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STATUTORY INSTRUMENTS

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**2016 No. 1024**

**The Insolvency (England and Wales) Rules 2016**

**PART 10**

**BANKRUPTCY**

**CHAPTER 4**

The interim receiver

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

**Application for appointment of interim receiver (section 286)**

**10.49.**—(1) An application to the court under section 286(1) for the appointment of the official receiver or an insolvency practitioner as interim receiver may be made by—

- (a) a creditor;
- (b) the debtor;
- (c) a temporary administrator; or
- (d) a member State liquidator appointed in main proceedings (including in accordance with Article 29 of the EC Regulation).

(2) The application must be supported by a witness statement stating—

- (a) the grounds on which it is proposed that the interim receiver should be appointed;
- (b) whether or not the official receiver has been informed of the application and, if so, whether a copy of it has been delivered to that person;
- (c) if the proposed interim receiver is an insolvency practitioner, that the insolvency practitioner has consented to act;
- (d) whether to the applicant's knowledge there has been proposed or is in force an IVA(2); and
- (e) the applicant's estimate of the value of the property or business in relation to which the interim receiver is to be appointed.

(3) The applicant must deliver copies of the application and the witness statement to the proposed interim receiver and to the official receiver.

(4) If for any reason it is not practicable to deliver a copy of the application to the proposed interim receiver that person must be informed of the application in sufficient time to be able to be present at the hearing.

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(1) Section 286 is amended by paragraph 17 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24), paragraph 13 of Schedule 6 to the Deregulation Act 2015 (c.20) and paragraph 2 of Schedule 10 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(2) Part 8 is amended by paragraph 2 of Schedule 6 to the Deregulation Act 2015 (c.20), paragraphs 2 to 4 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24) and sections 124 and 15 and paragraphs 61 to 72 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(5) The official receiver may attend the hearing of the application and make representations.

(6) If satisfied that sufficient grounds are shown for the appointment, the court may appoint an interim receiver on such terms as it thinks just.

### **Deposit**

**10.50.**—(1) An applicant for an order appointing the official receiver as interim receiver must, before the order is made, deposit with the official receiver, or otherwise secure to the official receiver's satisfaction, such sum as the court directs to cover the official receiver's remuneration and expenses.

(2) If the sum proves to be insufficient, the court may, on the application of the official receiver, order the applicant to deposit or secure an additional sum.

(3) If such additional sum is not deposited or secured within two business days after service of the order on the applicant the court may discharge the order appointing the official receiver as interim receiver.

(4) If a bankruptcy order is made after an interim receiver has been appointed, any money deposited under this rule must (unless it is required because the assets are insufficient to pay the remuneration and expenses of the interim receiver, or the deposit was made by the debtor out of the debtor's own property) be repaid to the person depositing it (or as that person may direct) out of the bankrupt's estate, in the prescribed order of priority.

### **Order of appointment**

**10.51.**—(1) The order appointing the interim receiver must contain—

- (a) identification details for the proceedings;
- (b) the name and title of the judge making the order;
- (c) the name and postal address of the applicant;
- (d) identification details for the debtor;
- (e) the statement that the court is satisfied—
  - (i) that the debtor is unable to pay the debtor's debts, and
  - (ii) that the proceedings are main, secondary, territorial or non-EC proceedings (as the case may be);
- (f) the order either that—
  - (i) upon the applicant depositing the sum specified in the order with the official receiver, the official receiver is appointed interim receiver of the property of the debtor, or
  - (ii) the person specified in the order is appointed interim receiver of the property of the debtor;
- (g) identification and contact details for the interim receiver, where the interim receiver is not the official receiver;
- (h) details of the nature, together with a short description, of the property of which the interim receiver is to take possession;
- (i) details of the duties to be carried out by the interim receiver in relation to the debtor's affairs;
- (j) a notice to the debtor stating that the debtor must give the interim receiver all the information about the debtor's property that the interim receiver may require in order to carry out the functions imposed on the interim receiver by the order; and
- (k) the date of the order.

(2) The court must, as soon as reasonably practicable after the order is made, deliver two sealed copies of the order to the person appointed interim receiver.

(3) The interim receiver must as soon as reasonably practicable deliver a sealed copy of the order to the debtor.

### **Security**

**10.52.**—(1) This rule applies where an insolvency practitioner is appointed as interim receiver under section 286.

(2) The cost of providing the security required under the Act must be paid in the first instance by the interim receiver.

(3) If a bankruptcy order is not made, the person so appointed is entitled to be reimbursed out of the property of the debtor, and the court may make an order on the debtor accordingly.

(4) If a bankruptcy order is made, the person so appointed is entitled to be reimbursed out of the bankrupt's estate in the prescribed order of priority.

(5) If the interim receiver fails to give or keep up the required security, the court may remove the interim receiver, and make such order as it thinks just as to costs.

(6) If an order is made under this rule removing the interim receiver, or discharging the order appointing the interim receiver, the court must give directions as to whether any, and if so what, steps should be taken for the appointment of another person as interim receiver.

### **Remuneration**

**10.53.**—(1) The remuneration of an interim receiver (other than the official receiver) must be fixed by the court from time to time on application of the interim receiver.

(2) In fixing the remuneration of the interim receiver, the court must take into account—

- (a) the time properly given by the interim receiver and staff of the interim receiver in attending to the debtor's affairs;
- (b) the complexity of the case;
- (c) any respects in which, in connection with the debtor's affairs, there falls on the interim receiver any responsibility of an exceptional kind or degree;
- (d) the effectiveness with which the interim receiver appears to be carrying out, or to have carried out, the duties of the interim receiver; and
- (e) the value and nature of the property with which the interim receiver has to deal.

(3) Without prejudice to any order the court may make as to costs, the interim receiver's remuneration (whether the official receiver or another) must be paid to the interim receiver, and the amount of any expenses incurred by the interim receiver (including the remuneration and expenses of any special manager appointed under section 370)(3) reimbursed—

- (a) if a bankruptcy order is not made, out of the property of the debtor; and
- (b) if a bankruptcy order is made, out of the bankrupt's estate in the prescribed order of priority; or
- (c) in either case (the relevant funds being insufficient), out of any deposit under rule 10.50.

(4) Unless the court otherwise directs, if a bankruptcy order is not made, the interim receiver may retain out of the debtor's property such sums or property as are or may be required for meeting the remuneration and expenses of the interim receiver.

(5) Where a person other than the official receiver has been appointed interim receiver, and the official receiver has taken any steps for the purpose of obtaining a statement of affairs or has performed any other duty under these Rules, the interim receiver must pay the official receiver such sum (if any) as the court may direct.

**Termination of appointment**

**10.54.**—(1) The appointment of the interim receiver may be terminated by the court on the application of the interim receiver, or a person specified in rule 10.49(1).

(2) If the interim receiver's appointment terminates, in consequence of the dismissal of the bankruptcy petition or otherwise, the court may give such directions as it thinks just relating to the accounts of the interim receiver's administration and any other matters which it thinks appropriate.