

2009 No. 642

INSOLVENCY, ENGLAND AND WALES

COMPANIES

INDIVIDUALS

The Insolvency (Amendment) Rules 2009

<i>Made - - - - -</i>	<i>10th March 2009</i>
<i>Laid before Parliament</i>	<i>13th March 2009</i>
<i>Coming into force - -</i>	<i>6th April 2009</i>



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The Lord Chancellor has consulted the Committee existing for the purposes of section 413 of the Insolvency Act 1986(a).

The Lord Chancellor, in the exercise of powers under sections 411 and 412 of the Insolvency Act 1986, with the concurrence of the Secretary of State, and of the Chancellor of the High Court (by the authority of the Lord Chief Justice under sections 411(7) and 412(6) of that Act) in relation to those rules that affect court procedure, makes the following Rules:

Citation, commencement and interpretation

1. These Rules made be cited as the Insolvency (Amendment) Rules 2009 and come into force on 6th April 2009.

2. In these Rules—

“the principal Rules” mean the Insolvency Rules 1986(b) (any reference to a numbered Part or Rule is a reference to a Part or Rule so numbered in the principal Rules unless the context otherwise requires);

“the Act” means the Insolvency Act 1986 (any reference to a numbered section being a reference to a section of that Act).

Transitional provisions

3.—(1) Subject to paragraph (2), the amendments made by Rules 5 to 31, 33 to 46, 62, 71, 73, 76 and 78 of these Rules to the principal Rules shall not apply, and the provisions of the principal Rules as unamended by these Rules shall continue to apply, where before 6th April 2009—

(a) 1986 c.45. Sections 412 and 413 of the Act were amended by the Constitutional Reform Act 2005 (c.4), section 15(1), Schedule 4, Part 1, paragraphs 185, 189(1) and (3) and 195(1)(2) and (3) and by the Tribunals, Courts and Enforcement Act 2007 (c.15), section 108(3), Schedule 20, Part 1, paragraph 8.

(b) S.I. 1986/1925 as amended by S.I. 1987/1919, 1989/397, 1991/495, 1993/602, 1995/586, 1999/359, 1999/1022, 2001/763, 2002/1307, 2002/2712, 2003/1730, 2004/584, 2004/1070, 2005/527, 2006/1272, 2007/1974 and 2008/737.

- (a) in relation to a company—
 - (i) a moratorium under a company voluntary arrangement comes into force;
 - (ii) the company enters administration;
 - (iii) a receiver or manager is appointed;
 - (iv) a resolution for a voluntary winding up is passed; or
 - (v) a winding up petition is presented to the court; and
- (b) in relation to an individual, a bankruptcy petition is presented to the court.

(2) In the case of a statutory demand, the amendments made by Rules 33, 34 and 35 of these Rules to Rules 6.3(3), 6.4(1) and 6.11(8) of the principal Rules shall not apply, and the provisions of the principal Rules as unamended by these Rules shall continue to apply where the demand is served on the debtor before 6th April 2009.

Amendments to the principal Rules

4. The principal Rules are amended as set out in Rules 5 to 78 of these Rules.

General amendment

5. In the principal Rules wherever it appears, for “forthwith” substitute “as soon as reasonably practicable”.

Amendment to Rule 1.40

6. In Rule 1.40, for paragraph (2) substitute—

- “(2) On receipt of the copies of the schedule pursuant to paragraph (1), the nominee—
- (a) as soon as reasonably practicable shall cause a notice of the coming into force of the moratorium to be gazetted; and
 - (b) may advertise the notice in such other manner as the nominee thinks fit.”.

Amendment to Rule 1.42

7. In Rule 1.42, for paragraph (1) substitute—

- “(1) After the moratorium comes to an end, the nominee—
- (a) as soon as reasonably practicable shall cause a notice of its coming to an end and the date on which it came to an end to be gazetted; and
 - (b) may advertise the notice in such other manner as the nominee thinks fit.”.

Amendment to Rule 2.27

8. In Rule 2.27, for paragraph (1) substitute—

“(1) The notice of appointment to be given by the administrator as soon as reasonably practicable after appointment under paragraph 46(2)(b) shall be gazetted in Form 2.11B and may be advertised in such other manner as the administrator thinks fit.”.

Amendment to Rule 2.33

9. In Rule 2.33, for paragraph (7) substitute—

“(7) Where the administrator wishes to publish a notice under paragraph 49(6), the notice shall be advertised in such manner as the administrator thinks fit.

(7A) A notice published under Rule 2.33(7) shall—

- (a) state the full name of the company;

- (b) state the full name and address of the administrator;
- (c) give details of the administrator’s appointment; and
- (d) specify an address to which members can write for a copy of the statement of proposals.”.

Amendment to Rule 2.34

10. In Rule 2.34—

- (a) for paragraph (1) substitute—

“(1) As soon as reasonably practicable after an invitation to the initial creditors’ meeting has been sent to the creditors in compliance with the requirements of paragraph 51(1), the administrator shall have gazetted—

- (a) the name, registered number and address of the registered office of the company in administration;
- (b) that an initial creditors’ meeting is to take place;
- (c) the venue fixed for the initial creditors’ meeting; and
- (d) the full name and address of the administrator.”; and

- (b) after paragraph (1), insert—

“(1A) The information required to be gazetted under paragraph (1) may also be advertised in such other manner as the administrator thinks fit.”.

Amendment to Rule 2.45

11. In Rule 2.45, for the first sentence of paragraph (4) substitute—

“Any notice to be published by the administrator acting under paragraph 54(3) shall be advertised in such manner as the administrator thinks fit.”.

Amendment to Rule 2.95

12. In Rule 2.95—

- (a) for paragraph (3) substitute—

“(3) Subject to paragraph (5)(b), before declaring a dividend the administrator shall by notice invite the creditors to prove their debts. Such notice—

- (a) shall be gazetted; and
- (b) may be advertised in such other manner as the administrator thinks fit.”; and

- (b) for paragraph (5) substitute—

“(5) Where a dividend is to be declared for preferential creditors—

- (a) the notice pursuant to paragraph (1) need only to be given to those creditors in whose case the administrator has reason to believe that their debts are preferential; and
- (b) the notice pursuant to paragraph (3) need only be given if the administrator thinks fit.”.

Amendment to Rule 2.113

13. In Rule 2.113, for paragraph (6) substitute—

“(6) The requirements of paragraph 80(4) shall be taken to be complied with if, within 5 business days of filing the notice of end of administration with the court, the administrator has gazetted a notice undertaking to provide a copy of the notice of the end of administration to any creditor of the company.

(6A) The notice under Rule 2.113(6) may be advertised in such other manner as the administrator thinks fit.”.

Amendment to Rule 3.2

14. In Rule 3.2, for paragraphs (3) and (4) substitute—

“(3) Subject to paragraph (4), the notice of appointment to be given by the administrative receiver under section 46(1)(a) shall be gazetted and may be advertised in such other manner as the administrative receiver thinks fit.

(4) The notice published under paragraph (3) may omit the matters stated in the notice of appointment sent to the company in compliance with sub-paragraphs (f) and (g) of paragraph (2).”.

Amendment to Rule 3.8

15. In Rule 3.8, for paragraph (1) substitute—

“(1) If an administrative receiver gives notice under section 48(2)(b), the notice—

(a) shall be gazetted; and

(b) may be advertised in such other manner as the administrative receiver thinks fit.”.

Amendment to Rule 3.9

16. In Rule 3.9—

(a) for paragraph (6), substitute—

“(6) Notice of the meeting summoned under section 48(2) and its venue, as soon as reasonably practicable, shall also be gazetted and may be advertised in such other manner as the receiver thinks fit.”; and

(b) in paragraph (7), for “newspaper advertisement” substitute “notice given under paragraph (6).”.

Amendment to Rule 3.39

17. In Rule 3.39, for paragraph (4) substitute—

“(4) Where the requirements of paragraph (5) are satisfied, the receiver may, instead of sending the report required under paragraph (2)—

(a) cause a notice to the same effect to be gazetted; and

(b) may advertise the notice in such other manner as the receiver thinks fit.

(5) The requirements of this paragraph are that—

(a) full details of the unsecured creditors of the company are not available to the receiver; or

(b) the receiver thinks it is otherwise impracticable to send the report.”.

Substitution of Rule 4.11

18. For Rule 4.11, substitute—

“**4.11.**—(1) Unless the court otherwise directs, the petitioner shall give notice of the petition.

(2) The notice shall be gazetted.

(3) Where compliance with paragraph (2) is not reasonably practicable, the court may direct that instead of the notice being gazetted, it shall be given in such other manner as the court thinks fit.

- (4) The notice must be made to appear—
 - (a) if the petitioner is the company itself, not less than 7 business days before the day appointed for the hearing; and
 - (b) otherwise, not less than 7 business days after service of the petition on the company, nor less than 7 business days before the day so appointed.
- (5) The notice must state—
 - (a) the name, registered number of the company and the address of its registered office, or—
 - (i) in the case of an unregistered company, the address of its principal place of business;
 - (ii) in the case of an oversea company, the address at which service of the petition was effected;
 - (b) the name and address of the petitioner;
 - (c) where the petitioner is the company itself, the address of its registered office or, in the case of an unregistered company, of its principal place of business;
 - (d) the date on which the petition was presented;
 - (e) the venue fixed for the hearing of the petition;
 - (f) the name and address of the petitioner’s solicitor (if any); and
 - (g) that any person intending to appear at the hearing (whether to support or oppose the petition) must give notice of his intention in accordance with Rule 4.16.
- (6) If notice of the petition is not given in accordance with this Rule, the court may dismiss it.”.

Amendment to Rule 4.14

19. In Rule 4.14(2)—

- (a) for paragraph (c) substitute—

“(c) the date or dates on which the petition was served and notice of it was given in compliance with the Rules.”; and
- (b) for “A copy of the advertisement of the petition shall be filed in court with the certificate”, substitute “A copy or, where this is not reasonably practicable, a description of the form and content of any notice given shall be filed in court with the certificate.”.

Amendment to Rule 4.21

20. For paragraph (4) of Rule 4.21 substitute—

- “(4) The official receiver—
- (a) as soon as reasonably practicable shall cause notice of the order to be gazetted; and
 - (b) may advertise notice of the order in such other manner as the official receiver thinks fit.”.

Insertion of new Rule 4.21B

21. At the end of Chapter 3, after Rule 4.21A, add—

“Petition dismissed

4.21B.—(1) Unless the court otherwise directs, when a petition is dismissed, as soon as reasonably practicable the petitioner shall give notice of the dismissal. Such notice shall be—

- (a) gazetted; or
 - (b) advertised in accordance with any directions of the court.
- (2) The notice published in accordance with paragraph (1) shall state—
- (a) the name, registered number of the company and the address of its registered office, or
 - (i) in the case of an unregistered company, the address of its principal place of business;
 - (ii) in the case of an oversea company, the address at which service of the petition was effected;
 - (b) the name and address of the petitioner;
 - (c) where the petitioner is the company itself, the address of its registered office or, in the case of an unregistered company, of its principal place of business;
 - (d) the date on which the petition was presented;
 - (e) the date on which the petition was gazetted or otherwise advertised; and
 - (f) the date of the hearing at which the petition was dismissed.
- (3) Where—
- (a) the petitioner is not the company itself; and
 - (b) the petitioner has not complied with paragraphs (1) and (2) within 21 days of the date of the hearing at which the petition was dismissed,
- the company may give notice of the dismissal itself. Such notice shall be gazetted.”.

Amendment to Rule 4.25A

22. In Rule 4.25A, after paragraph (2), add—

“(3) Unless the court otherwise directs, on receipt of the notice of appointment, as soon as reasonably practicable the provisional liquidator shall give notice of that appointment. Such notice—

- (a) shall be gazetted; and
- (b) may be advertised in such other manner as the provisional liquidator thinks fit.”.

Amendment to Rule 4.31

23. In Rule 4.31, after paragraph (2) add—

“(3) Unless the court otherwise directs, where the provisional liquidator’s appointment is terminated, as soon as reasonably practicable the provisional liquidator shall give notice of that termination. Such notice—

- (a) shall be gazetted; and
- (b) may be advertised in such other manner as the provisional liquidator thinks fit.”.

Amendment to Rule 4.50

24. For paragraph (5) of Rule 4.50 substitute—

“(5) Notice of the meetings shall be gazetted and may be advertised in such other manner as the official receiver thinks fit.”.

Amendment to Rule 4.54

25. For paragraph (6) of Rule 4.54 substitute—

- “(6) Notice of the meeting—
- (a) shall be gazetted; and

(b) may be advertised in such other manner as the convenor thinks fit.”.

Amendment to Rule 4.102

26. In Rule 4.102—

(a) after paragraph (4) insert—

“(4A) On receipt of the sealed copy of the order of appointment, the liquidator—

- (a) as soon as reasonably practicable shall cause a notice of appointment to be gazetted; and
- (b) may cause the notice to be advertised in such other manner as the liquidator thinks fit.”;

(b) for paragraph (5) substitute—

“(5) Within 28 days from appointment, the liquidator shall also—

- (a) give notice of it to all creditors and contributories of the company of whom the liquidator is aware; or
- (b) advertise it in accordance with any directions given by the court.”; and
- (c) in paragraph (6) omit “or advertisement”.

Amendment to Rule 4.103

27. For paragraph (4) of Rule 4.103 substitute—

“(4) Within 28 days from appointment, the liquidator shall—

- (a) give notice of it to all creditors of the company of whom the liquidator is aware; or
- (b) advertise it in accordance with any directions given by the court.”.

Amendment to Rule 4.106

28. For paragraph (1) of Rule 4.106 substitute—

“(1) Subject as follows, a liquidator who is appointed by a creditors’ or contributories’ meeting, or by a meeting of the company, as soon as reasonably practicable after receiving the certificate of appointment, shall give notice of it. In addition to being gazetted pursuant to section 109(1), the notice may also be advertised in such other manner as the liquidator thinks fit.”.

Amendment to Rule 4.182A

29. For paragraph (1) of Rule 4.182A substitute—

“(1) In a members’ voluntary winding up the liquidator may give notice of the intention to make a distribution to creditors. Such notice—

- (a) shall be gazetted; and
- (b) may be advertised in such other manner as the liquidator thinks fit.”.

Amendment to Rule 4.212

30. In Rule 4.212—

(a) for paragraph (3) substitute—

“(3) Subject to paragraph (4), where the official receiver thinks fit, notice of the order—

- (a) shall be gazetted; and
- (b) may be advertised in such other manner as the official receiver thinks fit, not less than 14 days before the date fixed for the hearing.”; and

(b) after paragraph (3) add—

“(4) Unless the court otherwise directs, there shall be no publication under paragraph (3) before at least 7 days have elapsed since the examinee was served with the order.”.

Amendment to Rule 5.60

31. For paragraph (3) in Rule 5.60 substitute—

“(3) The former bankrupt may in writing within 28 days of the date of the order require the Secretary of State to give notice of the making of the order. As soon as reasonably practicable the notice shall be—

(a) gazetted; and

(b) advertised in the same manner as the bankruptcy order to which it relates was advertised.”.

Insertion of new Part 5A - debt relief orders

32. In the Second Group of Parts (individual insolvency: bankruptcy), immediately after Part 5 (individual voluntary arrangements), insert as Part 5A the Part set out in Schedule 1 to these Rules.

Amendment to Rule 6.3

33. In paragraph (3) of Rule 6.3, for “the demand may be advertised in one or more newspapers” substitute “the creditor may advertise the demand in such manner as the creditor thinks fit”.

Amendment to Rule 6.4

34. In paragraph (1) of Rule 6.4 omit “in a newspaper”.

Amendment to Rule 6.11

35. In Rule 6.11—

(a) In paragraph (8)—

(i) omit “newspaper” where it first occurs;

(ii) for sub-paragraph (b) substitute—

“(b) the method by which, and the date or dates on which the statutory demand was advertised under that rule”; and

(b) at the end of paragraph (8), for “a copy of any advertisement”, substitute “either a copy of any advertisement of the statutory demand or, where this is not reasonably practicable, the affidavit shall contain or exhibit a description of the contents of any such advertisement.”.

Amendment to Rule 6.34

36. For paragraph (2) of Rule 6.34 substitute—

“(2) Subject to the next paragraph, on receipt of the sealed copies of the bankruptcy order, the official receiver—

(a) as soon as reasonably practicable shall—

(i) send notice of the making of the order to the Chief Land Registrar, for registration in the register of writs and orders affecting land;

(ii) cause notice of the order to be gazetted; and

(b) may cause notice of the order to be advertised in such other manner as the official receiver thinks fit.”.

Amendment to Rule 6.35

37. In Rule 6.35—

(a) for paragraph (2) substitute—

“(2) Where such an order is made, as soon as reasonably practicable the official receiver shall send notice of it to the Chief Land Registrar for corresponding amendment of the register.”; and

(b) after paragraph (2) add—

“(3) If the official receiver thinks fit, notice of the order—

(a) as soon as reasonably practicable, shall be gazetted; and

(b) may be advertised in such other manner as the official receiver thinks fit.”.

Amendment to Rule 6.46

38. For paragraph (2) in Rule 6.46 substitute—

“(2) Subject to the next paragraph, on receipt of the sealed copies of the bankruptcy order, the official receiver—

(a) as soon as reasonably practicable shall—

(i) send notice of the making of the order to the Chief Land Registrar, for registration in the register of writs and orders affecting land; and

(ii) cause notice of the order to be gazetted; and

(b) may cause notice of the order to be advertised in such other manner as the official receiver thinks fit.”.

Amendment to Rule 6.47

39. In Rule 6.47—

(a) for paragraph (2) substitute—

“(2) Where such an order is made, as soon as reasonably practicable the official receiver shall send notice of it to the Chief Land Registrar for corresponding amendment of the register.”; and

(b) after paragraph (2) add—

“(3) Where the official receiver thinks fit, notice of the order—

(a) as soon as reasonably practicable shall be gazetted; and

(b) may be advertised in such other manner as the official receiver thinks fit.”.

Amendment to Rule 6.79

40. For paragraph (5) of Rule 6.79 substitute—

“(5) As soon as reasonably practicable, notice of the meeting shall also be gazetted and may be advertised in such other manner as the official receiver thinks fit.”.

Amendment to Rule 6.81

41. For paragraph (4) of Rule 6.81 substitute—

“(4) Where the convenor thinks fit, as soon as reasonably practicable, additional notice of the meeting shall be given. Such notice—

(a) shall be gazetted; and

(b) may be advertised in such other manner as the convenor thinks fit.”.

Amendment to Rule 6.124

42. For paragraph (1) of Rule 6.124 substitute—

“(1) A trustee who is appointed by a creditors’ meeting, as soon as reasonably practicable after receiving the certificate of appointment, shall give notice of that appointment. Such notice—

- (a) shall be gazetted; and
- (b) may be advertised in other such manner as the trustee thinks fit.”.

Amendment to Rule 6.134

43. In the heading to, and in Rule 6.134, for “advertisement” substitute “notice”.

Amendment to Rule 6.172

44. In Rule 6.172—

(a) for paragraph (4) substitute—

“(4) Where the official receiver thinks fit, a notice of the order shall be gazetted not less than 14 days before the day fixed for the hearing.”; and

(b) after paragraph (4) add—

“(5) The official receiver may advertise the notice under paragraph (4) of this Rule in such other manner as the official receiver thinks fit.”.

Amendment to Rule 6.213

45. For paragraph (3) of Rule 6.213, substitute—

“(3) Within 28 days of the making of the order, the former bankrupt may require the Secretary of State to give notice of the making of the order. As soon as reasonably practicable such notice shall be—

- (a) gazetted; and
- (b) advertised in the same manner as the bankruptcy order to which it relates was advertised.”.

Amendment to Rule 6.220

46. For paragraph (2) of Rule 6.220, substitute—

“(2) The discharged bankrupt may require the Secretary of State to give notice of the discharge. As soon as reasonably practicable such notice shall be—

- (a) gazetted; and
- (b) advertised in such manner as the bankruptcy order to which it relates was advertised.”.

Insertion of new Chapters 31, 32 and 33 of Part 6 - debt relief restrictions orders and undertakings

47. At the end of Part 6 add—

“CHAPTER 31
DEBT RELIEF RESTRICTIONS ORDER

Interpretation

6.252. In this Chapter and in Chapter 32, “Secretary of State” includes the official receiver acting in accordance with paragraph 1(2)(b) of Schedule 4ZB to the Act.

Application for debt relief restrictions order

6.253.—(1) Where the Secretary of State applies to the court for a debt relief restrictions order to be made in relation to a person in respect of whom a debt relief order has been made under paragraph 1 of Schedule 4ZB to the Act, the application shall be supported by a report by the Secretary of State.

(2) The report shall include—

- (a) a statement of the conduct by reference to which it is alleged that it is appropriate for a debt relief restrictions order to be made; and
- (b) the evidence on which the Secretary of State relies in support of the application.

(3) Any evidence in support of an application for a debt relief restrictions order provided by persons other than the Secretary of State shall be by way of an affidavit.

(4) The date for the hearing shall be no earlier than 8 weeks from the date when the court fixes the venue for the hearing.

(5) For the purposes of hearing an application under this Rule by a registrar, Rule 7.6(1) shall not apply and the application shall be heard in public.

Service on the defendant

6.254.—(1) The Secretary of State shall serve notice of the application and the venue fixed by the court on the debtor not more than 14 days after the application is made at court.

(2) Service shall be accompanied by a copy of the application, together with copies of the report by the Secretary of State, any other evidence filed with the court in support of the application, and an acknowledgement of service.

(3) The defendant shall file in court an acknowledgement of service of the application indicating whether or not he contests the application not more than 14 days after service on him of the application.

(4) Where the defendant has failed to file an acknowledgement of service and the time period for doing so has expired, the defendant may attend the hearing of the application but may not take part in the hearing unless the court gives permission.

The debtor’s evidence

6.255.—(1) If the debtor wishes to oppose the application, he shall within 28 days of the service of the application and evidence of the Secretary of State, file in court any evidence which he wishes the court to take into consideration, and shall serve a copy of such evidence upon the Secretary of State within 3 days of filing it at court.

(2) The Secretary of State shall, within 14 days from receiving the copy of the debtor’s evidence, file in court any further evidence in reply he wishes the court to take into consideration and shall as soon as reasonably practicable serve a copy of that evidence upon the debtor.

Making a debt relief restrictions order

6.256.—(1) The court may make a debt relief restrictions order against the debtor, whether or not the latter appears and whether or not he has filed evidence in accordance with Rule 6.255.

(2) Where the court makes a debt relief restrictions order, it shall send two sealed copies to the Secretary of State.

(3) As soon as reasonably practicable after receipt of the sealed copy of the order, the Secretary of State shall send a sealed copy of the order to the debtor.

CHAPTER 32

INTERIM DEBT RELIEF RESTRICTIONS ORDER

Application for interim debt relief restrictions order

6.257.—(1) Where the Secretary of State applies for an interim debt relief restrictions order under paragraph 5 of Schedule 4ZB to the Act, the court shall fix a venue for the hearing.

(2) Notice of an application for an interim debt relief restrictions order shall be given to the debtor at least 2 business days before the date set for the hearing unless the court directs otherwise.

(3) For the purposes of hearing an application under this Rule by a registrar, Rule 7.6(1) shall not apply and the application shall be heard in public.

The case against the debtor

6.258.—(1) The Secretary of State shall file a report in court as evidence in support of any application for an interim debt relief restrictions order.

(2) The report shall include evidence of the debtor's conduct which is alleged to constitute the grounds for the making of an interim debt relief restrictions order and evidence of matters which relate to the public interest in making the order.

(3) Any evidence by persons other than the Secretary of State in support of an application for an interim debt relief restrictions order shall be by way of an affidavit.

Making an interim debt relief restrictions order

6.259.—(1) The debtor may file in court any evidence which he wishes the court to take into consideration and may appear at the hearing for an interim debt relief restrictions order.

(2) The court may make an interim debt relief restrictions order against the debtor, whether or not the latter appears, and whether or not he has filed evidence.

(3) Where the court makes an interim debt relief restrictions order, as soon as reasonably practicable, it shall send two sealed copies of the order to the Secretary of State.

(4) As soon as reasonably practicable after receipt of the sealed copies of the order, the Secretary of State shall send a copy of the order to the debtor.

Application to set aside an interim debt relief restrictions order

6.260.—(1) A person subject to an interim debt relief restrictions order may apply to the court to set the order aside.

(2) An application to set aside an interim debt relief restrictions order shall be supported by an affidavit stating the grounds on which the application is made.

(3) Where an application is made to set aside an interim debt relief restrictions order under paragraph (1), the person making the application shall send to the Secretary of State, not less than 7 days before the hearing—

- (a) notice of his application;
- (b) notice of the venue;
- (c) a copy of his application; and
- (d) a copy of the supporting affidavit.

(4) The Secretary of State may attend the hearing and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(5) Where the court sets aside an interim debt relief restrictions order two sealed copies of the order shall be sent, as soon as reasonably practicable, to the Secretary of State by the court.

(6) As soon as reasonably practicable after receipt of the sealed copies of the order, the Secretary of State shall send a sealed copy of the order to the applicant.

CHAPTER 33

DEBT RELIEF RESTRICTIONS UNDERTAKING

Acceptance of debt relief restrictions undertaking

6.261. A debt relief restrictions undertaking signed by a person in relation to whom a debt relief order has been made shall be deemed to have been accepted by the Secretary of State for the purposes of paragraph 9 of Schedule 4ZB to the Act when the undertaking is signed by the Secretary of State.

Notification

6.262. As soon as reasonably practicable after a debt relief restrictions undertaking has been accepted by the Secretary of State, a copy shall be sent to the person who offered the undertaking and to the official receiver.

Application under paragraph 9(3) of Schedule 4ZB to the Act to annul a debt relief restrictions undertaking.

6.263.—(1) An application under paragraph 9(3)(a) or (b) of Schedule 4ZB to the Act shall be supported by an affidavit stating the grounds on which it is made.

(2) The applicant shall give notice of the application and the venue, together with a copy of the affidavit supporting his application to the Secretary of State at least 28 days before the date fixed for the hearing.

(3) The Secretary of State may attend the hearing and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(4) The court shall send a sealed copy of any order annulling or varying the debt relief restrictions undertaking to the Secretary of State and the applicant.”.

Amendment to Rule 6A.1

48. In Rule 6A.1—

- (a) in paragraph (1), after “bankruptcies”, insert “, debt relief orders”; and
- (b) for paragraph (2), substitute—

“(2) The register—

- (a) referred to in paragraph 12 of Schedule 4A to the Act (referred to in this Part as “the bankruptcy restrictions register”), and

(b) of the matters specified in paragraphs (b) and (c) of section 251W (referred to in this Part as “the debt relief restrictions register”),
shall be maintained in accordance with the provisions of this Part.”.

Amendment to Rule 6A.4

49. In Rule 6A.4(3), for sub-paragraph (c), substitute—

“(c) where a bankruptcy order or debt relief order has been made in the period of six years immediately prior to the day of the latest bankruptcy order made against the bankrupt (excluding for these purposes any bankruptcy order that was annulled or any debt relief order that was revoked), the date of whichever is the latest of them;”.

Amendment to Rule 6A.5

50. After Rule 6A.5, before the cross-heading for Chapter 3, insert—

“Entry of information onto the individual insolvency register – debt relief orders

6A.5A.—(1) This Rule is subject to Rule 6A.5B.

(2) The official receiver shall cause to be entered onto the individual insolvency register as soon as reasonably practicable after the making of a debt relief order the following information relating to the order or to the debtor in respect of whom it has been made—

- (a) as they are stated in the debtor’s application—
 - (i) the name, gender, occupation (if any) and date of birth of the debtor;
 - (ii) the debtor’s last known address;
 - (iii) the name or names in which he carries or has carried on business, if other than his true name; and
 - (iv) the nature of his business and the address or addresses at which he carries or has carried it on and whether alone or with others;
- (b) the date of the making of the debt relief order;
- (c) the reference number of the order;
- (d) the date of the end of the moratorium period; and
- (e) where a bankruptcy order or a debt relief order has been made in the period of six years immediately prior to the date of the latest debt relief order made against the debtor (excluding for these purposes any bankruptcy order that was annulled or any debt relief order that was revoked), the date of whichever is the latest of them.

(3) Provided that information concerning a debt relief order has not been validly deleted under Rule 6A.5B, the official receiver shall also cause to be entered on the register in relation to the order—

- (a) where the moratorium period is terminated early, the fact that such has happened, the date of early termination and whether the early termination is on revocation of the debt relief order or by virtue of any other enactment;
- (b) where the moratorium period is extended, the fact that such has happened, the date on which the extension was made, its duration and the date of the new anticipated end of the moratorium period; or
- (c) where the debtor is discharged from all qualifying debts, the date of such discharge.

Deletion of information from the individual insolvency register – debt relief orders

6A.5B. The Secretary of State shall delete from the individual insolvency register all information concerning a debt relief order where—

- (a) the debt relief order has been revoked, or
- (b) the debtor has been discharged from his qualifying debts, and a period of 3 months has elapsed from the date of revocation or discharge.”.

Insertion of new Chapter 3A into Part 6A

51. After Rule 6A.7 insert—

“CHAPTER 3A
DEBT RELIEF RESTRICTIONS REGISTER

Debt relief restrictions orders and undertakings – entries of information onto the debt relief restrictions register

6A.7A.—(1) This Rule is subject to Rule 6A.7B.

(2) Where an interim debt relief restrictions order or a debt relief restrictions order is made against a debtor, the Secretary of State shall enter onto the debt relief restrictions register—

- (a) the name, gender, occupation (if any) and date of birth of the debtor;
- (b) the debtor’s last known address;
- (c) a statement that an interim debt relief restrictions order or, as the case may be, a debt relief restrictions order has been made against him;
- (d) the date of the making of the order and the order reference number; and
- (e) the duration of the order.

(3) Where a debt relief restrictions undertaking is given by a debtor, the Secretary of State shall enter onto the debt relief restrictions register—

- (a) the name, gender, occupation (if any) and date of birth of the debtor;
- (b) the debtor’s last known address;
- (c) a statement that a debt relief restrictions undertaking has been given;
- (d) the date of the acceptance of the debt relief restrictions undertaking by the Secretary of State and reference number of the undertaking; and
- (e) the duration of the debt relief restrictions undertaking.

Deletion of information from the debt relief restrictions register – debt relief restrictions order and undertakings

6A.7B. In any case where an interim debt relief restrictions order or a debt relief restrictions order is made or a debt relief restrictions undertaking has been accepted, the Secretary of State shall remove from the debt relief restrictions register all information regarding that order or, as the case may be, undertaking after—

- (a) receipt of notification that the order or, as the case may be, undertaking has ceased to have effect; or
- (b) the expiry of the order or, as the case may be, undertaking.”.

Amendment to Rule 6A.8

52. In Rule 6A.8, for paragraph (2) substitute—

“(2) Where the Secretary of State receives notice of the date of the death of a person in respect of whom information is held on any of the registers, he shall cause the fact and date of the person’s death to be entered onto the individual insolvency register and, as the case may be, the bankruptcy restrictions register or the debt relief restrictions register.”.

Amendment to Rule 7.2

53. Immediately before the end of Rule 7.2(1) add—

“; and

“proceedings relating to a debt relief order” includes proceedings relating to a debt relief restrictions order or undertaking except as the context otherwise requires”.

Amendment to Rule 7.11

54. In Rule 7.11—

(a) after “winding-up or bankruptcy proceedings” in paragraphs (1), (2) and (4) insert “or proceedings relating to a debt relief order”;

(b) in paragraph (3)—

(i) after “In any case where”, insert “winding-up”, and

(ii) omit “or, as the case may be, jurisdiction in bankruptcy”; and

(c) after paragraph (3), insert—

“(3A) In any case where bankruptcy proceedings or proceedings relating to a debt relief order are transferred to a county court, the transfer must be to a court which has jurisdiction in bankruptcy.”.

Amendment to Rule 7.12

55. In Rule 7.12, after “winding-up or bankruptcy proceedings”, insert “or proceedings relating to a debt relief order”.

Amendment to Rule 7.13

56. In Rule 7.13, for paragraph (1)(b), substitute—

“(b) including a statement either that—

(i) the petitioner, or

(ii) the debtor in proceedings relating to a debt relief order,

consents to the transfer, or that he has been given at least 14 days’ notice of the official receiver’s application.”.

Amendment to Rule 7.16

57. In Rule 7.16(2), after “133, 236,” insert “251N,”.

Amendment to Rule 7.21

58. In Rule 7.21(2), after “134(2), 236(5),” insert “251N(5),”.

Amendment to Rule 7.23

59. In Rule 7.23—

(a) in the heading, after “ss 236,” insert “251N and”; and

- (b) in paragraph (1), immediately before “or 366” insert “, 251N (the equivalent in relation to debt relief orders)”.

Amendment to Rule 7.26

60. In Rule 7.26, for paragraph (2) substitute—

“(2) Every proceeding under—

- (i) Part 7A of the Act shall be headed “IN THE MATTER OF A DEBT RELIEF ORDER”, and
- (ii) Parts 9 to 11 of the Act shall be headed “IN BANKRUPTCY”.

Amendment to Rule 7.31

61. Immediately before the end of Rule 7.31(2) add “; and (d) in proceedings relating to a debt relief order, by the debtor”.

Amendment to Rule 7.32

62. Rule 7.32 shall cease to have effect.

Amendment to Rule 7.40

63. In Rule 7.40, for paragraphs (1) to (3) substitute—

“(1) This Rule applies where a party to, or person affected by, any proceedings in an insolvency—

- (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 or her application—

- (a) in proceedings other than proceedings relating to a debt relief order—
 - (i) on the responsible insolvency practitioner, and,
 - (ii) in a winding up by the court or a bankruptcy, on the official receiver;
- (b) in proceedings relating to a debt relief order, on the official receiver.

(3) The insolvency practitioner and, where appropriate, the official receiver may appear on an application to which paragraph (2)(a) applies.

(3A) The official receiver may appear on an application to which paragraph (2)(b) applies.”.

Amendment to Rule 7.41

64. In Rule 7.41—

- (a) in paragraph (1), after “the bankrupt”, insert “ or the debtor ”; and
- (b) in paragraph (2), for “insolvency proceedings”, substitute “a company insolvency or bankruptcy proceedings”.

Amendment to Rule 7.64

65. At the end of Rule 7.64(1) add “other than proceedings relating to a debt relief order”.

Amendment to Rule 9.1

66. In Rule 9.1—

- (a) in paragraph (1), after subparagraph (a), insert “(aa) section 251N (debt relief orders – inquiry into dealings and property of debtor), or”; and
- (b) in paragraph (2), for subparagraphs (b) and (c) substitute—
 - “(b) “the applicable section” is section 236, 251N or 366, according to whether the affairs of a company or those of a debtor in relation to a debt relief order or an application for a debt relief order or a bankrupt or (where the application under section 366 is made by virtue of section 368) a debtor in bankruptcy proceedings are in question;
 - (c) the company or, as the case may be, the debtor in relation to a debt relief order or an application for a debt relief order, the bankrupt or debtor in bankruptcy proceedings concerned is “the insolvent”;
 - (d) “the applicant”, in any application made under section 251N, means the official receiver.”.

Amendment to Rule 9.4

67. In Rule 9.4 (4), for “the applicable section” substitute “section 236 or 366”.

Amendment to Rule 9.6

68. In Rule 9.6—

- (a) in the heading, after “**ss 236,**” insert “**251N and**”; and
- (b) in paragraph (3)(b), after “individual insolvency” insert “, but not in proceedings relating to debt relief orders or applications for debt relief orders”.

Amendment to Rule 10.2

69. In Rule 10.2(1)(a), after “236,” insert “251N,”.

Amendment to Rule 10.4

70. In Rule 10.4(2), after “paragraph (1)” insert “in connection with insolvency proceedings other than proceedings relating to debt relief orders or applications for debt relief orders”.

Amendment to Rule 11.2

71. In Rule 11.2—

- (a) for paragraph (1A), substitute—
 - “(1A) Before declaring a first dividend the responsible insolvency practitioner shall give notice of the intended dividend. As soon as reasonably practicable such notice—
 - (a) shall be gazetted; and
 - (b) may be advertised in such other manner as the responsible insolvency practitioner thinks fit.”; and
 - (b) after paragraph (1A) insert—
 - “(1B) Paragraph (1A) shall not apply where the responsible insolvency practitioner has previously, by notice, invited creditors to prove their debts.”.

Amendment to Rule 12.1

72. In Rule 12.1(1)(d)(ii), for “individual insolvency” substitute “bankruptcy”.

Amendment to Rule 12.22

73. For paragraph (5) of Rule 12.22, substitute—

“(5) The court may direct that the requirement of paragraph (3) shall be taken to be complied with if a notice has been published by the liquidator, administrator or receiver, as the case may be, stating that the court has made an order disapplying the requirement to set aside the prescribed part. As soon as reasonably practicable the notice—

- (a) shall be gazetted; and
- (b) may be advertised in such other manner as the liquidator, administrator or receiver thinks fit.”.

Amendment to Rule 13.3

74. In Rule 13.3—

- (a) in paragraph (1), after “personal”, insert “or other”;
- (b) in paragraph (3), at the end insert “except applications for debt relief orders”; and
- (c) in paragraph (4), after “application” where it first occurs, insert “made to the court”.

Amendment to Rule 13.8

75. In Rule 13.8(b), for “an individual insolvency” substitute “a bankruptcy or a petition for bankruptcy”.

Amendment to Rule 13.13

76. In Rule 13.13, after paragraph (4), insert—

“(4A) “gazetted” means to advertise once in the Gazette.”.

Amendment to Schedule 2 – alternative courts

77. In Schedule 2 to the principal Rules, for the heading and the reference to Rule 6.40(3) substitute—

“**SCHEDULE 2** Rules 5A.21(2) and 6.40(3)

ALTERNATIVE COURTS”

Amendments to Schedule 4 - forms

78. Schedule 4 to the principal Rules is amended as set out in Schedule 2 to these Rules.

9th March 2009

Jack Straw
Lord Chancellor and Secretary of State for Justice
Ministry of Justice

10th March 2009

The Rt Hon Sir Andrew Morritt
The Chancellor of the High Court

I concur, on behalf of the Secretary of State

10th March 2009

Pat McFadden
Minister of State for Employment Relations and Postal Affairs
Department for Business, Enterprise and Regulatory Reform

PART 5A OF THE INSOLVENCY RULES

“PART 5A

DEBT RELIEF ORDERS

CHAPTER 1

*Preliminary***Scope of this part: introductory and interpretation**

5A.1. The Rules in this Part apply in relation to debt relief orders and applications for debt relief orders under Part 7A of the Act.

Excluded debts

5A.2. For the purposes of that Part of the Act and this Part of the Rules—

“excluded debt” means—

- (a) any fine imposed for an offence and any obligation (including an obligation to pay a lump sum or to pay costs) arising under an order made in family proceedings or any obligation arising under a maintenance assessment made under the Child Support Act 1991(a)
- (b) any obligation arising under a confiscation order made under section 1 of the Drug Trafficking Offences Act 1986(b) or section 1 of the Criminal Justice (Scotland) Act 1987(c) or section 71 of the Criminal Justice Act 1988(d) or under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002(e); and
- (c) any debt or liability to which a debtor is or may become subject in respect of any sum paid or payable to the debtor as a student by way of a loan and which he receives before or after a debt relief order is made in respect of him.

“Fine” and “family proceedings” have the meanings given by section 281(8) of the Act (which applies the Magistrates’ Courts Act 1980(f) and the Matrimonial and Family Proceedings Act 1984(g)).

“Loan” means a loan made pursuant to—

- (a) regulations made under section 22(1) of the Teaching and Higher Education Act 1998(h), or
- (b) the Education (Student Loans) Act 1990(i), or that Act as it continues in force by virtue of any savings made, in connection with its repeal by the Teaching and Higher Education Act 1998, by an order made under section 46(4) of that Act,

(a) 1991 c.48.
 (b) 1986 c.32.
 (c) 1987 c.41.
 (d) 1988 c.33.
 (e) 2002 c.29.
 (f) 1980 c.43.
 (g) 1984 c.42.
 (h) 1998 c.30.
 (i) 1990 c.6.

including any interest on the loan and any penalties or charges incurred in connection with it

Application for a debt relief order – information to be in the application

5A.3.—(1) In addition to the matters referred to in section 251B(2)(a) and (b) of the Act and subject to paragraphs (5) to (11), an application for a debt relief order under section 251A must also state the matters set out in paragraphs (2) to (4) as they subsist at the date of the application.

(2) The application must state—

- (a) the debtor's surname, forenames and occupation (if any);
- (b) the debtor's gender and date of birth;
- (c) the debtor's places of residence during the three years preceding the date of the application;
- (d) any name or names used by the debtor for any purpose, if different from the above;
- (e) the name, address and nature of any business carried on by the debtor, including any business carried on by—
 - (i) a firm or partnership of which the debtor is a member;
 - (ii) an agent or manager for the debtor or for such firm or partnership;
- (f) any other liabilities (including those imposed by an order of the court) to which the debtor is subject;
- (g) the address of the creditor to whom each debt is owed;
- (h) the total amount of the debtor's monthly income from any source (see Rule 5A.8(1));
- (i) the sources of that income and the amount from each source;
- (j) particulars of the expenditure which the debtor claims is necessary to meet the monthly reasonable domestic needs of the debtor and the debtor's family, including the object and the amount of that expenditure (see Rule 5A.8(2));
- (k) the total amount available from any source to meet the claimed monthly reasonable domestic needs of the debtor and his or her family (see Rule 5A.8(2)); and
- (l) particulars of the debtor's property and its total estimated value (see Rule 5A.9 and 5A.10).

(3) The debtor shall also state in the application—

- (a) whether or not the debtor at the date of the application—
 - (i) has given a preference to any person during the period of two years prior to and ending with the application date;
 - (ii) has entered into a transaction with any person at an undervalue during the period of two years prior to and ending with the application date;
 - (iii) is domiciled in England and Wales;
 - (iv) at any time during the period of three years ending with the application date,
 - (aa) was ordinarily resident,
 - (bb) had a place of residence, or
 - (cc) carried on business,in England and Wales;
 - (v) is an undischarged bankrupt;
 - (vi) is subject to a debt relief order;
 - (vii) has been subject to a debt relief order in the six years preceding the date of the application;

- (viii) is subject to an interim order or a voluntary arrangement under Part 8 of the Act; or
 - (ix) is subject to a bankruptcy restrictions order or undertaking or debt relief restrictions order or undertaking; and
- (b) whether at the date of the application—
- (i) a bankruptcy petition has been presented by the debtor or by a creditor against the debtor;
 - (ii) a bankruptcy petition has been presented by the debtor, but the court has referred the debtor for the purpose of making an application for a debt relief order;
 - (iii) any debt management arrangements (see section 251F) are in force in respect of the debtor; and
 - (iv) any other legal action has been taken against the debtor in respect of any of the debtor's existing debts.
- (4) In the application, the debtor must also—
- (a) consent to checks being made by the official receiver for the purpose of verifying that the debtor complies with the conditions to which the making of a debt relief order is subject;
 - (b) state that the debtor is unable to pay his or her debts;
 - (c) request a debt relief order, and
 - (d) indicate the date on which the application is completed.
- (5) The debtor shall submit to the approved intermediary such information and such documents by reference to which the information in the application, including information about each debt, the amount of the debt and the name and address of the creditor, may be substantiated.
- (6) In making the application, the debtor must in every case deduct from the amount of the debt all trade and other discounts which are available to the debtor, except any discount for immediate, early or cash settlement.
- (7) Subject to paragraph (8), where a debt was incurred or is payable in a currency other than sterling, the amount of the debt shall be converted into sterling at the official exchange rate prevailing on the application date.
- (8) The official exchange rate is the middle exchange rate on the London foreign exchange market at the close of business, as published for the date in question or, in the absence of any such published rate for the date in question such rate as the official receiver determines.
- (9) Where a debt consists of unpaid payments of a periodical nature, the amount of the debt shall consist of any amounts due and unpaid up to the date of the application.
- (10) Where at the application date any payment was accruing due, the debt shall consist of so much as would have fallen due at that date, if accruing from day to day.
- (11) A debtor may include a debt of which payment is not yet due at the date of the application, provided that it is for a liquidated sum payable at some certain future time.

Application for a debt relief order

5A.4.—(1) Subject to paragraphs (2) and (3), an application for a debt relief order must be completed and sent to the official receiver in electronic form and by electronic means.

(2) In this Rule, an application—

- (a) is sent by electronic means, if it is sent initially and received at its destination by means of electronic equipment for the processing (which expression includes digital compression) or storage of data and entirely created, transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic

means but does not include electronic facsimile transmission or mobile telephonic text messaging;

- (b) is completed in electronic form, if it is an application which is created, and sent, by electronic means;
- (c) in hard copy form, means an application completed and sent on paper and capable of being read (but is not the product of an electronic facsimile transmission).

(3) An application in electronic form sent by electronic means shall be treated as not having been submitted unless and until its receipt has been acknowledged by the official receiver in the same form and by the same means.

(4) In the event of any malfunction or error in the operation of the electronic form or means referred to, the official receiver shall notify the competent authorities and approved intermediaries—

- (a) that approved intermediaries may, for a specified period, complete and send applications in hard copy form; and
- (b) of the postal address to which such applications are to be sent and any terms or conditions to which their use is subject.

Approved intermediary

5A.5.—(1) The approved intermediary, as and when requested by a debtor who proposes to make an application for a debt relief order through him or her, shall create an application for a debt relief order in the name of the debtor.

(2) The approved intermediary through whom the application for a debt relief order is to be made may assist the debtor—

- (a) to identify what information is required to complete the application;
- (b) based upon the documentation and information supplied by the debtor, to ascertain whether—
 - (i) the debtor appears to have debts not exceeding the prescribed amount;
 - (ii) the debtor's surplus income does not exceed the prescribed amount; and
 - (iii) the value of the debtor's property does not exceed the prescribed amount; and
- (c) to ensure that the application (if any) is completed in full.

(3) The approved intermediary must draw the debtor's attention to—

- (a) all the conditions to which an application for, and the making of, a debt relief order is subject;
- (b) the possible consequences of the making by the debtor of any false representation or omission in the debtor's application; and
- (c) the fact that verification checks will be made for the purpose of verifying that the debtor complies with the conditions to which the making of a debt relief order is subject and the requirement for the debtor to consent to such checks being made.

(4) If and when instructed to do so by the debtor, the approved intermediary must send the application to the official receiver on behalf of the debtor.

Form, manner and reasons for refusal of application for debt relief order

5A.6.—(1) The official receiver must notify the debtor of his or her decision to refuse an application for a debt relief order in accordance with this Rule.

(2) The official receiver must send a notice in writing to the debtor stating—

- (a) that the official receiver has decided to refuse the debtor's application, and
- (b) the reason for which it has been refused.

Prescribed verification checks – conditions in paragraphs 1 to 8 of Schedule 4ZA

5A.7.—(1) In this Rule, “credit reference agency” means a person licensed to carry on a business comprising the furnishing of information relevant to the financial standing of individuals.

(2) For the purposes of subsections (4) and (5) of section 251D and the conditions specified in paragraphs 1 to 8 of Schedule 4ZA, the prescribed verification checks are those searches or enquiries specified in relation to the condition in paragraphs (3) to (8) below.

(3) For the purpose of verifying a debtor’s connection with England and Wales on the application date, verification checks made in, or with, one or more of the following—

- (a) the electoral registers for the areas in England and Wales in which the debtor in, and at the date of, the debtor’s application, claims to reside or to carry on business or to have resided or carried on business;
- (b) the individual insolvency register;
- (c) the bankruptcy restrictions register;
- (d) the debt relief restrictions register;
- (e) a credit reference agency.

(4) For the purpose of verifying that a debtor—

- (a) is not, on the determination date—
 - (i) an undischarged bankrupt;
 - (ii) subject to a bankruptcy restrictions order or undertaking;
 - (iii) subject to a debt relief restrictions order or undertaking;
 - (iv) subject to an individual voluntary arrangement; or
- (b) has not been the subject of a debt relief order in the period of 6 years ending with the determination date,

verification checks made in one or more of the registers specified in paragraph (5).

(5) The registers referred to in paragraph (4) are—

- (a) the individual insolvency register;
- (b) the bankruptcy restrictions register;
- (c) the debt relief restrictions register.

(6) For the purpose of verifying—

- (a) that the debtor is not, on the determination date, subject to an interim order;
- (b) whether a debtor’s or creditor’s bankruptcy petition has been presented against the debtor prior to the determination date;
- (c) where a bankruptcy petition has been presented against the debtor prior to the determination date, whether proceedings in relation to the petition have finally been disposed of before the determination date;
- (d) where a bankruptcy petition has been presented against the debtor prior to the determination date, the status of the proceedings in relation to the petition and whether the court has referred the debtor under section 274A(2) for the purpose of making an application for a debt relief order;
- (e) where a creditor’s bankruptcy petition has been presented against the debtor prior to the determination date, the status of the proceedings in relation to the petition and whether the person who presented the petition has consented to the making of the application for a debt relief order,

verification checks made in, or with one or more of the sources specified in paragraph (7).

(7) The sources are—

- (a) the individual insolvency register;

- (b) county or other court records;
 - (c) a credit reference agency.
- (8) For the purpose of verifying that—
- (a) the amount of the debtor’s overall indebtedness;
 - (b) the amount of the debtor’s monthly surplus income; or
 - (c) the total value of the debtor’s property,

does not exceed the prescribed amount, verification checks made with a credit reference agency.

Determination of debtor’s monthly surplus income

5A.8.—(1) For the purposes of this Part, the income of a debtor comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment and (despite anything in section 11 or 12 of the Welfare Reform and Pensions Act 1999(a)) any payment under a pension scheme.

(2) In determining the monthly surplus income of a debtor, the official receiver shall take into account any contribution made by any member of the debtor’s family to the amount necessary for the reasonable domestic needs of the debtor and his or her family.

Determination of value of a debtor’s property

5A.9.—(1) Subject to Rule 5A.10, the official receiver in determining whether the condition in paragraph 8 of Schedule 4ZA to the Act is met shall regard as a debtor’s property for the purposes of this Part—

- (a) all property belonging to or vested in the debtor on the determination date, and
- (b) any property which by virtue of any of the following provisions of this Part is comprised in or is treated as falling within the preceding sub-paragraph.

(2) References in this Part to property, in relation to a debtor, include references to any power exercisable by him or her over or in respect of property except in so far as the power is exercisable over or in respect of property which is not or is deemed not for the time being to be the property of the debtor and cannot be exercised for the benefit of the debtor;

and a power exercisable over or in respect of property is deemed for the purposes of this Part to vest in the person entitled to exercise it at the time of the transaction or event by virtue of which it is exercisable by that person (whether or not it becomes so exercisable at that time).

(3) For the purposes of any such provision in this Part, property belonging to or vested in the debtor so belongs or vests in him or her subject to the rights of any person other than the debtor (whether as a secured creditor of the debtor or otherwise) in relation thereto.

Particular descriptions of property to be excluded for the purpose of determining the value of a person’s property

5A.10.—(1) For the purposes of Rule 5A.9, the official receiver shall disregard—

- (a) subject to paragraph (2), a single domestic motor vehicle belonging to or vested in the debtor provided that—
 - (i) it has been especially adapted for use by him or her because he or she has a physical impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities; or

(a) 1999 c.30.

- (ii) the maximum potential realisable value of the vehicle is less than the prescribed amount;
- (b) subject to paragraph (3), such tools, books and other items of equipment as are necessary to the debtor for use personally by him in his employment, business or vocation;
- (c) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the debtor and his or her family;
- (d) property held by the debtor on trust for any other person;
- (e) the right of nomination to a vacant ecclesiastical benefice;
- (f) a tenancy which is an assured tenancy or an assured agricultural occupancy, within the meaning of Part I of the Housing Act 1988(a), and the terms of which inhibit an assignment as mentioned in section 127(5) of the Rent Act 1977(b);
- (g) a protected tenancy, within the meaning of the Rent Act 1977, in respect of which, by virtue of any provision of Part IX of that Act, no premium can lawfully be required as a condition of assignment;
- (h) a tenancy of a dwelling-house by virtue of which the debtor is, within the meaning of the Rent (Agriculture) Act 1976(c), a protected occupier of the dwelling-house, and the terms of which inhibit an assignment as mentioned in section 127(5) of the Rent Act 1977, or
- (i) a secure tenancy, within the meaning of Part IV of the Housing Act 1985(d), which is not capable of being assigned, except in the cases mentioned in section 91(3) of that Act.

(2) Where—

- (a) a vehicle is to be disregarded by the official receiver by virtue of paragraph (1)(a)(i) of this Rule (adapted vehicle), and
- (b) it appears to the official receiver that the realisable value of the vehicle exceeds the cost of a reasonable replacement for it,

the official receiver shall disregard only the value of a reasonable replacement.

(3) Where—

- (a) property is to be disregarded by the official receiver by virtue of paragraph (1)(b) or (c) of this Rule (tools of trade, household effects, etc), and
- (b) it appears to the official receiver that the realisable value of the whole or any part of that property exceeds the cost of a reasonable replacement for that property or that part of it,

the official receiver shall disregard only the value of a reasonable replacement.

(4) For the purposes of this Rule,

- (a) the prescribed amount is £1000
- (b) property is a reasonable replacement for other property if it is reasonably adequate for meeting the needs met by the other property.

(5) This Rule has effect subject to the provisions of any enactment not contained in these Rules or in the Act under which any property is to be excluded from belonging to or being vested in the debtor for the purposes of the determination of a debt relief order.

(a) 1988 c.50.
 (b) 1977 c.42.
 (c) 1976 c.80.
 (d) 1985 c.68.

Making of debt relief order – form of debt relief order

5A.11 A debt relief order must be in writing and include the following particulars—

- (a) the name and address of the debtor;
- (b) the date of, and the reference number allocated to, the debtor’s application;
- (c) a list of the debtor’s qualifying debts as at the application date, specifying the amount owed and the creditor’s name, address and reference (if any); and
- (d) the date on which the order was made.

Other steps to be taken by official receiver or debtor upon making of the order

5A.12.—(1) In addition to giving a copy of the order to the debtor, the official receiver must—

- (a) notify the approved intermediary through whom the debtor’s application was made, of the making and date of the order; and
- (b) cause an entry to be made in the individual insolvency register in accordance with Rule 6A.5A.

(2) In any case in which there are other debt management arrangements or attachment of earnings orders in force in respect of the debtor, the official receiver must notify the court, or the body, as the case may be, responsible for making the debt management arrangements or orders, of the making of the debt relief order.

Prescribed information to be notified to creditor on making of debt relief order

5A.13. The official receiver must notify each creditor to whom a qualifying debt specified in the order is owed, of—

- (a) the making, the date and the reference number of the order and its effect;
- (b) the matters to which a creditor may object under section 251K; and
- (c) the name, address and telephone number of the official receiver sending the notice and the address to which any objection under that section may or must be sent.

Creditor’s objection

5A.14.—(1) In this Rule, “creditor” means a person specified in a debt relief order as a creditor to whom a specified qualifying debt is owed.

(2) A creditor who wishes to object to—

- (a) the making of an order;
- (b) the inclusion of the debt in the list of the debtor’s qualifying debts; or
- (c) the details of the debt specified in the order,

must object in writing to the official receiver in accordance with this Rule.

(3) For an objection to be considered by the official receiver, it must be made during the moratorium period relating to the order and within 28 days of the date on which the creditor was notified of the making of the order and must include—

- (a) the name and address of the creditor;
- (b) the name of the debtor and the reference number of the order;
- (c) which of the matters under section 251K the creditor objects to;
- (d) a statement indicating at least one or more of the grounds listed in paragraph (4), upon which the creditor relies;
- (e) a statement indicating the facts upon which the creditor relies, and

- (f) information and documents in support of the grounds and the facts upon which the creditor relies.

(4) The grounds are that—

- (a) there is an error in, or an omission from, something specified in the debt relief order;
- (b) a bankruptcy order has been made in respect of the debtor;
- (c) the debtor has made a proposal under Part 8 of the Act;
- (d) the official receiver should not have been satisfied that—
 - (i) the debts specified in the order were qualifying debts of the debtor as at the application date;
 - (ii) the conditions specified in Part 1 of Schedule 4ZA to the Act were met;
 - (iii) the conditions specified in Part 2 of that Schedule were met or that any failure to meet such condition did not prevent him or her from making the order;
 - (iv) the condition in paragraph 7 of that Schedule was not met at any time after the order was made;
 - (v) the condition in paragraph 8 of that Schedule was not met at any time after the order was made.

(5) For the purposes of paragraph (4)(d)(iv) and (v) above, paragraph 7 and 8 of Schedule 4ZA to the Act are to be read as if references to the determination date were references to the time in question.

Official receiver's response to objection

5A.15.—(1) For the purposes of this Rule—

“the creditor” means the creditor specified in a debt relief order as a creditor to whom a qualifying debt is owed and who has made an objection in relation to that order under the Act and the Rules;

“the debt relief order” means the debt relief order in which the creditor is specified;

“the debtor” means the person subject to the debt relief order.

(2) If, after considering an objection in accordance with section 251K, the official receiver is minded to revoke or amend the debt relief order, he or she shall send to the debtor particulars of—

- (a) the objection;
- (b) the grounds and facts upon which the creditor relies; and
- (c) the address to which the debtor's comments must be sent,

and invite the debtor to comment on them.

(3) Before deciding whether to revoke or amend the debt relief order, the official receiver shall consider any comments made by the debtor, provided they are made within 21 days after the particulars were sent to the debtor.

(4) The official receiver must—

- (a) within 14 days of coming to a decision specified in section 251K(5)—
 - (i) send notice to the creditor under and in accordance with Rule 5A.16 of either the revocation or amendment of the debt relief order under section 251L; or
 - (ii) under Rule 5A.19(b), if he or she would not otherwise be treated as such, treat the creditor as a person interested in any application made under section 251M by the official receiver to the court for directions or an order in relation to any matter arising in connection with the debt relief order, to whom notice of the official receiver's application must be sent; or

- (iii) send notice to the creditor of the official receiver's decision to take other steps in relation to the debtor and of the steps he or she proposes to take; or
- (b) notify the creditor of the official receiver's decision to do none of the above.

Procedure to be followed when revoking or amending a debt relief order

5A.16.—(1) Subject to Rule 5A.27, the official receiver must as soon as reasonably practicable after deciding to revoke a debt relief order —

- (a) send notice of the decision to revoke to—
 - (i) the debtor; and
 - (ii) any creditor specified in the debt relief order as a creditor to whom a qualifying debt is owed; and
- (b) upon the revocation taking effect, provided that information concerning a debt relief order has not been deleted under Rule 6A.5B, cause the entry in the individual insolvency register relating to the debt relief order to be amended accordingly.

(2) The notice of the decision to revoke must—

- (a) identify the debtor and the date and reference number of the debt relief order;
- (b) state the reasons for revocation; and
- (c) specify the date (whether under subsection (5) or (7) of section 251L) on or from which the revocation has effect.

(3) Where—

- (a) a revocation is to take effect from a specified date, and
- (b) the official receiver thinks it appropriate to revoke the order under subsection (7) of section 251L with immediate effect at any time before that date,

any debtor or creditor to whom notice of the specified date has already been sent pursuant to paragraph (1), must be notified by the official receiver of the earlier date on which the revocation has effect.

(4) Upon amendment of a debt relief order, the official receiver shall as soon as reasonably practicable after the amendment—

- (a) send notice of the amendment to—
 - (i) the debtor; and
 - (ii) any creditor specified in the debt relief order as a creditor to whom a qualifying debt is owed;
- (b) in the notice of amendment—
 - (i) identify the debtor and the date and reference number of the debt relief order;
 - (ii) specify the amendment;
 - (iii) specify the date on which the amendment was made; and
 - (iv) state the reasons for it; and
- (c) cause the entry in the individual insolvency register relating to the amended debt relief order to be amended accordingly.

Notification of official receiver by debtor of matters in section 251J(3) or (5)

5A.17.—(1) As soon as reasonably practicable after the debtor becomes aware of—

- (a) an error in, or omission from, the information supplied to the official receiver in, or in support of, the application, he or she must notify the official receiver of—
 - (i) the nature of the error or omission; and
 - (ii) the reason for it;

- (b) a change in his or her circumstances between the application date and the determination date that would affect (or would have affected) the determination of the application, he or she must notify the official receiver of—
 - (i) the nature of the change; and
 - (ii) the date of the change.
- (2) Where a debt relief order is made and—
 - (a) there is an increase in the debtor’s income during the moratorium period applicable to the order, the debtor shall notify the official receiver, as soon as reasonably practicable after the date of the increase, of—
 - (i) the amount of the increase;
 - (ii) the reason for it;
 - (iii) the date of the increase; and
 - (iv) its expected duration;
 - (b) the debtor acquires any property or any property is devolved upon him during that period, the debtor shall notify the official receiver, as soon as reasonably practicable after the date of the acquisition or the devolution, of—
 - (i) the nature of the acquisition or devolution;
 - (ii) the date of the acquisition or devolution;
 - (iii) the reason for it; and
 - (iv) its value;
 - (c) the debtor becomes aware of any error in or omission from any information supplied by him or her to the official receiver after the determination date, the debtor shall notify the official receiver, as soon as reasonably practicable after the date on which the debtor becomes aware of it, of—
 - (i) the nature of the error or omission;
 - (ii) the reason for it; and
 - (iii) the date on which the debtor becomes aware of it.

Persons at risk of violence – debt relief orders, debt relief restrictions orders and debt relief restrictions undertakings

5A.18.—(1) For the purposes of this Rule—

“debtor” means a person subject to a debt relief order, or a debt relief restrictions order or a debt relief restrictions undertaking; and

“current address” means in relation to any debtor the address of his or her current place of residence and any address at which he or she currently carries on business.

(2) This Rule applies in any case where disclosure or continuing disclosure to other persons (whether to the public generally or to specific persons) of the current address or whereabouts of a debtor might reasonably be expected to lead to violence against him or her or against a person who normally resides with him or her as a member of his or her family.

(3) The court may, subject to paragraph (6)—

- (a) on the application of a debtor subject to a debt relief order or the official receiver in respect of such a debtor, order that—
 - (i) the details in respect of the debtor to be entered onto the individual insolvency register under Rule 6A.5A shall not include details of the debtor’s current address; or
 - (ii) the details of the debtor’s current address kept on the individual insolvency register under Part 6A shall be removed from such register;

- (b) on the application of a debtor subject to a debt relief restrictions order or the official receiver in respect of such a debtor, order that—
 - (i) details of the debtor’s current address shall be removed from any part of the court file of the proceedings in relation to the debtor which is open to inspection and be kept on a separate file not open to inspection;
 - (ii) the full of title of the proceedings shall be amended by the removal of the details of the debtor’s current address from the description of the debtor;
 - (iii) the details in respect of the debtor to be entered onto the debt relief restrictions register under Rule 6A.7A shall not include details of the debtor’s current address; or
 - (iv) the details of the debtor’s current address kept on the debt relief restrictions register under Rule 6A shall be removed from such register;
- (c) on the application of a debtor subject to a debt relief restrictions undertaking or the official receiver in respect of such a debtor, order that—
 - (i) the details of the debtor’s current address shall be excluded from the details in respect of the debtor to be entered onto the debt relief restrictions register under Rule 6A.7A; or
 - (ii) the details of the debtor’s current address kept on the debt relief restrictions register under Rule 6A shall be removed from such register.
- (4) Where the court makes an order under paragraph (3), it may further order that—
 - (a) the full title of any proceedings; or
 - (b) the details in respect of the debtor kept on or to be entered onto the registers referred to in that paragraph,

as the case may be, shall instead include such other details of the debtor’s addresses or whereabouts as the court thinks fit, including details of any address at which the debtor has previously resided or carried on business.

(5) Proceedings under this Rule may be ordered by the court to be transferred under Rule 7.11 on the application of the person in respect of whom the application is being made.

(6) In any case where an application is made by a debtor under or by virtue of this Rule, the application shall be accompanied by an affidavit referring to this Rule and containing sufficient evidence to satisfy the court to which the application was made, that this Rule applies to or in respect of that debtor.

Application to court under section 251M

5A.19. Where an application is made to the court under section 251M—

- (a) by a person who is dissatisfied by any act, omission or decision of the official receiver in connection with a debt relief order or an application for a debt relief order, if the person making the application—
 - (i) is the debtor, notice of the application to the court must be sent to the official receiver and to any creditor specified in the debt relief order or in the application for a debt relief order; or
 - (ii) is a person other than the debtor, notice of the application to the court must be sent to the official receiver and to the debtor;
- (b) by the official receiver for directions or an order in relation to any matter arising in connection with a debt relief order or an application for such an order, notice of the application must be sent by the official receiver to the debtor and to any person appearing to the official receiver to have an interest in the application.

Extension of moratorium period

5A.20. Where the moratorium period applicable to a debt relief order is extended—

- (a) notice of the extension, and the period for which it is extended must be sent,
 - (i) where extended by the court, to the official receiver, who shall send a copy to the debtor subject to the debt relief order and to the creditors specified in it;
 - (ii) where extended by the official receiver, to the debtor subject to the debt relief order and to the creditors specified in it; and
- (b) the official receiver shall cause to be entered in the individual insolvency register that—
 - (i) such an extension has been made in relation to the debtor;
 - (ii) the date on which the extension was made;
 - (iii) its duration; and
 - (iv) the date of the anticipated end of the moratorium period.

Court in which applications under sections 251M (powers of court in relation to debt relief orders) or 251N (inquiry into debtor’s dealings and property) to be made

5A.21.—(1) An application to the court by a debtor under section 251M(1) or by the official receiver under section 251M(2) or 251N shall, if the debtor is resident in England and Wales—

- (a) be made to the High Court if the debtor has resided or carried on business in the London insolvency district for the greater part of the 6 months immediately preceding the making of the application, or for a longer period in those 6 months than in any other insolvency district, and
- (b) in any other case, (subject to paragraph (2)) be made to the debtor’s own county court, which is—
 - (i) the county court for the insolvency district in which he or she has resided or carried on business for the longest period during those 6 months, or
 - (ii) if he or she has for the greater part of those 6 months carried on business in one insolvency district and resided in another, the county court for that in which he or she has carried on business, or
 - (iii) if he or she has during those 6 months carried on business in more than one insolvency district, the county court for that in which is, or has been for the longest period in those 6 months, his or her principal place of business.

(2) If, in a case not falling within paragraph (1)(a), it is more expedient for the debtor with a view to expediting the application—

- (a) it may in any case be made to whichever court is specified by Schedule 2 to the Rules as being, in relation to the debtor’s own county court, the nearest full-time court, and
- (b) it may alternatively, in a case falling within paragraph (1)(b)(ii), be made to the court for the insolvency district in which he or she has resided for the greater part of the 6 months there referred to.

(3) If the debtor is not resident in England and Wales but has resided or carried on business in England and Wales within the 6 months immediately preceding the making of the application, the application—

- (a) shall be made to the High Court if the debtor has resided or carried on business in the London insolvency district for the greater part of those 6 months, or for a longer period in those 6 months than in any other insolvency district, and
- (b) in any other case, may (subject to paragraph (4)) be made either to the debtor’s own county court or to the High Court.

(4) The provisions of paragraph (2) shall apply with any appropriate modifications in any case where in accordance with paragraph (3)(b) the application may be made to the debtor’s own county court.

(5) If the debtor is not resident in England and Wales and has not resided or carried on business in England and Wales within the 6 months immediately preceding the making of the application, the application shall be made to the High Court.

(6) The application shall contain sufficient information to establish that it is brought in the appropriate court.

Referral of debtor, by court, to intermediary under section 274A

5A.22. If, on the hearing of a debtor’s bankruptcy petition, the court refers the debtor to an approved intermediary under section 274A for the purposes of making an application for a debt relief order, as soon as reasonably practicable after the making of the order of referral—

- (a) the court shall send to the debtor a sealed copy of the order of referral, and
- (b) the debtor shall send to the approved intermediary a copy of the order and copies of the debtor’s petition and statement of affairs.

Creditor’s bankruptcy petition - where creditor consents to making of application for a debt relief order

5A.23.—(1) This Rule applies where prior to the determination of an application, a creditor’s petition for bankruptcy has been presented against a debtor and the proceedings in relation to that petition remain before the court.

(2) In this Rule,

“the petition” means the creditor’s bankruptcy petition; and

“the debt” means the debt to which the creditor’s bankruptcy petition relates.

(3) If, on the hearing of the petition, the petitioner consents to the making by the debtor of an application for a debt relief order in respect of the debt—

(a) the court shall—

(i) refer the debtor to an approved intermediary (within the meaning of Part 7A) for the purpose of making an application for a debt relief order in relation to the debtor and the debt noting the consent of the creditor on the order for referral;

(ii) stay the proceedings on the petition in relation to the debt on such terms and conditions as it thinks fit; and

(b) the debtor shall send to the approved intermediary as soon as reasonably practicable after the making of the order of referral,

(i) a sealed copy of the order, and

(ii) copies of the petition and (if any), of the creditor’s statutory demand.

(4) The approved intermediary shall, on receipt of the order and the copies, as soon as reasonably practicable after the application for a debt relief order has been made, send them to the official receiver endorsed with the name of the debtor and the number of the application to which they relate.

(5) If, following the reference by the court, a debt relief order is made in relation to the debt, the petition shall be dismissed in relation to it unless the court otherwise directs.

Application for leave under Company Directors Disqualification Act 1986

5A.24.—(1) An application by a person—

(a) in relation to whom a moratorium period under a debt relief order applies, or

(b) in respect of whom a debt relief restrictions order or undertaking is in force,

for leave (“the applicant for leave”), under section 11 of the Company Directors Disqualification Act 1986^(a), to act as director of, or to take part or be concerned in the promotion, formation or management of a company, shall be supported by an affidavit complying with this Rule.

- (2) The affidavit must identify the company and specify—
- (a) the nature of its business or intended business, and the place or places where that business is, or is to be, carried on;
 - (b) whether it is, or is to be, a private or a public company;
 - (c) the persons who are, or are to be, principally responsible for the conduct of its affairs (whether as directors, shadow directors, managers or otherwise);
 - (d) the manner and capacity in which the applicant for leave proposes to take part or be concerned in the promotion or formation of the company or, as the case may be, its management; and
 - (e) the emoluments and other benefits to be obtained from the directorship.

(3) If the company is already in existence, the affidavit must specify the date of its incorporation and the amount of its nominal and issued share capital; and if not, it must specify the amount, or approximate amount, of its proposed commencing share capital, and the sources from which that capital is to be obtained.

(4) Where the applicant for leave intends to take part or be concerned in the promotion or formation of a company, the affidavit must contain an undertaking by the applicant for leave that he or she will, within not less than 7 days of the company being incorporated, file in court a copy of its memorandum of association and certificate of incorporation under section 13 of the Companies Act.

(5) The court shall fix a venue for the hearing of the application, and shall give notice to the applicant for leave accordingly.

Application for leave under Company Directors Disqualification Act 1986 - report of official receiver

5A.25.—(1) The applicant for leave shall, not less than 28 days before the date fixed for the hearing, give to the official receiver, notice of the venue, accompanied by copies of the application and the affidavit under Rule 5A.24.

(2) The official receiver may, not less than 14 days before the date fixed for the hearing, file in court a report of any matters which he considers ought to be drawn to the court’s attention. A copy of the report shall be sent by him, as soon as reasonably practicable after it is filed, to the applicant for leave.

(3) The applicant for leave may, not later than 7 days before the date of the hearing, file in court a notice specifying any statements in the official receiver’s report which he or she intends to deny or dispute.

(4) If he or she gives notice under this paragraph, he or she shall send copies of it, not less than 4 days before the date of the hearing, to the official receiver.

(5) The official receiver may appear on the hearing of the application, and may make representations and put to the applicant for leave such questions as the court may allow.

Application for leave under Company Directors Disqualification Act 1986 - court’s order on application

5A.26.—(1) If the court grants the application for leave under section 11 of the Company Directors Disqualification Act 1986, its order shall specify that which by virtue of the order the applicant has leave to do.

(a) 1986 c.46.

(2) The court may at the same time, having regard to any representations made by the official receiver on the hearing of the application, exercise in relation to the moratorium period or the debt relief order to which the applicant for leave is subject, any power which it has under section 251M.

(3) Whether or not the application is granted, copies of the order shall be sent by the court to the applicant and the official receiver.

Death of debtor at a time when a moratorium period under a debt relief order applies in relation to him or her

5A.27.—(1) This Rule applies where a debtor dies at a time when a moratorium period under a debt relief order applies in relation to him or her.

(2) The official receiver shall, as soon as reasonably practicable after receiving notice of the death of the debtor—

- (a) revoke the debt relief order;
- (b) cause a note of the fact and the date of the death to be entered on the individual insolvency register under Rule 6A.8; and
- (c) send notice of the revocation—
 - (i) to any creditor specified in the debt relief order as a creditor to whom a qualifying debt is owed, and
 - (ii) to the personal representatives of the deceased debtor.

(3) In the notice of revocation, the official receiver shall—

- (a) identify the debtor;
- (b) state the reason for the revocation, and
- (c) specify the date on which the revocation took effect.”

SCHEDULE 2

Rule 78

Amendments to Index, Title and Content of Forms in Schedule 4 to the Insolvency Rules 1986

1. In the index to forms in Schedule 4, for the entry relating to—
 - (a) Form 1.10 in Part 1, substitute “Advertisement of coming into force or ending of moratorium (for Gazette and other advertising)”;
 - (b) Form 2.11B in Part 2, substitute “Notification of appointment of administrator (for Gazette and other advertising)”;
 - (c) Form 3.1A in Part 3, substitute “Notice of appointment of administrative receiver (for Gazette and other advertising)”.
2. There is substituted for the title in Schedule 4 of—
 - (a) Form 1.10, the title “Advertisement of coming into force or ending of moratorium (for Gazette and other advertising)”;
 - (b) Form 2.11B, the title “Notification of appointment of administrator (for Gazette and other advertising)”;
 - (c) Form 3.1A, the title “Notice of appointment of administrative receiver (for Gazette and other advertising)”.
3. In the forms in Schedule 4 listed below, the contents are amended as follows—
 - (a) in Form 4.7—

- (i) for “and advertised in accordance with the provisions of Rule 4.11 on (a)” substitute “and [was gazetted in accordance with the provisions of Rule 4.11 on (a)][was advertised as directed by the court and in accordance with the provisions of Rules 4.11(3) – (5) on (a)][the court has previously directed under Rule 4.11(1) that no further notice of the petition shall be given]”;
- (ii) adjacent to and before “and advertised in accordance with the provisions of Rule 4.11 on (a)” insert “(b) Delete if inapplicable”;
- (iii) for “**Note** A copy of the advertisement must be filed in court with this certificate”, substitute “**Note** A copy, or a description of the form and content of any notice shall be filed in court with this certificate”;
- (b) in the table in Form 4.71 and in Form 4.72, for “Costs of notices in the Gazette and newspaper” substitute “Costs of gazetting and other advertising”;
- (c) in Form 5.7, in note one of the Notice to Bankrupt, for “Should you, the bankrupt, require advertisement of this order in a newspaper and/or the Gazette”, substitute “Should you, the bankrupt, require notice of this order to be gazetted and advertised in the same manner as the bankruptcy order was advertised”;
- (d) in Form 5.8, in note one of the Notice to Bankrupt, for “Should you, the bankrupt, require advertisement of this order in a newspaper and/or the Gazette”, substitute “Should you, the bankrupt, require notice of this order to be gazetted and advertised in the same manner as the bankruptcy order was advertised”;
- (e) in note (c) of the notes in Form 6.12—
 - (i) for “(newspaper advertisement)”, substitute “(advertising)”; and
 - (ii) for “the date or dates on which, and the newspaper in which, the demand was advertised”, substitute “the method by which, and the date or dates on which, the demand was advertised”;
- (f) in Form 6.15—
 - (i) for “in the London Gazette and/or in the newspaper”, substitute “(e)”; and
 - (ii) in the notes, insert “(e) Insert method by which the petition is to be publicised”;
- (g) in note one of the Notice to Bankrupt in Form 6.71, for “Should you, the bankrupt, require advertisement of this order in a newspaper and/or the Gazette”, substitute “Should you, the bankrupt, require notice of this order to be gazetted and advertised in the same manner as the bankruptcy order was advertised”;
- (h) in the Notice to Bankrupt in Form 6.76 and in Form 6.77—
 - (i) for “Should you, the bankrupt, require advertisement of this order in a newspaper and/or the Gazette”, substitute “Should you, the bankrupt, require notice of this order to be gazetted and advertised in the same manner as the bankruptcy order was advertised”; and
 - (ii) omit “within days”.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Insolvency Rules 1986 (S.I. 1986/1925) (“the principal Rules”). The amendments may be divided into those which provide for the introduction of debt relief orders, debt relief restrictions orders and debt relief restrictions undertakings and those which make changes to the rules on the publication or advertisement of notices.

Currently notices are required to be published in the London Gazette or in a newspaper. The amended Rules continue to require publication in the London Gazette but allow a discretion to be exercised as to whether any further publication is required and the methods which may be utilised to do so. The amendments apply, therefore to every aspect of company or individual insolvency which requires publication of notices.

Rule 3 makes the advertising changes subject to transitional provisions applying the new rules essentially to winding ups, company voluntary arrangements, administrations, receiverships and bankruptcies which commence on or after 6th April 2009. Special provision is made in the case of statutory demands. In addition to the amendments made by Rules 5 to 31, 33 to 46, 62, 71, 73 and 76, Rule 78 makes amendments by way of Schedule 2 to these Rules reflecting the advertising changes in relation to Forms in Schedule 4 to the principal Rules.

With regard to debt relief orders, section 108(1) of, together with Schedule 17 to, the Tribunals, Courts and Enforcement Act 2007 (c.15) introduces a new Part 7A into the Insolvency Act 1986. Part 7A makes provision for debt relief orders. Applications for debt relief orders are made to the official receiver through an approved intermediary. A debt relief order is made in respect of qualifying debts. A debt relief order which is made in respect of qualifying debts imposes a moratorium on action in respect of the debts to which the order applies. At the end of the period of the moratorium, if the debt relief order has not been revoked, the debtor is discharged from his qualifying debts.

Section 108(2) of, and Schedules 18 and 19 to, the Tribunals, Courts and Enforcement Act 2007 insert two new Schedules, Schedule 4ZA and Schedule 4ZB, into the Insolvency Act 1986. Schedule 4ZA sets out certain conditions with which an applicant for a debt relief order must comply in order to be eligible for a debt relief order. Schedule 4ZB introduces debt relief restrictions orders and undertakings. Schedule 20 to the 2007 Act makes amendments to the Insolvency Act 1986 consequential to the introduction of debt relief orders and debt relief restriction orders and undertakings.

The Rules relating to debt relief orders are made under section 412 of the Insolvency Act 1986 as amended by the Constitutional Reform Act 2005 (c.4) and further amended by the Tribunals, Courts and Enforcement Act 2007 so as to permit the power in that section to be exercised in relation to new Part 7A of the 1986 Act.

Rule 32 of these Rules inserts new Part 5A into the principal Rules by way of Schedule 1 to these Rules. Part 5A sets out the matters which Part 7A either permits or requires to be prescribed by rules for the purpose of an application for, and the making of debt relief orders.

Rule 47 of these Rules inserts new Rules 6.252 to 6.263 into Part 6 of the principal Rules. The new Rules introduce debt relief restrictions orders and undertakings which correspond in almost every way to the bankruptcy restrictions orders and undertakings which are already provided for in Part 6.

Rules 48 to 52 amend the existing Rules concerning the individual insolvency register. The new Rules provide for the existing individual insolvency register to incorporate the registration of debt relief orders. They amend the principal Rules so as to make provision for the new debt relief restrictions register. Provision is made for the insertion of new Rules 6A.5A and 6A.5B and new Rules 6A.7A and 6A.7B which make specific provision for the making of entries in, and deletion of information from the individual insolvency register and the debt relief restrictions register.

Rules 53 to 61, 63 to 70, 72, 74 and 75 make amendments respectively to Part 7 (court procedure and practice), Part 9 (examination of persons), Part 10 (official receivers), Part 12 (miscellaneous and general) and Part 13 (interpretation and application) of the principal Rules consequential upon the introduction of new Part 7A into the Insolvency Act 1986 and new Part 5A into the principal Rules.

Rule 77 makes an amendment to the heading of Schedule 2 to the principal Rules, which lists alternative courts for the purposes of individual insolvency proceedings.

Schedule 1 to these Rules contains new Part 5A (debt relief orders) inserted by these Rules into the principal Rules.

The remaining rules in these Rules give effect to changes in advertising.

Rule 78, by way of Schedule 2 to these Rules, makes amendments to forms in Schedule 4 to the principal Rules, consequential upon the advertising changes

An Impact Assessment was prepared for the debt relief provisions of the Tribunal, Courts and Enforcement Act 2007. It may be consulted on the website www.dca.gov.uk/consult/debt/debt.htm and www.insolvency.gov.uk.htm.

An Impact Assessment has also been prepared for these Rules, copies of which are available from the Insolvency Service Policy Unit at Policy.Unit@insolvency.gsi.gov.uk.

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