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STATUTORY INSTRUMENTS

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**2016 No. 1024**

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

**PART 12**

**COURT PROCEDURE AND PRACTICE**

**CHAPTER 6**

**Transfer of proceedings**

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

*Sub-division A : General*

**General power of transfer**

**12.30.**—(1) The High Court may order insolvency proceedings which are pending in that court to be transferred to a specified hearing centre.

(2) The County Court may order insolvency proceedings which are pending in a hearing centre to be transferred either to the High Court or another hearing centre.

(3) A judge of the High Court may order insolvency proceedings which are pending in the County Court to be transferred to the High Court.

(4) The court may order a transfer of proceedings—

- (a) of its own motion;
- (b) on the application of the official receiver; or
- (c) on the application of a person appearing to the court to have an interest in the proceedings.

(5) Winding-up proceedings may only be transferred to a hearing centre in which proceedings to wind up companies may be commenced under the Act or to the County Court at Central London.

(6) Bankruptcy proceedings or proceedings relating to a debt relief order may only be transferred to a hearing centre in which bankruptcy proceedings may be commenced under the Act.

(7) A case in a schedule under rule 12.37(8) may be transferred solely for the purposes of rule 12.38 (action following application for a block transfer order) by—

- (a) the registrar to or from the High Court; and
- (b) the District Judge of the hearing centre to which the application is made, to or from that hearing centre.

**Proceedings commenced in the wrong court**

**12.31.** Where insolvency proceedings are commenced in the wrong court or hearing centre, that court may order—

- (a) the proceedings be transferred to the court or hearing centre in which they ought to have been commenced;
- (b) the proceedings be continued in the court in which they have been commenced; or
- (c) the proceedings be struck out.

### **Applications for transfer**

**12.32.**—(1) An application by the official receiver for proceedings to be transferred must be accompanied by a report by the official receiver.

- (2) The report must set out the reasons for the transfer, and include a statement either that—
  - (a) the petitioner, or the debtor in proceedings relating to a debt relief order, consents to the transfer; or
  - (b) the petitioner or such a debtor has been given at least 14 days' notice of the official receiver's application.

(3) If the court is satisfied from the report that the proceedings can be conducted more conveniently in another court or hearing centre, it must order that the proceedings be transferred to that court or hearing centre.

(4) A person other than the official receiver who applies for the transfer of winding up or bankruptcy proceedings or proceedings relating to a debt relief order must deliver a notice that such an application is intended to be made at least 14 days' before filing the application with the court to—

- (a) the official receiver attached to the court or hearing centre in which the proceedings are pending; and
- (b) the official receiver attached to the court or hearing centre to which it is proposed that they should be transferred.

### **Procedure following order for transfer**

**12.33.**—(1) Where a court makes an order for the transfer of proceedings under rule 12.30 (other than paragraph (7) of that rule), it must as soon as reasonably practicable deliver to the transferee court or hearing centre a sealed copy of the order, and the file of the proceedings.

(2) A transferee court (or hearing centre) which receives such an order and the file in winding up or bankruptcy proceedings or proceedings relating to a debt relief order must, as soon as reasonably practicable, deliver notice of the transfer to the official receiver attached to that court or hearing centre and the transferor court respectively.

- (3) Where the High Court makes a transfer order under rule 12.30(7)—
  - (a) it must deliver sealed copies of the order—
    - (i) to the hearing centre from which the proceedings are transferred, and
    - (ii) in winding up or bankruptcy proceedings or proceedings relating to a debt relief order, to the official receiver attached to that hearing centre and the High Court respectively; and
  - (b) the hearing centre must deliver the file of the proceedings to the High Court.

### **Consequential transfer of other proceedings**

**12.34.**—(1) This rule applies where—

- (a) the High Court has—
  - (i) made a winding-up order,

- (ii) appointed a provisional liquidator,
  - (iii) made a bankruptcy order, or
  - (iv) appointed an interim receiver; or
- (b) winding-up or bankruptcy proceedings have been transferred to the High Court from the County Court.

(2) A judge of any division of the High Court may, of that judge's own motion, order the transfer to that division of any such proceedings as are mentioned below and are pending against the company or individual concerned ("the insolvent") either in another division of the High Court or in a court in England and Wales other than the High Court.

(3) Paragraph (2) is subject to rule 30.5(4) CPR(1) (transfer between divisions and to and from a specialist list).

(4) The proceedings which may be transferred are those brought by or against the insolvent for the purpose of enforcing a claim against the insolvent estate, or brought by a person other than the insolvent for the purpose of enforcing any such claim (including in either case proceedings of any description by a debenture-holder or mortgagee).

(5) Where any such proceedings are transferred, they must be listed before a registrar for directions or final disposal as the registrar sees fit.

*Sub-division B : Block transfer of cases where insolvency practitioner has died etc.*

## **Interpretation**

**12.35.** In this Sub-division—

- "outgoing office-holder" has the meaning given in rule 12.36(1);
- "replacement office-holder" has the meaning given in rule 12.36(1);
- "block transfer order" has the meaning given in rule 12.36(2);
- "substantive application" is that part of the application in rule 12.37(1)(c) and (d).

## **Power to make a block transfer order**

**12.36.—**(1) This rule applies where an office-holder ('the outgoing office-holder')—

- (a) dies;
- (b) retires from practice; or
- (c) is otherwise unable or unwilling to continue in office;

and it is expedient to transfer some or all of the cases in which the outgoing office-holder holds office to one or more office-holders ('the replacement office-holder') in a single transaction.

(2) In a case to which this rule applies the court has the power to make an order ('a block transfer order') appointing a replacement office-holder in the place of the outgoing office-holder to be—

- (a) liquidator in any winding up (including a case where the official receiver is the liquidator by virtue of section 136)(2);
- (b) administrator in any administration;

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(1) Rule 30.5(4) was substituted by rule 4 of [SI 2014/2044](#).

(2) Section 136(4), (5)(a) and (c) and (6) are amended by paragraph 31 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

- (c) trustee in a bankruptcy (including a case where the official receiver is the trustee by virtue of section 300(3)); or
  - (d) supervisor of a CVA or an IVA.
- (3) The replacement office-holder must be—
- (a) qualified to act as an insolvency practitioner in relation to the company or bankrupt; or
  - (b) where the replacement office-holder is to be appointed supervisor of an IVA—
    - (i) qualified to act as an insolvency practitioner in relation to the debtor, or
    - (ii) a person authorised so to act.

### **Application for a block transfer order**

**12.37.**—(1) An application for a block transfer order may be made to the registrar or District Judge for—

- (a) the transfer to the High Court of the cases specified in the schedule to the application under paragraph (8);
  - (b) the transfer of the cases back to the court or hearing centre from which they were transferred when a replacement office-holder has been appointed;
  - (c) the removal of the outgoing office-holder by the exercise of any of the powers in paragraph (2);
  - (d) the appointment of a replacement office-holder by the exercise of any of the powers in paragraph (3); or
  - (e) such other order or direction as may be necessary or expedient in connection with any of the matters referred to above.
- (2) The powers referred to in paragraph (1)(c) are those in—
- (a) section 7(5) and paragraph 39(6)(4) of Schedule A1 (CVA);
  - (b) section 19(5), paragraph 88 of Schedule B1 and rule 12.36(2) (administration);
  - (c) section 108 (voluntary winding up);
  - (d) section 172(2)(6) and rule 12.36(2) (winding up by the court);
  - (e) section 263(5)(7) (IVA); and
  - (f) section 298(8) and rule 12.36(2) (bankruptcy).
- (3) The powers referred to in paragraph (1)(d) are those in—
- (a) section 7(5) and paragraph 39(6) of Schedule A1 (CVA);
  - (b) section 13(9), paragraphs 63, 91 and 95 of Schedule B1 and rule 12.36(2) (administration);
  - (c) section 108 (voluntary winding up);

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- (3) Section 300(4) and (8) is amended, (3) is substituted and (3A) is inserted by paragraph 79 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).
  - (4) Section 7(5) is amended by paragraph 20(2)(d) of Schedule 6 to the Deregulation Act 2015 (c.20) and paragraph 39(6) is amended by paragraph 20(2)(e)(iv) of Schedule 6 to the same Act.
  - (5) Section 19 is substituted by section 248(1) of the Enterprise Act 2002 (c.40).
  - (6) Section 172(2) is amended by paragraph 43(2) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).
  - (7) Section 263(5) is amended by paragraph 2(11)(b) of Schedule 6 to the Deregulation Act 2015.
  - (8) Section 298(8A) is inserted and (1) is amended by paragraph 77 of Schedule 9; subsection (4) is amended and, (2) omitted and (4A) and (4B) are inserted by paragraph 9 of Schedule 10 to the Small Business, Enterprise and Employment Act 2015 (c.26) and subsections (7) and (8) are amended by paragraph 23 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24).
  - (9) Section 13 is substituted by section 248(1) of the Enterprise Act 2002.

- (d) section 168(3) and (5) and rule 12.36(2) (winding up by the court);
  - (e) section 263(5) (IVA); and
  - (f) sections 298 and 303(2) and rule 12.36(2) (bankruptcy).
- (4) Subject to paragraph (5), the application may be made by any of the following—
- (a) the outgoing office-holder (if able and willing to do so);
  - (b) any person who holds office jointly with the outgoing office-holder;
  - (c) any person who is proposed to be appointed as the replacement office-holder;
  - (d) any creditor in a case subject to the application;
  - (e) the recognised professional body which was the source of the outgoing office-holder's authorisation; or
  - (f) the Secretary of State.
- (5) Where one or more outgoing office-holder in the schedule under paragraph (8) is an administrator, an application may not be made unless the applicant is a person permitted to apply to replace that office-holder under section 13 or paragraph 63, 91 or 95 of Schedule B1 or such a person is joined as applicant in relation to the replacement of that office-holder.
- (6) An applicant (other than the Secretary of State) must deliver a notice of the intended application to the Secretary of State on or before the date the application is made.
- (7) The following must be made a respondent to the application and served with it—
- (a) the outgoing office-holder (if not the applicant or deceased);
  - (b) any person who holds office jointly with the outgoing office-holder; and
  - (c) such other person as the registrar or District Judge directs.
- (8) The application must contain a schedule setting out—
- (a) identification details for the proceedings; and
  - (b) the capacity in which the outgoing office-holder was appointed.
- (9) The application must be supported by evidence—
- (a) setting out the circumstances as a result of which it is expedient to appoint a replacement office-holder; and
  - (b) exhibiting the consent to act of each person who is proposed to be appointed as replacement office-holder.
- (10) Where all the cases in the schedule under paragraph (8) are in the County Court—
- (a) the application may be made to a District Judge of a convenient hearing centre in which insolvency proceedings of such type may be commenced; and
  - (b) this rule applies with appropriate modifications.

#### **Action following application for a block transfer order**

**12.38.**—(1) The registrar or District Judge may in the first instance consider the application without a hearing and make such order as the registrar or District Judge thinks just.

- (2) In the first instance, the registrar or District Judge may do any of the following—
- (a) make an order directing the transfer to the High Court of those cases not already within its jurisdiction for the purpose only of the substantive application;
  - (b) if the documents are considered to be in order and the matter is considered straightforward, make an order on the substantive application;

- (c) give any directions which are considered to be necessary including (if appropriate) directions for the joinder of any additional respondents or requiring the service of the application on any person or requiring additional evidence to be provided; or
- (d) if an order is not made on the substantive application, give directions for the further consideration of the substantive application by the registrar or District Judge or a judge of the Chancery Division.

(3) The applicant must ensure that a sealed copy of every order transferring any case to the High Court and of every order which is made on a substantive application is filed with the court having jurisdiction over each case affected by such order.

(4) In any case other than an application relating to the appointment of an administrator, in deciding to what extent (if any) the costs of making an application under this rule should be paid as an expense of the insolvency proceedings to which the application relates, the factors to which the court must have regard include—

- (a) the reasons for the making of the application;
- (b) the number of cases to which the application relates;
- (c) the value of assets comprised in those cases; and
- (d) the nature and extent of the costs involved.

(5) Where an application relates to the appointment of an administrator and is made by a person under section 13 or paragraph 63, 91 or 95 of Schedule B1, the costs of making that application are to be paid as an expense of the administration to which the application relates unless the court directs otherwise.

(6) Notice of any appointment made under this rule must be delivered—

- (a) to the Secretary of State as soon as reasonably practicable; and
- (b) to—
  - (i) the creditors, and
  - (ii) such other persons as the court may direct, in such manner as the court may direct.

(7) Where the application was made to the District Judge under rule 12.37(10) this rule applies with appropriate modifications.