of a document forming part of the records of the proceedings, that—

- (a) it should be treated as confidential, or
- (b) it is of such a nature that its disclosure would be calculated to be injurious to the interests of the creditors or members of a protected railway company,

he may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.

(2) Where under this Rule the special railway administrator determines to refuse inspection of a document, the person wishing to inspect it may apply to the court for that determination to be overruled; and the court may either overrule it altogether, or sustain it subject to such conditions (if any), as it thinks fit to impose.

(3) Nothing in this Rule entitles the special railway administrator to decline to allow the inspection of any claim or proxy.

Notices sent simultaneously to the same person

9.13 Where under the 1986 Act, the 1993 Act or the Rules a document of any description is to be sent to a person (whether or not as a member of a class of persons to whom that same document is to be sent), it may be sent as an accompaniment to any other document or information which the person is to receive, with or without modification or adaptation of the form applicable to that document.

Right to copy documents

9.14 Where under the 1986 Act or the Rules a person has a right to inspect documents, the right includes that of taking copies of those documents, on payment—

- (a) in the case of documents on the court's file of proceedings, of the fee chargeable under any order made under section 130 of the Supreme Court Act 1981(a), and

(a) 1981 c. 54.

- (b) otherwise, of the appropriate fee.

Charge for copy documents

9.15 Where in railway administration proceedings the special railway administrator is requested by a creditor or member to supply copies of any documents, he is entitled to require the payment of the appropriate fee in respect of the supply of the documents.

Non-receipt of notice of meeting

9.16 Where in accordance with the 1986 Act or the Rules a meeting of creditors is called or summoned by notice, the meeting is presumed to have been duly summoned and held, notwithstanding that not all those to whom the notice is to be given have received it.

Right to have list of creditors

9.17—(1) In any railway administration proceedings a creditor who under the Rules has the right to inspect documents on the court file also has the right to require the special railway administrator to furnish him with a list of the creditors of the protected railway company and the amounts of their respective debts.

This does not apply if a statement of the protected railway company's affairs has been filed in court.

(2) The special railway administrator, on being required by any person to furnish that list, shall send it to him, but is entitled to charge the appropriate fee for doing so.

False claim of status as creditor

9.18—(1) Where the Rules provide for creditors of a protected railway company a right to inspect any documents, whether on the court's file or in the hands of the special railway administrator or other person, it is an offence for a person, with the intention of obtaining a sight of documents which he has not under the Rules any right to inspect, falsely to claim a status which would entitle him to inspect them.

(2) A person guilty of an offence under this Rule is liable—

- (a) in summary proceedings, to a maximum of six months' imprisonment or a fine of the statutory maximum, or both;
- (b) on indictment, to two years' imprisonment or a fine, or both.

The Gazette

9.19—(1) A copy of the Gazette containing any notice required by the 1986 Act or the Rules to be gazetted is evidence of any fact stated in the notice.

(2) In the case of an order of the court notice of which is required by the 1986 Act or the Rules to be gazetted, a copy of the Gazette containing the notice may in any proceedings be produced as conclusive evidence that the order was made on the date specified in the notice.

(3) Where an order of the court which is gazetted has been varied, and where any matter has been erroneously or inaccurately gazetted, the person whose responsibility it was to procure the requisite entry in the Gazette shall forthwith cause the variation of the order to be gazetted or, as the case may be, a further entry to be made in the Gazette for the purpose of correcting the error or inaccuracy.

Punishment of offences

9.20 Section 431 (summary proceedings) of the 1986 Act, as it applies to England and Wales, has effect in relation to offences under the Rules as to offences under that Act.

PART 10

INTERPRETATION AND APPLICATION

Introductory

10.1 This Part of the Rules has effect for their interpretation and application; and any definition given in this Part applies except, and in so far as, the context otherwise requires.

“The court”; “the registrar”

10.2—(1) Anything to be done in railway administration proceedings by, to or before the court may be done by, to or before a judge or the registrar.

(2) The registrar may authorise any act of a formal or administrative character which is not by statute his responsibility to be carried out by the chief clerk or any other officer of the court acting on his behalf, in accordance with directions given by the Lord Chancellor.

(3) In railway administration proceedings, “the registrar” means—

- (a) subject to the following paragraph, a Registrar in Bankruptcy of the High Court;
- (b) where the proceedings are in the District Registry of Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle-upon-Tyne or Preston, the District Registrar.

“Give notice” etc.

10.3—(1) A reference in the Rules to giving notice, or to delivering, sending or serving any document, means that the notice or document may be sent by post, unless under a particular Rule personal service is expressly required.

(2) Any form of post may be used, unless under a particular Rule a specified form is expressly required.

(3) Personal service of a document is permissible in all cases.

(4) Notice of the venue fixed for an application may be given by service of the sealed copy of the application under Rule 6.4(3).

Notice, etc. to solicitors

10.4 Where in railway administration proceedings a notice or other document is required or authorised to be given to a person, it may, if he has indicated that his solicitor is authorised to accept service on his behalf, be given instead to the solicitor.

Notice to joint special railway administrators

10.5 Where two or more persons are acting jointly as the special railway administrator in any proceedings, delivery of a document to one of them is to be treated as delivery to them all.

“Petition”

10.6 References to “petition” means petition for a railway administration order to be made in relation to a protected railway company.

“Venue”

10.7 References to the “venue” for any proceedings or attendance before the court, or for a meeting, are to the time, date and place for the proceedings, attendance or meeting.

“Railway administration proceedings”

10.8 “Railway administration proceedings” means any proceedings under sections 59 to 62 of, and Schedule 6 to, the 1993 Act.

“The appropriate fee”

10.9 “The appropriate fee” means 15 pence per A4 or A5 page and 30 pence per A3 page.

Expressions used generally

10.10—(1) “File in court” means deliver to the court for filing.

(2) “The Gazette” means The London Gazette.

(3) “Business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain under or by virtue of the Banking and Financial Dealings Act 1971(a).

Application

10.11 The Rules apply to railway administration proceedings commenced on or after the date on which the Rules come into force. Nothing contained in the Insolvency Rules 1986(b) shall apply to such proceedings commenced on or after that date.

5th October 2001

Irvine of Lairg, C

I concur,

6th October 2001

Stephen Byers
Secretary of State,
Department for Transport, Local Government and the Regions

(a) 1971 c. 80.
(b) S.I. 1986/1925.

SCHEDULE

Rule 9.6

FORMS

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FORM NO	TITLE
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2.	Consent of special railway administrator(s) to act
3.	Affidavit of service of petition for railway administration order
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6.	Notice of railway administration order for newspaper or London Gazette
7.	Notice of railway administration order
8.	Notice of railway administration order to registrar of companies
9.	Notice requiring preparation and submission of railway administration statement of affairs
10.	Statement of affairs
11.	Notice of meetings in railway administration proceedings
12.	Special railway administrator's abstract of receipt and payments
13.	Notice to court of special railway administrator's resignation under rule 5.6(1)
14.	Notice to court of special railway administrator's resignation under rule 5.6(2)
15.	Notice of order to deal with charged property
16.	Notice of discharge of railway administration order
17.	Statement of special railway administrator's proposals
18.	Statement of revised proposals
19.	Originating application
20.	Ordinary application
21.	Appointment of shorthand writer to take examination
22.	Declaration by shorthand writer
23.	Proxy (railway administration)
24.	Order appointing person to act for incapacitated person

Rule 2.4

Petition for Railway Administration Order

(TITLE)

- (a) Insert title of court To (a) _____

- (b) Insert full name(s) and address(es) The petition of (b) _____

- (c) Insert full name of company subject to petition 1.(c) _____

- (d) Insert date of incorporation (hereinafter called “the company” was incorporated on (d)____
under the Companies Act 19____
- (e) Insert address of registered office 2. The registered office of the company is at (e) _____

- (f) Insert amount of nominal capital and how it is divided 3. The nominal capital of the company is (f) £ ____ divided into shares
of £ ____ each. The amount of the capital paid up or credited as paid
up is (g) £ ____
- (g) Insert amount of capital paid up or credited as paid up 4. The principal objects for which the company was established are
as follows

and other objects set forth in the memorandum of association thereof.

5. The petitioner believes that the company is or is likely to become
unable to pay its debts for the reasons stated in the affidavit
of _____ filed in support hereof. (and/or)

The Secretary of State has certified that it would be appropriate for him
to petition for the winding up of the protected railway company under
section 124A of the Insolvency Act 1986 (petition for winding up on
grounds of public interest) and that it would be just and equitable, as
mentioned in that section, for the said company to be wound up.
(and/or)

An agreement between the Secretary of State and a relevant rail link undertaker (as defined in section 60 of the Railways Act 1993) has been determined.

(In the case of a petition presented by the Strategic Rail Authority)

This petition relates to a protected railway company which is the holder of a passenger licence and is presented with the consent of the Secretary of State.

6. The petitioner proposes that during the period for which the order is in force the affairs, business and property of the company be managed by

(h) Insert full name(s) and address(es) of proposed special railway administrator(s)

(h) _____

who is(are) to the best of the petitioner's knowledge and belief qualified to act as (an) insolvency practitioner(s) in relation to the company. The petitioner(s) therefore pray(s) as follows:

(1) that the court make a railway administration order in relation to (i) _____

(i) Insert full name of company

(j) Insert name(s) of proposed special railway administrator(s)

(2) that (j) _____
be appointed to be the special railway administrator(s) of the said company.

(k) Insert details of any ancillary orders sought

(3)(k)
or

(4) that such other order may be made in the premises as shall be just.

Note:

It is intended to serve this petition on _____

Rule 2.9

Affidavit of Service of Petition for Railway Administration Order

(TITLE)

(a) Insert full name, address and description of deponent

1(a) _____
of _____

Make oath and say as follows

(b) Insert the address stated in the petition to be the company's registered office

1. That I did on _____ day the _____ day of _____ 20____, serve the above-named company with a copy of the petition duly sealed with the seal of the court and its supporting documents by leaving the same at the registered office of the said company at (b) _____

OR by posting the same on _____ day the _____ day of _____ 20____, by ordinary first class mail in an envelope duly pre-paid and properly addressed to the said company at its registered office at (b) _____

(c) Insert name

2. That I did on _____ day the _____ day of _____ 20____, serve (c) _____ a person who has appointed or is [or may be] entitled to appoint an administrative receiver of the said company with a copy of the petition duly sealed with the seal of the court and its supporting documents by leaving the same at his proper address at (d) _____

(d) Insert address where served

OR by posting the same on _____ day the _____ day of _____ 20____, by ordinary post first class mail in an envelope duly pre-paid and properly addressed to the said (c) _____
at (d) _____

3. That I did on _____ day the _____ day of _____ 20____, serve (c) _____ the administrative receiver of the said company with a copy of the petition duly sealed with the seal of the court and its supporting documents by leaving the same at his proper address at (d) _____

at (d) _____

7. That I did on _____ day the _____ day of _____
20____, serve (c) _____ the Strategic Rail Authority with a copy
of the petition duly sealed with the seal of the court and its supporting
documents by leaving the same at his proper address at (d) _____

OR by posting the same on _____ day the _____ day
of _____ 20____, by ordinary post first class mail in an envelope duly
pre-paid and properly addressed to the said (c) _____ at
(d) _____

8. That I did on _____ day the _____ day of _____
20____, serve (c) _____ the Secretary of State for Transport,
Local Government and the Regions with a copy of the petition duly sealed
with the seal of the court and its supporting documents by leaving the same at
his proper address at (d) _____

OR by posting the same on _____ day the _____ day of _____
20____, by ordinary post first class mail in an envelope duly pre-paid and
properly addressed to the said (c) _____ at (d) _____

A sealed copy of the petition and its supporting documents are now produced
and shown to me marked "A".

S W O R N

Rule 2.10

Railway Administration Order

(TITLE)

(a) Insert name and address of petitioner UPON THE PETITION OF (a) _____

(b) Insert status of petitioner (b) presented to the court on _____ 20 ____

 And upon hearing counsel for the petitioner and for (c) _____

(c) Insert details of any other parties (including the company) appearing and by whom represented _____

 and upon reading the evidence _____

IT IS ORDERED that during the period for which this order is in force the affairs, business and property of the company be managed by the special railway administrator(s) appointed pursuant to the provisions of section [60] [61] [62] of the Railways Act 1993 for the purposes set out in section 59(2)(a) and (b) of that Act.

(d) Insert full name(s) and address(es) of special railway administrator(s) AND it is ordered that (d) _____

be appointed special railway administrator(s) of the company and that during the period this order is in force any act required or authorised to be done by the special railway administrator is to be done by all or by one or more of the persons for the time being holding that office.

Rule 2.11

Notice of Railway Administration Order
(for newspaper or London Gazette)

(TITLE)

Registered number

Nature of
business

- (a) Insert "32" or the number of the trade classification listed overleaf which most closely relates to the business of the company

Trade classification(s)

- (b) Insert date

Railway Administration order made (b)

_____ 20____

[Joint] Special Railway administrator(s)

Rule 5.5

The Insolvency Act 1986
and the Railways Act 1993

Special Railway Administrator's
Abstract of Receipts and Payments

Pursuant to Rule 5.5 of the
Railway Administration Order Rules 2001

To the Registrar of Companies

To the Court

For
official use

--	--	--

Company Number

--

Insert full name of company

Name of Company

Limited

I/We _____

of _____

Special railway administrator(s) of the company present the abstract
of receipts and payments overleaf for the period

Insert dates

from

--

to

--

Number of continuation sheets (if any) attached

--

Signed _____ Dated _____

Abstract

Note

The receipts and payments must severally be added up at the foot of each sheet and the totals carried forward from one abstract to another without any intermediate balance so that the gross totals shall represent the total amounts received and paid by the administrator since he was appointed

Receipts		
Brought forward from previous Abstract (if any)	£	p
Carried forward to [continuation sheet]* [next Abstract]		
Payments		
Brought forward from previous Abstract (if any)	£	p
Carried forward to [continuation sheet]* [next Abstract]		

*delete as appropriate

*delete as appropriate

Notice to Court of Registration by Special Railway Administrator under Rule 5.6(1) of the Railway Administration Order Rules 2001

(TITLE)

(a) Insert full name and address of special railway administrator

I, (a)

the special railway administrator of the above company give notice that I am resigning from the said office of special railway administrator with effect from (b)

(b) Insert date
(c) See Rule 5.6(1)

for the following reason(s): (c)

(d) The date must be at least 7 days before that stated at (a) above

I confirm that on (d)

I gave notice to:

(i) _____

(ii) _____

(iii) _____

being persons who under section 13(3) of the Insolvency Act 1986 (as applied by Schedule 6 to the Railways Act 1993) are entitled to apply for a vacancy in the office of special railway administrator to be filled, of my intention to resign as special railway administrator.

Signed _____

Dated _____

**Rule 5.6 Notice to court of Resignation by
Special Railway Administrator Under Rule 5.6(2)
of the Railway Administration Order Rules 2001**

(a) Insert full name and address of administrator

(I a) _____

(TITLE)

(b) Insert date

the special railway administrator of the above company give that on (b) _____ the court gave me leave to resign from the said office of special railway administrator with effect from (b) _____

(c) See Rule 5.6 (2)

for the following reason(s): (c) _____

(d) The date must be at least 7 days before application was made to the court for leave to resign.

and I hereby resign.
I confirm that on (d) _____ I gave notice to:
(i) _____
(ii) _____
(iii) _____

being persons who under section 13(3) of the Insolvency Act 1986 (as applied by Schedule 6 to the Railways Act 1993) are entitled to apply for a vacancy in the office of special railway administrator to be filled, of my intention to apply to the court for leave to resign as special railway administrator.

Signed _____

Dated _____

The Insolvency Act 1986
and the Railways Act 1993

Notice of Order to Deal with
Charged Property
Pursuant to Section 15(7) of the
Insolvency Act 1986 as applied by
Schedule 6 to the Railways Act 1993

To the Registrar of Companies

For official use

--	--	--

Company Number

--

Name of Company

Insert full name of company

Limited

I/We _____

of _____

*delete whichever is
not applicable

special railway administrator(s) of the company obtained an order for the
disposal of charged property*/goods in possession of the company under a
hire-purchase agreement on

Insert date

--

An office copy of the said Court order is attached.

Signed _____ Dated _____

Presenter's name,
address and reference
(if any)

	For Official Use	
	Insolvency Section	Post Room

The Insolvency Act 1986
and the Railways Act 1993

Notice of Discharge of
Railway Administration Order
Pursuant to Section 18(4) of the
Insolvency Act 1986 as applied by
Schedule 6 to the Railways Act 1993

To the Registrar of Companies
To the Secretary of State
To the Strategic Railway Authority

For official use

--	--	--

Company Number

--

Name of Company

Insert full name of company

Limited

I/We _____

of _____

special railway administrator(s) of the company hereby give notice that on

Insert date

--

the railway administration order was discharged. An office copy of the said order of discharge is attached.

Signed _____ Dated _____

Presenter's name,
address and reference
(if any)

	For Official Use	
	Insolvency Section	Post Room

The Insolvency Act 1986
and the Railways Act 1993

Statement of Special Railway
Administrator's Proposals
Pursuant to Section 23 of the
Insolvency Act 1986 as applied by
Schedule 6 to the Railways Act 1993

To The Secretary of State for Transport
Local Government and the Regions
The Rail Regulator
The Strategic Rail Authority
(named creditors)
The Registrar of Companies

For official use

--	--	--

Company Number

--

Name of Company

Insert full name of company

Limited

I/We _____

of _____

special railway administrator(s) of the company attach a copy of my[our] proposals for achieving the purposes set out in the railway administration order filed herein.

Signed _____ Dated _____

Presenter's name,
address and reference
(if any)

	For Official Use	
	Insolvency Section	Post Room

The Insolvency Act 1986 and
the Railways Act 1993

**Statement of Special Railway
Administrator's Revised Proposals**

(TITLE)

To: The Secretary of State for Transport, Local Government and the Regions
The Rail Regulator
The Strategic Rail Authority
(named creditors)
The Registrar of Companies

Notice is hereby given under section 23(2) of the Insolvency Act 1986 (as applied by Schedule 6 to the Railways Act 1993) of revisions of the proposals which were sent to the persons mentioned in section 23(1) on the _____ day of _____ 20 _____

The revisions I propose are:

The reasons for these revisions are:

Signed _____
Special Railway Administrator(s)

Rule 6.2

Originating Application

(TITLE)

Between Applicant and Respondent

(a) Insert name and address of respondent

Let (a) attend before the Judge/Registrar on:— Date Time hours Place

(b) Insert name of applicant

On the hearing of an application by (b) the applicant for an order in the following terms:—

(c) State the terms of the order to which the applicant claims to be entitled

(c) The grounds on which the applicant claims to be entitled to the order are:—

(d) Set out grounds or refer to an affidavit in support

(d) The names and addresses of the persons upon whom it is intended to serve this application are:—

(e) State the names and addresses of the persons intended to be served

(e) OR It is not intended to serve any person with this application

(f) State the applicant's address for service

The applicant's address for service is: (f) Date Signed: (SOLICITOR FOR THE) APPLICANT

If you do not attend, the court may make such order as it thinks fit.

Rule 6.2

Ordinary Application

(TITLE)

Between
Applicant

and
Respondent

Take notice that I intend to apply to the Judge/Registrar on:

Date

Time

hours

Place

(a) State nature and grounds
of application

for (a)

Signed:

(SOLICITOR FOR THE) APPLICANT

My/Our address for service is:—

(b) Give the name(s) and
address(es) of the
person(s) (including the
respondent) on whom it
is intended to serve the
application

To: (b)

OR

It is not intended to serve any person with this application

If you do not attend, the court will make such order as it thinks fit

Rule 6.11

**Appointment of Shorthand Writer
(Railway Administration Proceedings)**

(TITLE)

- (a) Insert name of applicant Upon the application of (a)
- (b) Insert name of shorthand writer the court appoints (b)
of
- (c) Insert name to take down a written record of the examination under section 236
of the Insolvency Act 1986 (as applied by Schedule 6 to the Railways
Act 1993).
of (c)
- today under Rule 6.12 of the Railways Administration Order Rules
2001.

Dated _____

Rule 6.11

**Declaration by Shorthand Writer
(Railway Administration Proceedings)**

(TITLE)

I,

of

(a) Insert name

the shorthand writer appointed by this court to take down notes of the examination of (a)

Delete as appropriate

do solemnly and sincerely declare that I will truly and faithfully take down the questions and answers put and given by him/her

and will deliver an accurate written record of them as the court directs.

Dated

Declared before me as follows: _____

Date

Place

Duly Authorised Officer

Rule 7.2

The Insolvency Act 1986 and the Railways Act 1993

Proxy (Railway Administration)

(TITLE)

Notes to help completion of the form

Please give full name and address for communication

Name of creditor

Address

Please insert name of person (who must be 18 or over) or the "chairman of the meeting". If you wish to provide for alternative proxy-holders in the circumstances that your first choice is unable to attend please state the name(s) of the alternatives as well.

Name of proxy-holder

1

2

3

Please delete words in brackets if the proxy-holder is only to vote as directed ie he has no discretion

I appoint the above person to be my/the creditor's proxy-holder at the meeting of creditors to be held on _____ or at any adjournment of that meeting. The proxy-holder is to propose or vote as instructed below [and in respect of any resolution for which no specific instruction is given, may vote or abstain at his/her discretion].

Voting instructions for resolutions

Please insert as appropriate

1.

2.

This form must be signed

Signature _____ Date _____

Name in CAPITAL LETTERS

Only to be completed if the creditor has not signed in person

Position with creditor or relationship to creditor or other authority for signature.

Rule 6.30

Order Appointing Person to Act for Incapacitated Person

(TITLE)

Mr Registrar

in chambers

- (a) "The Official Receiver"
or insert full name and
address of the
applicant and the
capacity in which he
makes the application

And upon hearing

- (b) Insert name and
description of
incapacitated person

And upon reading the evidence

And it appearing that (b),

is incapable of managing and administering his property and affairs

- (c) Insert name and
address of
incapacitated person's
representative

It is ordered that (c)

- (d) Delete as applicable

be appointed to (d) [appear for] [represent] [act for] (e)

- (e) Insert name of
incapable person

(d) [for the purpose of]

[generally in the proceedings.]

Dated _____

EXPLANATORY NOTE

(This note does not form part of the Rules)

These Rules set out the procedure for the conduct of railway administration proceedings for protected railway companies under the Insolvency Act 1986 and the Railways Act 1993. They apply the relevant rules contained in the Insolvency Rules 1986 with modifications.



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