
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 10

BANKRUPTCY

CHAPTER 8

Public examination of bankrupt

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

Order for public examination of bankrupt

[Note: rule 81.9 (as amended) of the CPR requires a warning as mentioned in paragraph (2)(f) to be displayed prominently on the front of the order.]

10.99.—(1) This rule applies to a court order for the public examination of a bankrupt made on an application by the official receiver under section 290(1).

(2) The order must have the title “Order for public examination” and contain—

- (a) identification details for the proceedings;
- (b) the name and the title of the judge making the order;
- (c) an order that the bankrupt must attend the venue specified in the order for the purpose of being publicly examined;
- (d) the venue for the public examination;
- (e) the date of the order; and
- (f) a warning that if the bankrupt fails without reasonable excuse to attend the public examination at the time and place specified in the order the bankrupt will be liable to be arrested without further notice under section 364(1)(2) and may be held to be in contempt of court under section 290(5) and imprisoned or fined.

(3) The official receiver must serve a copy of the court’s order on the bankrupt as soon as reasonably practicable after the order is made.

Notice of public examination

10.100.—(1) The official receiver must deliver at least 14 days’ notice of the public examination to—

- (a) any trustee or special manager; and
- (b) subject to any contrary direction of the court, every creditor of the bankrupt who is known to the official receiver.

(1) Section 290(4)(a) is amended by paragraph 19 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24).
(2) Section 364(1) is amended by paragraph 50(2) of Schedule 19 to the Enterprise and Regulatory Reform Act 2013.

(2) Where the official receiver thinks fit, a notice of the order must be gazetted not less than 14 days before the day fixed for the hearing.

(3) The official receiver may advertise the notice in such other manner as the official receiver thinks fit.

(4) The notice must state the purpose of the examination hearing and the venue.

Order for public examination requested by creditors

10.101.—(1) A notice by a creditor to the official receiver, under section 290(2), requesting the bankrupt to be publicly examined must be accompanied by—

- (a) a list of the creditors concurring with the request with the name and postal address of each and the amount of their respective claims; and
- (b) confirmation by each creditor of that creditor's concurrence; and
- (c) a statement of the reasons why the public examination is requested.

(2) The request must be authenticated and dated by the creditor giving the notice.

(3) A list of concurring creditors is not required if the requisitioning creditor's debt alone is at least one half in value of the bankrupt's creditors.

(4) Before the official receiver makes the requested application, the creditor requesting the examination must deposit with the official receiver such sum (if any) as the official receiver determines is appropriate as security for the expenses of the public examination, if ordered.

(5) The official receiver must make the application for the examination—

- (a) within 28 days of receiving the creditor's request (if no security is required under paragraph (4)); or
- (b) within 28 days of the creditor depositing such security if security is requested.

(6) However, if the official receiver thinks the request is unreasonable, the official receiver may apply to the court for an order to be relieved from making the application.

(7) If the court so orders, and the application for the order was made without notice to any other party, the official receiver must deliver a copy of the order as soon as reasonably practicable to the requisitioner.

(8) If such an application is dismissed, the official receiver's application under section 290(2) must be made as soon as reasonably practicable on conclusion of the hearing of the application first mentioned.

Bankrupt unfit for examination

[Note: rule 81.9 (as amended) of the CPR requires a warning as mentioned in paragraph (6) to be displayed prominently on the front of the order.]

10.102.—(1) Where the bankrupt is a person who lacks capacity within the meaning of the Mental Capacity Act 2005(3) or is unfit to undergo or attend for public examination, the court may—

- (a) stay the order for the bankrupt's public examination; or
- (b) direct that it will be conducted in a manner and place the court thinks just.

(2) An application for an order under paragraph (1) must be made—

- (a) by a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the bankrupt;
- (b) by a person who appears to the court to be a suitable person to make the application; or

- (c) by the official receiver.
- (3) Where an application is made by a person other than the official receiver, then—
 - (a) the application must, unless the bankrupt is a person who lacks capacity within the meaning of the Mental Capacity Act 2005, be supported by a witness statement by a registered medical practitioner as to the bankrupt’s mental and physical condition;
 - (b) at least five business days’ notice of the application must be delivered to the official receiver and the trustee (if one is appointed); and
 - (c) before any order is made on the application, the applicant must deposit with the official receiver such sum as the official receiver determines is necessary for the additional expenses of an examination.
- (4) The court may order that some or all of the expenses of the examination are to be payable out of the deposit under paragraph (3)(c), instead of out of the bankrupt’s estate.
- (5) The order must contain—
 - (a) identification details for the proceedings;
 - (b) the name and title of the judge making the order;
 - (c) the date of the original order for the public examination of the bankrupt;
 - (d) the name and postal address of the applicant;
 - (e) a statement as to the capacity in which the applicant (other than the official receiver) made the application;
 - (f) a statement that the court is satisfied that the bankrupt is a person who lacks capacity within the meaning of the Mental Capacity Act 2005 to manage and administer the bankrupt’s property and affairs or is unfit to undergo a public examination;
 - (g) an order either that—
 - (i) the original order is stayed on the grounds that the bankrupt is unfit to undergo a public examination, or
 - (ii) the original order is varied (as specified in this order) on the grounds that the bankrupt is unfit to attend the public examination fixed by the original order; and
 - (h) the date of the order.
- (6) If the original order is varied, the order must also contain a warning to the bankrupt, which must be displayed prominently on the front page of the order, stating that if the bankrupt fails without reasonable excuse to attend the public examination at the time and place set out in the order the bankrupt—
 - (a) may be arrested without further notice under section 364(1); and
 - (b) may be held to be in contempt of court under section 290(5) and imprisoned or fined.
- (7) Where the application is made by the official receiver, it may be made without notice to any other party, and may be supported by evidence set out in a report by the official receiver to the court.

Procedure at public examination

- 10.103.**—(1) At the public examination the bankrupt must—
- (a) be examined on oath; and
 - (b) answer all the questions the court puts, or allows to be put.
- (2) A person allowed by section 290(4) to question the bankrupt may—
- (a) with the approval of the court be represented by an appropriately qualified legal representative;

(b) in writing authorise another person to question the bankrupt on that person's behalf.

(3) The bankrupt may at the bankrupt's own expense instruct an appropriately qualified legal representative, who may put such questions as the court may allow to the bankrupt for the purpose of enabling the bankrupt to explain or qualify any answers given by the bankrupt, and may make representations on the bankrupt's behalf.

(4) The court must have such record made of the examination as the court thinks proper.

(5) The record may, in any proceedings (whether under the Act or otherwise) be used as evidence of any statement made by the bankrupt in the course of the bankrupt's public examination.

(6) If criminal proceedings have been instituted against the bankrupt, and the court is of the opinion that the continuance of the hearing might prejudice a fair trial of those proceedings, the hearing may be adjourned.

Adjournment

[Note: rule 81.9 (as amended) of the CPR requires a warning as mentioned in paragraph (2) to be displayed prominently on the front of the order.]

10.104.—(1) The court may adjourn the public examination from time to time, either to a fixed date or generally.

(2) The order of adjournment of the public examination to a fixed date must contain a warning to the bankrupt, which must be displayed prominently on the front page of the order, stating that if the bankrupt fails without reasonable excuse to attend the public examination at the time and place set out in the order the bankrupt—

(a) may be arrested without further notice under section 364(1); and

(b) may be held to be in contempt of court under section 290(5) and imprisoned or fined.

(3) Where the examination has been adjourned generally, the court may at any time on the application of the official receiver or of the bankrupt—

(a) fix a venue for the resumption of the examination; and

(b) give directions as to the manner in which, and the time within which, notice of the resumed public examination is to be given to persons entitled to take part in it.

(4) Where such an application is made by the bankrupt, the court may grant it on terms that the expenses of giving the notices required by that paragraph must be paid by the bankrupt and that, before a venue for the resumed public examination is fixed, the bankrupt must deposit with the official receiver such sum as the official receiver considers necessary to cover those expenses.

(5) Where the examination is adjourned, the official receiver may, there and then, make an application under section 279(3) (suspension of automatic discharge).

(6) If the court makes such an order suspending the bankrupt's discharge, then the court must deliver copies of the order to the official receiver, the trustee and the bankrupt.

Expenses of examination

10.105.—(1) Where a public examination of the bankrupt has been ordered by the court on a creditor's request under rule 10.101, the court may order that some or all of the expenses of the examination are to be paid out of the deposit under rule 10.101, instead of out of the bankrupt's estate.

(2) The costs and expenses of a public examination do not fall on the official receiver personally.