

SCHEDULE 1

PART 5

AMENDMENTS TO PART 5 OF THE PRINCIPAL RULES

Amendments to Rule 5.1

28. In Rule 5.1—

- (a) in paragraph (1) after the words “the Act” there is inserted “, except in relation to voluntary arrangements under section 263A, in relation to which only Chapters 7, 10, 11 and 12 of this Part shall apply,”;
- (b) for paragraph (2) there is substituted—
 - “(2) In this Part, in respect of voluntary arrangements other than voluntary arrangements under section 263A—
 - (a) Chapter 2 applies in all cases;
 - (b) Chapter 3 applies in cases where an application for an interim order is made;
 - (c) Chapter 4 applies in cases where no application for an interim order is or is to be made;
 - (d) except where otherwise stated, Chapters 5 and 6 apply in all cases;
 - (e) Chapter 8 applies where a bankrupt makes an application under section 261(2)(a); and
 - (f) Chapter 9 applies where the official receiver makes an application under section 261(2)(b).
 - (3) In this Part, in respect of voluntary arrangements under section 263A—
 - (a) Chapter 7 applies in all cases; and
 - (b) Chapter 10 applies where the official receiver makes an application under section 263D(3).
 - (4) In this Part, Chapters 11 and 12 apply in all cases.”.

Amendments to Rule 5.7

29. In paragraph (1) of Rule 5.7—

- (a) after sub-paragraph (d) the word “and” is omitted;
- (b) at the end of sub-paragraph (e) for the full-stop there is substituted a semi-colon and after that semi-colon there is inserted the word “and”; and
- (c) after sub-paragraph (e) there is inserted—
 - “(f) that the debtor has not submitted to the official receiver either the document referred to at section 263B(1)(a) or the statement referred to at section 263B(1)(b).”.

Omission of Rule 5.28

30. Rule 5.28 is omitted.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Substitution of Chapter 7 of Part 5

31. For Chapter 7 of Part 5 of the Rules there is substituted—

“CHAPTER 7

FAST-TRACK VOLUNTARY ARRANGEMENT

Application of Chapter

5.35. The Rules in this Chapter apply in relation to an individual debtor who intends to submit a proposal for a voluntary arrangement with his creditors to the official receiver in accordance with the provisions of section 263B.

Interpretation

5.36. In this Chapter—

“voluntary arrangement” means an individual voluntary arrangement under section 263A;

“proposal” means the document setting out the terms of the voluntary arrangement which the debtor is proposing.

Contents of proposal

5.37.—(1) The debtor’s proposal submitted under section 263B(1) shall—

(a) be accompanied by any fee payable to the official receiver for acting as nominee; and

(b) contain—

(i) a statement that the debtor is eligible to propose a voluntary arrangement;

(ii) a short explanation why, in his opinion, a voluntary arrangement is desirable, and give reasons why his creditors may be expected to concur with such an arrangement; and

(iii) a statement that the debtor is aware that he commits an offence under section 262A if, for the purpose of obtaining the approval of his creditors to his proposal, he makes any false representation, or fraudulently does, or omits to do, anything.

(2) The following matters shall be stated, or otherwise dealt with, in the proposal—

(a) the following matters, so far as within the debtor’s immediate knowledge—

(i) his assets, with an estimate of their respective values;

(ii) the extent (if any) to which the assets are charged in favour of creditors; and

(iii) the extent (if any) to which particular assets are to be excluded from the voluntary arrangement;

(b) particulars of any property, other than assets of the debtor himself, which is proposed to be included in the voluntary arrangement, the source of such property and the terms on which it is to be made available for inclusion;

(c) the nature and amount of the debtor’s liabilities (so far as within his immediate knowledge), the manner in which they are proposed to be met, modified, postponed or otherwise dealt with by means of the voluntary arrangement and (in particular)—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (i) how it is proposed to deal with preferential creditors (defined in section 258(7)) and creditors who are, or claim to be, secured;
- (ii) how associates of the debtor (being creditors of his) are proposed to be treated under the voluntary arrangement; and
- (iii) whether, to the debtor's knowledge, claims have been made under section 339 (transactions at an undervalue), section 340 (preferences), section 343 (extortionate credit transactions), or whether there are circumstances giving rise to the possibility of such claims,

and, where any such circumstances are present, whether, and if so how, it is proposed under the voluntary arrangement to make provision for wholly or partly indemnifying the insolvent estate in respect of such claims;

- (d) whether any, and if so what, guarantees have been given of the debtor's debts by other persons, specifying which (if any) of the guarantors are associates of his;
- (e) the proposed duration of the voluntary arrangement;
- (f) the proposed dates of distributions to creditors, with estimates of their amounts;
- (g) how it is proposed to deal with the claims of any person who is bound by the arrangement by virtue of section 263D(2)(c);
- (h) an estimate of the fees and expenses that will be incurred in connection with the approval and implementation of the voluntary arrangement;
- (j) whether, for the purposes of the voluntary arrangement, any guarantees are to be offered by any persons other than the debtor, and whether (if so) any security is to be given or sought;
- (k) the manner in which funds held for the purpose of payment to creditors, and not so paid on the termination of the voluntary arrangement, are to be dealt with;
- (l) the functions which are to be undertaken by the supervisor of the voluntary arrangement;
- (m) an address of the official receiver to which correspondence with the official receiver is to be sent;
- (n) the names and addresses of all the debtor's creditors so far as within his immediate knowledge; and
- (o) whether the EC Regulation will apply and, if so, whether the proceedings will be main proceedings or territorial proceedings,

and the proposal shall be signed and dated by the debtor.

(3) The official receiver shall on request supply to the debtor the address referred to in paragraph (2)(m).

Requirement for the official receiver's decision

5.38.—(1) Where the official receiver receives a proposal for a voluntary arrangement in accordance with Rule 5.37 he shall, within 28 days of its receipt, serve a notice on the debtor stating that—

- (a) he agrees to act as nominee in relation to the proposal;
- (b) he declines to act as nominee in relation to the proposal and specifying reasons for his decision; or
- (c) on the basis of the information supplied to him he is unable to reach a decision as to whether to act and specifying what further information he requires.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(2) Where the debtor, pursuant to a request under paragraph (1)(c), supplies the information requested, the official receiver shall, within 28 days of the receipt of the information, serve a notice on the debtor in accordance with paragraph (1).

Arrangements for approval of fast-track voluntary arrangement

5.39.—(1) As soon as reasonably practicable after the official receiver agrees to act as nominee, he shall send to the creditors and any trustee who is not the official receiver—

- (a) a copy of the proposal; and
- (b) a notice inviting creditors to vote to approve or reject the debtor’s proposal and stating that—
 - (i) if a majority in excess of three-quarters in value of creditors who vote approve the proposal, the official receiver will, as soon as reasonably practicable, report to the court that the proposal has been approved;
 - (ii) under section 263F—
 - (aa) the debtor, a person who was entitled to participate in the arrangements made under section 263B(2), any trustee who is not the official receiver, or the official receiver, has 28 days from the date the official receiver reports to the court under section 263C that the proposal has been approved to apply to the court to have the proposal set aside on the grounds set out in section 263F(1);
 - (bb) a creditor, who was not made aware of the arrangements under section 263B(2) at the time when they were made, has 28 days from the date on which he becomes aware of the voluntary arrangement, to apply to have the proposal set aside on the grounds set out in section 263F(1); and
 - (iii) creditors cannot propose modifications to the debtor’s proposal; and
- (c) for the creditors, a copy of Form 5.6 for their use.

(2) The notice shall include a date specified by the official receiver as the final date on which he will accept votes from creditors, being a date not less than 14 days and not more than 28 days from the date of the notice.

Approval by creditors

5.40.—(1) All creditors who wish to vote shall give notice in Form 5.6 to the official receiver of their decision whether to accept or reject the debtor’s proposal. Such notification shall be sent to the official receiver at the address specified in the notice.

(2) Votes may be signed by a representative of a creditor.

(3) Votes from a representative of a creditor shall be accompanied by written authority for that representation signed and dated by the creditor.

Entitlement to vote

5.41.—(1) Subject as follows, any creditor who is sent a notice by the official receiver is entitled to vote for the approval or rejection of the proposal.

(2) A creditor’s entitlement to vote is calculated by reference to the amount of the creditor’s debt at the date of the bankruptcy order.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(3) A creditor may vote in respect of a debt for an unliquidated amount or any debt whose value is not ascertained, and for the purposes of voting (but not otherwise) his debt shall be valued at £1 unless the official receiver agrees to put a higher value on it.

Procedure for admission of creditors' claims for voting purposes

5.42.—(1) The official receiver has the 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 part of the claim.

(2) The official receiver's decision on entitlement to vote is subject to appeal to the court by any creditor or the debtor.

(3) If on appeal the official receiver's decision is reversed or varied, or votes are declared invalid, the court may order another vote to be held, or make such order as it thinks just.

The court's power to make an order under this paragraph is exercisable only if it considers that the circumstances giving rise to the appeal are such as give rise to unfair prejudice or material irregularity.

(4) An application to the court by way of appeal against the official receiver's decision shall not be made after the end of the period of 28 days beginning with the day on which the report required by section 263C is made to the court.

(5) The official receiver is not personally liable for any costs incurred by any person in respect of an appeal under this Rule.

Requisite majorities

5.43.—(1) A proposal is approved by the creditors if a majority in excess of three-quarters in value of the creditors who vote approve the proposal.

(2) In the following cases there is to be left out of account a creditor's vote in respect of any claim or part of a claim—

- (a) where the claim or part is secured;
- (b) where the claim is in respect of a debt wholly or partly on, or secured by, a current bill of exchange or promissory note, unless the creditor is willing—
 - (i) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the debtor, 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
 - (ii) to estimate the value of the security and (for the purpose of entitlement to vote, but not of any distribution under the arrangement) to deduct it from his claim.

Notification to the court

5.44. The official receiver shall, in his report to court for the purposes of section 263C, include a statement whether, in his opinion—

- (a) the EC Regulation applies to the voluntary arrangement; and
- (b) if so, whether the proceedings are main proceedings or territorial proceedings.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Notice of appointment as supervisor etc

5.45.—(1) Where the official receiver is appointed to act as supervisor of a voluntary arrangement, he shall, as soon as reasonably practicable, give written notice of his appointment to the Secretary of State, and all creditors of whom he is aware, and the trustee (if any) who is not the official receiver.

(2) If the official receiver vacates office as supervisor he shall give written notice of that fact to the Secretary of State.

Revocation of the fast-track voluntary arrangement

5.46.—(1) This Rule applies where the court makes an order of revocation under section 263F.

(2) Where the person who applied for the order is—

- (a) the debtor, he shall serve a sealed copy of the order on the supervisor and any trustee of his estate who is not the official receiver;
- (b) the supervisor, he shall serve a sealed copy of the order on the debtor, and any trustee who is not the official receiver;
- (c) a trustee who is not the official receiver, he shall serve a sealed copy of the order on the debtor and the supervisor; and
- (d) a creditor, he shall serve a sealed copy of the order on the debtor, the supervisor and any trustee who is not the official receiver.

(3) The supervisor shall, as soon as reasonably practicable after receiving a copy of the order, give notice of it, to all persons who were sent a copy of the debtor's proposal under Rule 5.39 and all other persons who are affected by the order.

(4) The person on whose application the order was made shall, within 7 days after the making of the order, give written notice of it to the Secretary of State.

Supervisor's accounts and reports

5.47.—(1) The supervisor shall keep accounts and records of his acts and dealings in and in connection with the arrangement, including in particular records of all receipts and payments of money.

(2) The supervisor shall, not less often than once in every 12 months beginning with the date of his appointment—

- (a) prepare a report on the progress of the voluntary arrangement, including a summary of receipts and payments; and
- (b) send copies of it to—
 - (i) the debtor; and
 - (ii) all of the debtor's creditors of whom he is aware,

and if in any period of 12 months he has made no payments and had no receipts, he shall at the end of that period send a statement to that effect to those specified in sub-paragraphs (a) and (b) above.

(3) A report provided under paragraph (2) shall relate to a period beginning with the date of the supervisor's appointment or (as the case may be) the day following the end of the last period for which a report was prepared under this Rule; and copies of the report shall be sent, as required by paragraph (2), within the 2 months following the end of the period to which the report relates.

Fees, costs and expenses in respect of the performance of the functions of the official receiver

5.48. The fees, costs and expenses in respect of the performance by the official receiver of his functions in relation to the bankruptcy and those of the trustee who is not the official receiver (including those in connection with the employment of agents) shall be a first charge on any sums realised under the terms of the voluntary arrangement, and those of the official receiver in relation to the voluntary arrangement, shall be a second charge.

Employment of agents by the supervisor

5.49. The supervisor may employ agents in connection with the realisation of any assets subject to the terms of the voluntary arrangement.

Completion or termination of the fast-track voluntary arrangement

5.50.—(1) Not more than 28 days after the final completion or termination of the voluntary arrangement, the supervisor shall send to all creditors of the debtor who are bound by the arrangement, and to the debtor, a notice that the voluntary arrangement has been fully implemented, (or as the case may be) terminated.

(2) With the notice there shall be sent to each of those persons a copy of a report by the supervisor summarising all receipts and payments made by him in pursuance of the voluntary arrangement, and explaining any difference in the actual implementation of it compared with the proposal as approved by the creditors.

(3) The supervisor shall, within the 28 days mentioned above, send to the Secretary of State a copy of the notice under paragraph (1), together with a copy of the report under paragraph (2), and he shall not vacate office until after such copies have been sent.

(4) The court may, on application by the supervisor, extend the period of 28 days under paragraphs (1) and (3).

CHAPTER 8

APPLICATION BY A BANKRUPT TO ANNUL A BANKRUPTCY ORDER UNDER SECTION 261(2)(a)

Application of this Chapter

5.51. The following Rules apply where a bankrupt applies for an annulment of a bankruptcy order under section 261(2)(a).

Application to court

5.52.—(1) An application to the court to annul a bankruptcy order under section 261(2)(a) shall specify the section under which it is made.

(2) The application shall be supported by an affidavit stating—

(a) that the voluntary arrangement has been approved at a meeting of creditors;

(b) the date of the approval by the creditors; and

(c) that the 28 day period in section 262(3)(a) for applications to be made under section 262(1) has expired and no applications or appeal remain to be disposed of.

(3) The application and supporting affidavit shall be filed in court; and the court shall give to the bankrupt notice of the venue fixed for the hearing.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(4) The bankrupt shall give notice of the venue, accompanied by copies of the application and affidavit to the official receiver, any trustee who is not the official receiver, and the supervisor of the voluntary arrangement not less than 7 days before the date of the hearing.

(5) The official receiver, the supervisor of the voluntary arrangement and any trustee who is not the official receiver may attend the hearing or be represented and call to the attention of the court any matters which seem to him to be relevant.

(6) Where the court annuls a bankruptcy order, it shall send sealed copies of the order of annulment in Form 5.7 to the bankrupt, the official receiver, the supervisor of the voluntary arrangement and any trustee who is not the official receiver.

Notice to creditors

5.53.—(1) Where the official receiver has notified creditors of the debtor’s bankruptcy, and the bankruptcy order is annulled, he shall, as soon as reasonably practicable, notify them of the annulment.

(2) Expenses incurred by the official receiver in giving notice under this Rule are a charge in his favour on the property of the former bankrupt, whether or not actually in his hands.

(3) Where any property is in the hands of a trustee or any person other than the former bankrupt himself, the official receiver’s charge is valid subject only to any costs that may be incurred by the trustee or that other person in effecting realisation of the property for the purpose of satisfying the charge.

CHAPTER 9

APPLICATION BY OFFICIAL RECEIVER TO ANNUL A BANKRUPTCY ORDER UNDER SECTION 261(2)(b)

Application of this Chapter

5.54. The following Rules apply where the official receiver applies for an annulment of a bankruptcy order under section 261(2)(b).

Application to court

5.55.—(1) An application to the court to annul a bankruptcy order under section 261(2)(b) shall specify the section under which it is made.

(2) An application under section 261(2)(b) shall not be made before the expiry of 14 days from the date that the time period in section 262(3)(a) for applications under section 262(1) has expired.

(3) The application shall be supported by a report stating the grounds on which it is made. It shall also state that—

- (a) the time period for application in paragraph (2) above has expired; and
- (b) the official receiver is not aware that any application or appeal remains to be disposed of.

(4) The application and the report shall be filed in court and the court shall give to the official receiver notice of the venue fixed for the hearing.

(5) The official receiver shall give notice of the venue, accompanied by copies of the application and the report to the bankrupt not less than 7 days before the date of the hearing.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(6) Where the court annuls a bankruptcy order, it shall send sealed copies of the order of annulment in Form 5.7 to the official receiver, any trustee who is not the official receiver, the supervisor of the voluntary arrangement and the bankrupt.

Notice to creditors

5.56.—(1) Where the bankruptcy order is annulled, the official receiver shall notify all creditors of whom he is aware of the annulment.

(2) Expenses incurred by the official receiver in giving notice under this Rule are a charge in his favour on the property of the former bankrupt, whether or not actually in his hands.

(3) Where any property is in the hands of a trustee or any person other than the former bankrupt himself, the official receiver's charge is valid subject only to any costs that may be incurred by the trustee or that other person in effecting realisation of the property for the purpose of satisfying the charge.

CHAPTER 10

APPLICATION BY OFFICIAL RECEIVER TO ANNULA BANKRUPTCY ORDER UNDER SECTION 263D(3)

Application of this Chapter

5.57. The following Rules apply where the official receiver applies for an annulment of a bankruptcy order under section 263D(3).

Application to court

5.58.—(1) An application to the court to annul a bankruptcy order under section 263D(3) shall specify the section under which it is made.

(2) An application under section 263D(3) shall be made within 21 days of the expiry of the relevant period set out in section 263D(4).

(3) The application shall be supported by a report stating the grounds on which it is made and a statement by the official receiver that he is not aware that any application or appeal under section 263F remains to be disposed of.

(4) The report shall be accompanied by a copy of the proposal for the voluntary arrangement and a copy of the report under section 263C.

(5) The application, together with the report and the documents in support, shall be filed in court and the court shall give to the official receiver notice of the venue fixed for the hearing.

(6) The official receiver shall give notice of the venue, accompanied by copies of the application and the report, to the bankrupt not less than 7 days before the date of the hearing.

(7) Where the court annuls a bankruptcy order, it shall send sealed copies of the order of annulment in Form 5.8 to the official receiver and the bankrupt.

Notice to creditors

5.59.—(1) Where the official receiver has notified creditors of the debtor's bankruptcy, and the bankruptcy order is annulled, he shall, as soon as reasonably practicable, notify them of the annulment.

(2) Expenses incurred by the official receiver in giving notice under this Rule are a charge in his favour on the property of the former bankrupt, whether or not actually in his hands.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(3) Where any property is in the hands of a trustee or any person other than the former bankrupt himself, the official receiver's charge is valid subject only to any costs that may be incurred by the trustee or that other person in effecting realisation of the property for the purpose of satisfying the charge.

CHAPTER 11

OTHER MATTERS ARISING ON ANNULMENTS UNDER SECTIONS 261(2)(a), 261(2)(b) OR 263D(3)

5.60.—(1) In an order under section 261(2)(a), 261(2)(b) or 263D(3) the court shall include provision permitting vacation of the registration of the bankruptcy petition as a pending action, and of the bankruptcy order, in the register of writs and orders affecting land.

(2) The court shall as soon as reasonably practicable give notice of the making of the order to the Secretary of State.

(3) The former bankrupt may, in writing, require the Secretary of State to give notice of the making of the order—

- (a) in the Gazette;
- (b) in any newspaper in which the bankruptcy order was advertised; or
- (c) in both.

(4) The Secretary of State shall notify the former bankrupt forthwith as to the cost of the advertisement, and is under no obligation to advertise until the sum has been paid.

(5) Where the former bankrupt has died, or is a person incapable of managing his affairs (within the meaning of Chapter 7 in Part 7 of the Rules), the references to him in paragraphs (3) and (4) are to be read as referring to his personal representative or, as the case may be, a person appointed by the court to represent or act for him.

Trustee's final account

5.61.—(1) Where a bankruptcy order is annulled under section 261(2)(a), 261(2)(b) or 263D(3), this does not of itself release the trustee from any duty or obligation, imposed on him by or under the Act or the Rules, to account for all his transactions in connection with the former bankrupt's estate.

(2) The trustee shall submit a copy of his final account to the Secretary of State as soon as reasonably practicable after the court's order annulling the bankruptcy order; and he shall file a copy of the final account in court.

(3) The final account must include a summary of the trustee's receipts and payments in the administration, and contain a statement to the effect that he has reconciled his account with that held by the Secretary of State in respect of the bankruptcy.

(4) The trustee is released from such time as the court may determine, having regard to whether paragraph (2) of this Rule has been complied with.

CHAPTER 12

EC REGULATION: CONVERSION OF VOLUNTARY ARRANGEMENT INTO BANKRUPTCY

Application for conversion of voluntary arrangement into bankruptcy

5.62.—(1) Where a member State liquidator proposes to apply to the court for conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of a voluntary

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

arrangement into a bankruptcy, an affidavit complying with Rule 5.63 must be prepared and sworn, and filed in court in support of the application.

- (2) The application and the affidavit required under this Rule shall be served upon—
 - (a) the debtor; and
 - (b) the supervisor.

Contents of affidavit

- 5.63.**—(1) The affidavit shall state—
- (a) that the main proceedings have been opened in relation to the debtor in a member State other than the United Kingdom;
 - (b) the deponent’s belief that the conversion of the voluntary arrangement into a bankruptcy would prove to be in the interests of the creditors in the main proceedings; and
 - (c) all other matters that, in the opinion of the member State liquidator, would assist the court—
 - (i) in deciding whether to make an order under Rule 5.64; and
 - (ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.

(2) An affidavit under this Rule shall be sworn by, or on behalf of, the member State liquidator.

Power of court

5.64.—(1) On hearing an application for conversion of a voluntary arrangement into a bankruptcy, the court may make such order as it thinks fit.

(2) If the court makes an order for conversion of a voluntary arrangement into a bankruptcy under paragraph (1), the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Where the court makes an order for conversion of a voluntary arrangement into a bankruptcy under paragraph (1), any expenses properly incurred as expenses of the administration of the voluntary arrangement in question shall be a first charge on the bankrupt’s estate.

Notices to be given to member State liquidator

5.65.—(1) This Rule applies where a member State liquidator has been appointed in relation to the debtor.

(2) Where the supervisor is obliged to give notice to, or provide a copy of a document (including an order of the court) to, the court or the official receiver, the supervisor shall give notice or provide copies, as appropriate, to the member State liquidator.”.