

---

## STATUTORY INSTRUMENTS

---

# 2016 No. 1024

## The Insolvency (England and Wales) Rules 2016

### PART 7

#### WINDING UP BY THE COURT

##### CHAPTER 1

##### Application of Part

##### Application of Part 7

7.1. This Part applies to winding up by the court.

##### CHAPTER 2

The statutory demand (sections 123(1)(a) and 222(1)(a))

##### Interpretation

7.2. A demand served by a creditor on a company under section 123(1)(a) (registered companies) or 222(1)(a) (unregistered companies) is referred to in this Part as “a statutory demand”.

##### The statutory demand

7.3.—(1) A statutory demand must be headed either “Statutory Demand under section 123(1)(a) of the Insolvency Act 1986” or “Statutory Demand under section 222(1)(a) of the Insolvency Act 1986” (as applicable) and must contain—

- (a) identification details for the company;
- (b) the registered office of the company (if any);
- (c) the name and address of the creditor;
- (d) either a statement that the demand is made under section 123(1)(a) or a statement that it is made under section 222(1)(a);
- (e) the amount of the debt and the consideration for it (or, if there is no consideration, the way in which it arises);
- (f) if the demand is founded on a judgment or order of a court, details of the judgment or order;
- (g) if the creditor is entitled to the debt by way of assignment, details of the original creditor and any intermediary assignees;
- (h) a statement that the company must pay the debt claimed in the demand within 21 days of service of the demand on the company after which the creditor may present a winding-up petition unless the company offers security for the debt and the creditor agrees to accept security or the company compounds the debt with the creditor's agreement;

---

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Insolvency (England and Wales) Rules 2016*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

---

- (i) the name of an individual with whom an officer or representative of the company may communicate with a view to securing or compounding the debt to the creditor's satisfaction;
  - (j) the named individual's address, electronic address and telephone number (if any);
  - (k) a statement that the company has the right to apply to the court for an injunction restraining the creditor from presenting or advertising a petition for the winding up of the company; and
  - (l) the name of the court (and hearing centre if applicable) to which, according to the present information, the company must make the application (i.e. the High Court, the County Court at Central London or a named hearing centre of the County Court, as the case may be).
- (2) The following must be separately identified in the demand (if claimed) with the amount or rate of the charge and the grounds on which payment is claimed—
- (a) any charge by way of interest of which notice had not previously been delivered to the company as included in its liability; and
  - (b) any other charge accruing from time to time.
- (3) The amount claimed for such charges must be limited to that which has accrued due at the date of the demand.
- (4) The demand must be dated, and authenticated either by the creditor, or a person authorised to make the demand on the creditor's behalf.
- (5) A demand which is authenticated by a person other than the creditor must state that the person is authorised to make the demand on the creditor's behalf and state the person's relationship to the creditor.

## CHAPTER 3

### Petition for winding-up order

[Notes: (1) for petitions by a contributory or relevant office-holder (an administrator, administrative receiver or supervisor of a CVA) see Chapter 4;

(2) a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

### Application of this Chapter

7.4.—(1) This Chapter applies subject to rule 7.25 to—

- (a) a petition for winding up presented by a contributory; or
- (b) a petition for winding up presented by a relevant office-holder of the company.

(2) “Relevant office-holder” in this Part means an administrator, administrative receiver and supervisor of a CVA.

### Contents of petition

7.5.—(1) The petition must contain [F1the following, and, in addition, where paragraph (1B) applies, the information specified in that paragraph]—

- (a) the name of the court (and hearing centre if applicable);
- (b) the name and address of the petitioner;
- (c) identification details for the company subject to the petition;
- (d) the company's registered office (if any);
- (e) the date the company was incorporated and the enactment under which it was incorporated;

- (f) the total number of issued shares of the company and the manner in which they are divided up;
- (g) the aggregate nominal value of those shares;
- (h) the amount of capital paid up or credited as paid up;
- (i) a statement of the nature of the company's business if known;
- (j) the grounds on which the winding-up order is sought;
- (k) where the ground for the winding-up order is section 122(1)(a), a statement that the company has by special resolution resolved that the company be wound up by the court and the date of such resolution;
- (l) where the ground for the winding-up order is section 122(1)(f) or 221(5)(b) and a statutory demand has been served on the company, a statement that such a demand has been served and the date of service and that the company is insolvent and unable to pay its debts;
- (m) a statement whether the company is an Article 1.2 undertaking;
- (n) a statement whether the proceedings will be [<sup>F2</sup>COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply] and that the reasons for so stating are given in a witness statement;
- (o) a statement that in the circumstances it is just and equitable that the company should be wound up;
- (p) a statement that the petitioner therefore applies for an order that the company may be wound up by the court under the Act, or that such other order may be made as the court thinks just;
- (q) the name and address of any person on whom the petitioner intends to serve the petition; and
- (r) the contact details of the petitioner's solicitor (if any).

[<sup>F3</sup>(1A) Paragraph (1B) applies if a moratorium under Part A1 is in force.

(1B) Where this paragraph applies the petition must contain—

- (a) a statement that a moratorium under Part A1 of the Act is in force for the company;
- (b) a statement as to which of the permitted exceptions to the restriction on winding up during a moratorium specified in section A20 applies; and
- (c) the name and contact details of the monitor.]

(2) The petition must also contain a blank box for the court to complete with the details of the venue for hearing the petition.

---

#### Textual Amendments

- F1** Words in rule 7.5(1) inserted (1.10.2021) by [The Insolvency \(England and Wales\) \(No.2\) \(Amendment\) Rules 2021 \(S.I. 2021/1028\)](#), rules 1, **34(2)** (with rules 4, 5)
- F2** Words in rule 7.5(1)(n) substituted (31.12.2020) by [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(3), **Sch. para. 71** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Rule 7.5(1A)(1B) inserted (1.10.2021) by [The Insolvency \(England and Wales\) \(No.2\) \(Amendment\) Rules 2021 \(S.I. 2021/1028\)](#), rules 1, **34(3)** (with rules 4, 5)

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Insolvency (England and Wales) Rules 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

#### Modifications etc. (not altering text)

- C1** Rule 7.5(1) modified (temp.) (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\), s. 49\(1\), Sch. 10 para. 19\(1\)\(3\)](#) (with ss. 2(2), 5(2))
- C2** Rule 7.5(1) modified (temp.) (1.10.2021) by [2020 c. 12, Sch. 10 paras. 2, 4](#) (as substituted by [The Corporate Insolvency and Governance Act 2020 \(Coronavirus\) \(Amendment of Schedule 10\) \(No. 2\) Regulations 2021 \(S.I. 2021/1091\), regs. 1\(3\), 3](#))

#### Verification of petition

7.6.—(1) The petition must be verified by a statement of truth.

(2) Where the petition is in respect of debts due to different creditors then the debt to each creditor must be verified separately.

(3) A statement of truth which is not contained in or endorsed upon the petition must identify the petition and must contain—

- (a) identification details for the company;
- (b) the name of the petitioner; and
- (c) the name of the court (and hearing centre if applicable) in which the petition is to be presented.

(4) The statement of truth must be authenticated and dated by or on behalf of the petitioner.

(5) Where the person authenticating the statement of truth is not the petitioner, or one of the petitioners, the statement of truth must state—

- (a) the name and postal address of the person making the statement;
- (b) the capacity in which, and the authority by which, the person authenticates the statement; and
- (c) the means of that person's knowledge of the matters verified in the statement of truth.

(6) If the petition is based on a statutory demand, and more than four months have elapsed between the service of the demand and the presentation of the petition, a witness statement must explain the reasons for the delay.

(7) A statement of truth verifying more than one petition must include in its title the names of the companies to which it relates and must set out, in relation to each company, the statements relied on by the petitioner; and a clear and legible photocopy of the statement of truth must be filed with each petition which it verifies.

(8) The witness statement must give the reasons for the statement that the proceedings will be [<sup>F4</sup>COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply].

#### Textual Amendments

- F4** Words in [rule 7.6\(8\)](#) substituted (31.12.2020) by [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\), reg. 1\(3\), Sch. para. 72](#) (with regs. 4, 5); [2020 c. 1, Sch. 5 para. 1\(1\)](#)

#### Petition: presentation and filing

7.7.—(1) The petition must be filed with the court.

(2) A petition may not be filed unless—

- (a) a receipt for the deposit payable to the official receiver is produced on presentation of the petition; or
  - (b) the Secretary of State has given notice to the court that the petitioner has made suitable alternative arrangements for the payment of the deposit and that notice has not been revoked.
- (3) A notice of alternative arrangements for the deposit may be revoked by a further notice filed with the court.
- (4) The court must fix a venue for hearing the petition, and this must be endorsed on the petition and the copies.
- (5) Each copy of the petition must have the seal of the court applied to it, and must be delivered to the petitioner.

### **Court to which petition is to be presented where the company is subject to a CVA or is in administration**

- 7.8.—**(1) A petition which is filed in relation to a company for which there is in force a CVA must be presented to the court or hearing centre to which the nominee's report under section 2 was submitted <sup>F5</sup>....
- (2) A petition which is filed in relation to a company which is in administration must be presented to the court or hearing centre of the court having jurisdiction for the administration.

#### **Textual Amendments**

**F5** Words in [rule 7.8\(1\)](#) omitted (1.10.2021) by virtue of [The Insolvency \(England and Wales\) \(No.2\) \(Amendment\) Rules 2021 \(S.I. 2021/1028\)](#), rule 1, [Sch. 2 para. 3 Table](#) (with rules 4, 5)

### **Copies of petition to be served on company or delivered to other persons**

- 7.9.—**(1) Where this rule requires the petitioner to serve a copy of the petition on the company or deliver a copy to another person the petitioner must, when filing the petition with the court, file an additional copy with the court for each such person.
- (2) Where the petitioner is not the company the petitioner must serve a sealed copy of the petition on the company in accordance with Schedule 4.
- (3) If, to the petitioner's knowledge—
- (a) the company is in the course of being wound up voluntarily, the petitioner must deliver a copy of the petition to the liquidator;
  - (b) an administrative receiver has been appointed in relation to the company, or the company is in administration, the petitioner must deliver a copy of the petition to the receiver or the administrator; [<sup>F6</sup>or]
  - (c) there is in force for the company a CVA, the petitioner must deliver a copy of the petition to the supervisor of the CVA; <sup>F7</sup>...
- <sup>F7</sup>(d) .....
- (4) If either the Financial Conduct Authority or Prudential Regulation Authority is entitled to be heard at the hearing of the petition in accordance with section 371 of the Financial Services and Markets Act 2000, the petitioner must deliver a copy of the petition to the Financial Conduct Authority or Prudential Regulation Authority (as appropriate).

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Insolvency (England and Wales) Rules 2016*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

(5) Where this rule requires the petitioner to deliver a copy of the petition to any other person that copy must be delivered within three business days after the day on which the petition is served on the company or where the petitioner is the company within three business days of the company receiving the sealed petition.

#### Textual Amendments

- F6** Word in [rule 7.9\(3\)](#) inserted (31.12.2020) by [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(3), [Sch. para. 73\(a\)](#) (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
- F7** [Rule 7.9\(3\)\(d\)](#) and word omitted (31.12.2020) by virtue of [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(3), [Sch. para. 73\(b\)](#) (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

### Notice of petition

- 7.10.**—(1) Unless the court otherwise directs, the petitioner must give notice of the petition.
- (2) The notice must state—
- (a) that a petition has been presented for the winding up of the company;
  - (b) in the case of an overseas company, the address at which service of the petition was effected;
  - (c) the name and address of the petitioner;
  - (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 that intention in accordance with rule 7.14.
- (3) The notice must be gazetted.
- (4) The notice must be made to appear—
- (a) if the petitioner is the company itself, not less than seven business days before the day appointed for the hearing; and
  - (b) otherwise, not less than seven business days after service of the petition on the company, nor less than seven business days before the day appointed for the hearing.
- (5) The court may dismiss the petition if notice of it is not given in accordance with this rule.

### Persons entitled to request a copy of petition

**7.11.** If a director, contributory [<sup>F8</sup>creditor, or, (if a moratorium under Part A1 of the Act is in force for the company), the monitor] requests a hard copy of the petition from the solicitor for the petitioner, or the petitioner, if acting in person, and pays the standard fee for copies the solicitor or petitioner must deliver the copy within two business days.

#### Textual Amendments

- F8** Words in [rule 7.11](#) substituted (1.10.2021) by [The Insolvency \(England and Wales\) \(No.2\) \(Amendment\) Rules 2021 \(S.I. 2021/1028\)](#), rules 1, [35](#) (with rules 4, 5)

### **Certificate of compliance**

**7.12.—**(1) The petitioner or the petitioner's solicitor must, at least five business days before the hearing of the petition, file with the court a certificate of compliance with rules 7.9 and 7.10 relating to service and notice of the petition.

(2) The certificate must be authenticated and dated by the petitioner or the petitioner's solicitor and must state—

- (a) the date of presentation of the petition;
- (b) the date fixed for the hearing; and
- (c) the date or dates on which the petition was served and notice of it was given in compliance with rules 7.9 and 7.10.

(3) A copy of or, where that is not reasonably practicable, a statement of the content of, any notice given must be filed with the court with the certificate.

(4) The court may, if it thinks just, dismiss the petition if this rule is not complied with.

### **Permission for the petitioner to withdraw**

**7.13.—**(1) The court may order that the petitioner has permission to withdraw the petition on such terms as to costs as the parties may agree if at least five business days before the first hearing the petitioner, on an application without notice to any other party, satisfies the court that—

- (a) notice of the petition has not been given under rule 7.10;
- (b) no notices in support or in opposition to the petition have been received by the petitioner; and
- (c) the company consents to an order being made under this rule.

(2) The order must contain—

- (a) identification details for the company;
- (b) the date the winding-up petition was presented;
- (c) the name and postal address of the applicant;
- (d) a statement that upon the application made without notice to any other party by the applicant named in the order the court is satisfied that notice of the petition has not been given, that no notices in support of or in opposition to the petition have been received by the petitioner and that the company consents to this order; and
- (e) an order that, with the permission of the court, the petition is withdrawn.

### **Notice by persons intending to appear**

**7.14.—**(1) A creditor or contributory who intends to appear on the hearing of the petition must deliver a notice of intention to appear to the petitioner.

(2) The notice must contain—

- (a) the name and address of the creditor or contributory, and any telephone number and reference which may be required for communication with that person or with any other person (also to be specified in the notice) authorised to speak or act on the creditor's or contributory's behalf;
- (b) the date of the presentation of the petition and a statement that the notice relates to the matter of that petition;
- (c) the date of the hearing of the petition;
- (d) for a creditor, the amount and nature of the debt due from the company to the creditor;

- (e) for a contributory, the number of shares held in the company;
  - (f) a statement whether the creditor or contributory intends to support or oppose the petition;
  - (g) where the creditor or contributory is represented by a solicitor or other agent, the name, postal address, telephone number and any reference number of that person and details of that person's position with or relationship to the creditor or contributory; and
  - (h) the name and postal address of the petitioner.
- (3) The notice must be authenticated and dated by or on behalf of the creditor or contributory delivering it.
- (4) Where the person authenticating the notice is not the creditor or contributory the notice must state the name and postal address of the person making the statement and the capacity in which, and the authority by which, the person authenticates the notice.
- (5) The notice must be delivered to the petitioner or the petitioner's solicitor at the address shown in the court records, or in the notice of the petition required by rule 7.10.
- (6) The notice must be delivered so as to reach the petitioner (or the petitioner's solicitor) not later than 4pm on the business day before that which is appointed for the hearing (or, where the hearing has been adjourned, for the adjourned hearing).
- (7) A person who fails to comply with this rule may appear on the hearing of the petition only with the permission of the court.

### **List of appearances**

- 7.15.**—(1) The petitioner must prepare for the court a list of the creditors and contributories who have given notice under rule 7.14.
- (2) The list must contain—
- (a) the date of the presentation of the petition;
  - (b) the date of the hearing of the petition;
  - (c) a statement that the creditors and contributories listed have delivered notice that they intend to appear at the hearing of the petition;
  - (d) their names and addresses;
  - (e) the amount each creditor claims to be owed;
  - (f) the number of shares claimed to be held by each contributory;
  - (g) the name and postal address of any solicitor for a person listed; and
  - (h) whether each person listed intends to support the petition, or to oppose it.
- (3) On the day appointed for the hearing of the petition, a copy of the list must be handed to the court before the hearing commences.
- (4) If the court gives a person permission to appear under rule 7.14(7), then the petitioner must add that person to the list with the same particulars.

### **Witness statement in opposition**

- 7.16.**—(1) If the company intends to oppose the petition, it must not later than five business days before the date fixed for the hearing—
- (a) file with the court a witness statement in opposition; and
  - (b) deliver a copy of the witness statement to the petitioner or the petitioner's solicitor.
- (2) The witness statement must contain—



- (a) identification details for the proceedings;
- (b) a statement that the company intends to oppose the making of a winding-up order; and
- (c) a statement of the grounds on which the company opposes the making of the order.

**Substitution of creditor or contributory for petitioner**

7.17.—(1) This rule applies where the petitioner—

- (a) is subsequently found not to have been entitled to present the petition;
- (b) fails to give notice of the petition in accordance with rule 7.10;
- (c) consents to withdraw the petition, or to allow it to be dismissed, consents to an adjournment, or fails to appear in support of the petition when it is called on in court on the day originally fixed for the hearing, or on a day to which it is adjourned; or
- (d) appears, but does not apply for an order in the terms requested in the petition.

(2) The court may, on such terms as it thinks just, substitute as petitioner—

- (a) a creditor or contributory who in its opinion would have a right to present a petition and who wishes to prosecute it; <sup>F9</sup>...

<sup>F9</sup>(b) .....

**Textual Amendments**  
**F9** Rule 7.17(2)(b) and word omitted (31.12.2020) by virtue of [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(3), [Sch. para. 74](#) (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

**Order for substitution of petitioner**

7.18. An order for substitution of a petitioner must contain—

- (a) identification details for the proceedings;
- (b) the name of the original petitioner;
- (c) the name of the creditor, [<sup>F10</sup>or] contributory <sup>F11</sup>... (“the named person”) who is substituted as petitioner;
- (d) a statement that the named person has requested to be substituted as petitioner under rule 7.17;
- (e) the following orders—
  - (i) either—
    - (aa) that the named person must pay the statutory deposit to the court and that, upon such payment being made, the statutory deposit paid by the original petitioner is to be repaid to the original petitioner by the official receiver, or
    - (bb) where the named person is the subject of a notice to the court by the Secretary of State under rule 7.7(2)(b) (notice of alternative arrangements for the payment of deposit) that the statutory deposit paid by the original petitioner is to be repaid to the original petitioner by the official receiver;
  - (ii) that the named person be substituted as petitioner in place of the original petitioner and that the named person may amend the petition accordingly,
  - (iii) that the named person must within a period specified in the order file a statement of truth of the statements in the amended petition,

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Insolvency (England and Wales) Rules 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (iv) that not later than before the adjourned hearing of the petition, by a date specified in the order, the named person must serve a sealed copy of the amended petition on the company and deliver a copy to any other person to whom the original petition was delivered,
- (v) that the hearing of the amended petition be adjourned to the venue specified in the order, and
- (vi) that the question of the costs of the original petitioner and of the statutory deposit (if appropriate) be reserved until the final determination of the amended petition;
- (f) the venue of the adjourned hearing; and
- (g) the date of the order.

#### Textual Amendments

- F10** Word in rule 7.18(c) inserted (31.12.2020) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 75(a)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in rule 7.18(c) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 75(b)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

#### Notice of adjournment

**7.19.—**(1) If the court adjourns the hearing of the petition the petitioner must as soon as reasonably practicable deliver a notice of the making of the order of adjournment and of the venue for the adjourned hearing to—

- (a) the company; and
  - (b) any creditor or contributory who has given notice under rule 7.14 but was not present at the hearing.
- (2) The notice must identify the proceedings.

#### Order for winding up by the court

**7.20.—**(1) An order for winding-up by the court 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 petitioner;
- (d) the nature of the petitioner which entitles that person to present the petition (e.g. the company, a creditor, or a regulator);
- (e) the date of presentation of the petition;
- (f) an order that the company be wound up by the court under the Act;
- (g) a statement whether the proceedings are [<sup>F12</sup>COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply];
- (h) an order that the petitioner's costs of the petition be paid out of the assets of the company (unless the court determines otherwise);
- (i) if applicable, an order that the costs of other persons as specified in the order be paid out of the assets of the company;

- (j) the date of the order; and
  - (k) a statement that an official receiver attached to the court is by virtue of the order liquidator of the company, or
- (2) The order may contain such additional terms concerning costs as the court thinks just.

#### Textual Amendments

- F12** Words in rule 7.20(1)(g) substituted (31.12.2020) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), Sch. para. 76 (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

#### Notice to official receiver of winding-up order

**7.21.**—(1) When a winding-up order has been made, the court must deliver notice of the fact to the official receiver as soon as reasonably practicable.

(2) The notice must have the title “Notice to Official Receiver of Winding-up Order” and must contain—

- (a) identification details for the proceedings;
- (b) the company's registered office;
- (c) the date of presentation of the petition;
- (d) the date of the winding-up order; and
- (e) the name and postal address of the petitioner or the petitioner's solicitor.

#### Delivery and notice of the order

**7.22.**—(1) As soon as reasonably practicable after making a winding-up order, the court must deliver to the official receiver two copies of the order sealed with the seal of the court.

(2) The official receiver must deliver—

- (a) a sealed copy of the order to the company; and
- [<sup>F13</sup>(b) a copy of the order to—
  - (i) the registrar of companies (in compliance with section 130(1)); and
  - (ii) if a moratorium under Part A1 of the Act was in force for the company at the time the petition for the winding up of the company was presented, the monitor.]

(3) As an alternative to delivering a sealed copy of the order to the company, the court may direct that the sealed copy be delivered to such other person or persons, as the court directs.

(4) The official receiver—

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

(5) The notice must state—

- (a) that a winding-up order has been made in relation to the company; and
- (b) the date of the order.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Insolvency (England and Wales) Rules 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

### Textual Amendments

**F13** Rule 7.22(2)(b) substituted (1.10.2021) by [The Insolvency \(England and Wales\) \(No.2\) \(Amendment\) Rules 2021 \(S.I. 2021/1028\)](#), rules 1, 36 (with rules 4, 5)

### Petition dismissed

**7.23.**—(1) Unless the court otherwise directs, when a petition is dismissed the petitioner must give a notice of the dismissal as soon as reasonably practicable.

- (2) The notice must be—
  - (a) gazetted; or
  - (b) advertised in accordance with any directions of the court.
- (3) The notice must contain—
  - (a) a statement that a petition for the winding up of the company has been dismissed;
  - (b) in the case of an overseas company, the address at which service of the petition was effected;
  - (c) the name and address of the petitioner;
  - (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.
- (4) The company may itself gazette notice of the dismissal where—
  - (a) the petitioner is not the company; and
  - (b) the petitioner has not given notice in accordance with paragraphs (1) to (3) within 21 days of the date of the hearing at which the petition was dismissed.

### Injunction to restrain presentation or notice of petition

**7.24.**—(1) An application by a company for an injunction restraining a creditor from presenting a petition for the winding up of the company must be made to a court having jurisdiction to wind up the company.

(2) An application by a company for an injunction restraining a creditor from giving notice of a petition for the winding up of a company must be made to the court or hearing centre in which the petition is pending.

## CHAPTER 4

### Petition by a contributory or a relevant office-holder

[Note: (1) “relevant office-holder” is defined in rule 7.4(2);

(2) a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

### Interpretation and application of rules in Chapter 3

**7.25.**—(1) The following rules in Chapter 3 apply subject to paragraph (2), with the necessary modifications, to a petition under this Chapter by a contributory or a relevant office-holder—

- rule 7.8 (court to which petition is to be presented where the company is subject to a CVA or is in administration);

rule 7.9(1), (4) and (5) (copies of petition to be served on other persons);  
rule 7.11 (persons entitled to request a copy of petition);  
rule 7.14 (notice by persons intending to appear);  
rule 7.15 (list of appearances);  
rule 7.19 (notice of adjournment);  
rule 7.20 (order for winding up by the court) except where rule 7.32 applies (petition by administrator or where there is a supervisor);  
rule 7.21 (notice to official receiver of winding-up order); and  
rule 7.22 (delivery and notice of the order).

(2) The following rules apply to petitions under this Chapter presented by a relevant office-holder—

rule 7.23 (petition dismissed); and  
rule 7.24 (injunction to restrain presentation or notice of petition).

### **Contents of petition for winding-up order by a contributory**

**7.26.**—(1) A petition presented by a contributory must contain—

- (a) the name of the court (and hearing centre if applicable);
- (b) the name and postal address of the petitioner;
- (c) identification details for the company subject to the petition;
- (d) the company's registered office (if any);
- (e) the date the company was incorporated and the enactment under which it was incorporated;
- (f) the total number of issued shares of the company and the manner in which they are divided up;
- (g) the aggregate nominal value of those shares;
- (h) the amount of capital paid up or credited as paid up;
- (i) a statement of the nature of the company's business if known;
- (j) the number and total value of the shares held by the petitioner;
- (k) a statement whether the shares held by the petitioner—
  - (i) were allotted to the petitioner on the incorporation of the company,
  - (ii) have been registered in the name of the petitioner for more than six months in the last 18 months, or
  - (iii) devolved upon the petitioner through the death of the former holder of the shares;
- (l) the grounds on which the winding-up order is sought;
- (m) a statement whether the company is an Article 1.2 undertaking;
- (n) a statement whether the proceedings will be [F14COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply] and that the reasons for so stating are given in the form of a witness statement;
- (o) a statement that in the circumstances it is just and equitable that the company should be wound up;

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Insolvency (England and Wales) Rules 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- (p) a statement that the petitioner therefore applies for an order that the company may be wound up by the court under the Act, or that such other order may be made as the court thinks just;
  - (q) the name and postal address of any person on whom the petitioner intends to serve the petition; and
  - (r) the contact details of the petitioner's solicitor (if any).
- (2) The petition must also contain a blank box for the court to complete with the details of the venue for hearing the petition.

#### Textual Amendments

**F14** Words in [rule 7.26\(1\)\(n\)](#) substituted (31.12.2020) by [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), [reg. 1\(3\)](#), [Sch. para. 77](#) (with [regs. 4, 5](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

#### Petition presented by a relevant office-holder

**7.27.—(1)** A petition by a relevant office-holder must be expressed to be the petition of the company by the office-holder.

(2) The petition must contain the particulars required by rule 7.26 (other than paragraph (1)(j) and (k) and the following (as applicable)—

- (a) identification details for the office-holder;
- (b) the full name of the court or hearing centre in which the proceedings are being conducted or where documents relating to the proceedings are filed;
- (c) the court case number;
- (d) the date the insolvency proceedings in respect of which the office-holder holds office commenced; and
- (e) where the office-holder is an administrator, an application under paragraph 79 <sup>M1</sup> of Schedule B1, requesting that the appointment of the administrator should cease to have effect.

#### Marginal Citations

**M1** Paragraph 79(2)(c) is amended by paragraph 10(29) of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

#### Verification of petition

**7.28.—(1)** The petition must be verified by a statement of truth.

(2) A statement of truth which is not contained in or endorsed upon the petition must identify the petition and must contain—

- (a) identification details for the company;
  - (b) the name of the petitioner; and
  - (c) the name of the court (and hearing centre if applicable) in which the petition is to be presented.
- (3) The statement of truth must be authenticated and dated by or on behalf of the petitioner.

---

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Insolvency (England and Wales) Rules 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

---

(4) Where the person authenticating the statement of truth is not the petitioner, or one of the petitioners, the statement of truth must state—

- (a) the name and postal address of the person making the statement;
- (b) the capacity in which, and the authority by which, the person authenticates the statement; and
- (c) the means of the person's knowledge of the matters verified in the statement of truth.

(5) A statement of truth verifying more than one petition must include in its title the names of the companies to which it relates and must set out, in relation to each company, the statements relied on by the petitioner; and a clear and legible photocopy of the statement of truth must be filed with each petition which it verifies.

(6) The reasons for the statement that the proceedings will be <sup>F15</sup>COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply] must be given in a witness statement.

**Textual Amendments**

**F15** Words in [rule 7.28\(6\)](#) substituted (31.12.2020) by [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(3), [Sch. para. 78](#) (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

**Presentation and service of petition**

**7.29.—**(1) The petition with one copy must be filed with the court.

(2) The petition may not be filed unless a receipt for the deposit payable to the official receiver is produced on presentation of the petition.

(3) The court must fix a hearing for a return day on which, unless the court otherwise directs, the petitioner and the company must attend before the court for—

- (a) directions to be given in relation to the procedure on the petition; or
- (b) the hearing of the petition where—
  - (i) it is presented by a relevant office-holder, and
  - (ii) the court considers it just in all the circumstances.

(4) On fixing the return day, the court must deliver to the petitioner a sealed copy of the petition endorsed with the return day and time of hearing.

(5) The petitioner must serve a sealed copy of the petition on the company at least 14 days before the return day.

<sup>F16</sup>(6) .....

**Textual Amendments**

**F16** [Rule 7.29\(6\)](#) omitted (31.12.2020) by virtue of [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(3), [Sch. para. 79](#) (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

**Request to appoint former administrator or supervisor as liquidator (section 140)**

**7.30.—**(1) This rule applies where a petition requests under section 140 <sup>M2</sup> the appointment of a former administrator or supervisor as liquidator.

(2) The person whose appointment is sought (“the appointee”) must, not less than two business days before the return day fixed under rule 7.29(3), file with the court a report including particulars of—

- (a) the date on which the appointee delivered notice to creditors of the company, of the appointee's intention to seek appointment as liquidator, such date to be at least seven business days before the day on which the report is filed; and
- (b) details of any response from creditors to that notice, including any objections to the proposed appointment.

#### Marginal Citations

- M2** Section 140(3) is amended by paragraph 35 of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

### Hearing of petition

**7.31.**—(1) On the return day, or at any time after it, the court—

- (a) must, where the petition is presented by a person who is not a relevant office-holder, give directions;
- (b) may, in any other case, give directions; or
- (c) may, in either case, make any such order as it sees fit.

(2) In particular, the court may give directions relating to the following matters—

- (a) service or delivery of the petition, whether in connection with the venue for a further hearing, or for any other purpose;
- (b) whether particulars of claim and defence are to be delivered, and generally as to the procedure on the petition;
- (c) whether and if so by what means, notice of the petition is to be given;
- (d) the manner in which any evidence is to be provided at any hearing before the judge and in particular (but without prejudice to the generality of the above) as to—
  - (i) the taking of evidence wholly or in part by witness statement or orally,
  - (ii) the cross-examination of any person who has made a witness statement, and
  - (iii) the matters to be dealt with in evidence; and
- (e) any other matter affecting the procedure on the petition or in connection with the hearing and disposal of the petition.

(3) In giving directions the court must consider whether a copy of the petition should be served on or delivered to any of the persons specified in rule 7.9.

### Order for winding up by the court of a company in administration or where there is a supervisor of a CVA in relation to the company

**7.32.**—(1) An order for winding-up by the court of a company in administration or where there is a supervisor of a CVA in relation to the company 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 administrator or supervisor of the company;
- (d) the date of the administrator's or supervisor's appointment;



- (e) the date of presentation of the petition;
  - (f) where there is an administrator, an order that the administrator's appointment ceases to have effect;
  - (g) an order that the company be wound up by the court under the Act;
  - (h) a statement whether the proceedings are [<sup>F17</sup>COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply]; and
  - (i) the name and address of the person appointed as liquidator of the company (if applicable);
  - (j) an order that—
    - (i) an official receiver attached to the court is by virtue of the order liquidator of the company, or
    - (ii) that the administrator or the supervisor (as the case may be) specified in the order is appointed liquidator of the company; and
  - (k) the date of the order.
- (2) The order may contain such additional terms as to the costs as the court thinks just.
- (3) Where the court appoints the former administrator or the supervisor as liquidator paragraphs (3)(c), (4), (7), (8) and (9) of rule 7.56 apply.

**Textual Amendments**

**F17** Words in [rule 7.32\(1\)\(h\)](#) substituted (31.12.2020) by [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), [reg. 1\(3\)](#), [Sch. para. 80](#) (with [regs. 4, 5](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

CHAPTER 5

Provisional liquidator

[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 provisional liquidator (section 135)**

**7.33.**—(1) An application to the court for the appointment of a provisional liquidator under section 135 may be made by—

- (a) the petitioner;
  - (b) a creditor of the company;
  - (c) a contributory;
  - (d) the company;
  - (e) the Secretary of State;
  - (f) a temporary administrator; [<sup>F18</sup>or]
  - <sup>F19</sup>(g) .....
  - (h) any person who under any enactment would be entitled to present a petition for the winding up of the company.
- (2) The application must be supported by a witness statement stating—
- (a) the grounds on which it is proposed that a provisional liquidator should be appointed;

- (b) if some person other than the official receiver is proposed to be appointed, that that person has consented to act and, to the best of the applicant's belief, is qualified to act as an insolvency practitioner in relation to the company;
- (c) whether or not the official receiver has been informed of the application and, if so, whether a copy of it has been delivered to the official receiver;
- (d) whether to the applicant's knowledge—
- [<sup>F20</sup>(zi) a moratorium under Part A1 of the Act is in force for the company;]
- (i) there has been proposed or is in force for the company a CVA;
- (ii) an administrator or administrative receiver is acting in relation to the company; or
- (iii) a liquidator has been appointed for its voluntary winding up; and
- (e) the applicant's estimate of the value of the assets in relation to which the provisional liquidator is to be appointed;
- [<sup>F21</sup>(f) a statement whether the proceedings will be [<sup>F22</sup>COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply] with the reasons for so stating.]
- (3) The applicant must deliver copies of the application and the witness statement in support to the official receiver, who may attend the hearing and make any representations which the official receiver thinks appropriate.
- (4) If for any reason it is not practicable to deliver copies of the application and statement to the official receiver before the hearing, the applicant must inform the official receiver of the application in sufficient time for the official receiver to be able to attend.
- (5) If satisfied that sufficient grounds are shown for the appointment the court may appoint a provisional liquidator on such terms as it thinks just.

#### Textual Amendments

- F18** Word in rule 7.33(1) inserted (31.12.2020) by [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(3), **Sch. para. 81(a)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
- F19** Rule 7.33(1)(g) omitted (31.12.2020) by virtue of [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(3), **Sch. para. 81(b)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
- F20** Rule 7.33(2)(d)(zi) inserted (1.10.2021) by [The Insolvency \(England and Wales\) \(No.2\) \(Amendment\) Rules 2021 \(S.I. 2021/1028\)](#), rules 1, **37** (with rules 4, 5)
- F21** Rule 7.33(2)(f) inserted (26.6.2017) by [The Insolvency Amendment \(EU 2015/848\) Regulations 2017 \(S.I. 2017/702\)](#), reg. 1, **Sch. para. 39** (with reg. 3)
- F22** Words in rule 7.33(2)(f) substituted (31.12.2020) by [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(3), **Sch. para. 81(c)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

#### Deposit by applicant

**7.34.—**(1) An applicant for an order appointing the official receiver as provisional liquidator 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 deposited or secured proves to be insufficient, the court may, on the application of the official receiver, order the applicant for the appointment 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 then the court may discharge the order appointing the official receiver as provisional liquidator.

(4) If a winding-up order is made after a provisional liquidator 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 provisional liquidator) be repaid to the person depositing it (or as that person may direct) as an expense of the winding up, in the prescribed order of priority.

### **Order of appointment of provisional liquidator**

**7.35.**—(1) The order appointing the provisional liquidator must have the title “Order of appointment of Provisional Liquidator” and contain—

- (a) the name of the court (and hearing centre if applicable) in which the order is made;
- (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 company;
- (e) the statement that the court is satisfied—
  - (i) that the company is unable to pay its debts (if applicable), and
  - (ii) that the proceedings are [F23COMI proceedings, establishment proceedings or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply], as the case may be;
- (f) an order either that—
  - (i) upon the sum, which is specified in the order, being deposited by the applicant with the official receiver, the official receiver is appointed provisional liquidator of the company, or
  - (ii) the person specified in the order is appointed provisional liquidator of the company;
- (g) identification and contact details for the provisional liquidator, where the provisional liquidator is not the official receiver;
- (h) details of the functions to be carried out by the provisional liquidator in relation to the company's affairs;
- (i) a notice to the officers of the company that they are required by section 235 to give the provisional liquidator all the information the provisional liquidator may reasonably require relating to the company's property and affairs and to attend upon the provisional liquidator at such times as the provisional liquidator may reasonably require; and
- (j) the date of the order.

(2) Where two or more provisional liquidators are appointed the order must also specify (as required by section 231) whether any act required or authorised under any enactment to be done by the provisional liquidator is to be done by all or any one or more of them.

(3) The court must, as soon as reasonably practicable after the order is made, deliver copies of the order as follows—

- (a) if the official receiver is the provisional liquidator, two sealed copies to the official receiver;
- (b) if another person is appointed as provisional liquidator—
  - (i) two sealed copies to that person, and
  - (ii) one copy to the official receiver;

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Insolvency (England and Wales) Rules 2016*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (c) if there is an administrative receiver acting in relation to the company, one sealed copy to the administrative receiver.
- (4) The official receiver or other person appointed as provisional liquidator must as soon as reasonably practicable deliver a sealed copy of the order to either—
  - (a) the company, or
  - (b) the liquidator, if a liquidator was appointed for the company's voluntary winding-up.
- [<sup>F24</sup>(4A) Where a moratorium under Part A1 of the Act is in force for the company the official receiver or other person appointed as provisional liquidator must as soon as reasonably practicable deliver a sealed copy of the order to the monitor.]
- (5) The official receiver or other person appointed as provisional liquidator must as soon as reasonably practicable deliver a copy of the order to the registrar of companies.

#### Textual Amendments

- F23** Words in rule 7.35(1)(e)(ii) substituted (31.12.2020) by [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/146), reg. 1(3), **Sch. para. 82** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
- F24** [Rule 7.35\(4A\)](#) inserted (1.10.2021) by [The Insolvency \(England and Wales\) \(No.2\) \(Amendment\) Rules 2021](#) (S.I. 2021/1028), rules 1, **38** (with rules 4, 5)

#### Notice of appointment of provisional liquidator

- 7.36.**—(1) The provisional liquidator must as soon as reasonably practicable after receipt of the copy of the order of appointment give notice of appointment unless the court directs otherwise.
- (2) The notice—
    - (a) must be gazetted; and
    - (b) may be advertised in such other manner as the provisional liquidator thinks fit.
  - (3) The notice must state—
    - (a) that a provisional liquidator has been appointed; and
    - (b) the date of the appointment.

#### Security

- 7.37.**—(1) This rule applies where an insolvency practitioner is appointed as provisional liquidator.
- (2) The cost of providing the security required under the Act must be paid in the first instance by the provisional liquidator, however—
    - (a) if a winding-up order is not made, the person appointed is entitled to be reimbursed out of the property of the company, and the court may make an order on the company accordingly; and
    - (b) if a winding-up order is made, the person appointed is entitled to be reimbursed as an expense of the winding up in the prescribed order of priority.
  - (3) If the provisional liquidator fails to give or keep up the required security, the court may remove the provisional liquidator, and make such order as it thinks just as to costs.
  - (4) If an order is made under this rule removing the provisional liquidator, or discharging the order appointing the provisional liquidator, the court must give directions as to whether any, and if

so what, steps should be taken for the appointment of another person in the place of the removed or discharged provisional liquidator.

## Remuneration

**7.38.**—(1) The remuneration of the provisional liquidator (other than the official receiver) is to be fixed by the court from time to time on the application of the provisional liquidator.

(2) In fixing the remuneration of the provisional liquidator, the court must take into account—

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

(3) Without prejudice to any order the court may make as to costs, the remuneration of the provisional liquidator (whether the official receiver or another) must be paid to the provisional liquidator, and the amount of any expenses incurred by the provisional liquidator (including the remuneration and expenses of any special manager appointed under section 177) reimbursed—

- (a) if a winding-up order is not made, out of the property of the company;
- (b) if a winding-up order is made, as an expense of the winding up, in the prescribed order of priority; and
- (c) in either case (if the relevant funds are insufficient), out of the deposit under rule 7.34.

(4) Unless the court otherwise directs, where a winding up order is not made, the provisional liquidator may retain out of the company's property such sums or property as are or may be required for meeting the remuneration and expenses of the provisional liquidator.

(5) Where a person other than the official receiver has been appointed provisional liquidator, 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 provisional liquidator must pay the official receiver such sum (if any) as the court may direct.

---

### Modifications etc. (not altering text)

- C3** Rule 7.38(3) applied (23.4.2019) by S.I. 1999/2979, **reg. 14(5)(a)(ii)** (as amended by [The Financial Services and Markets \(Insolvency\) \(Amendment of Miscellaneous Enactments\) Regulations 2019](#) (S.I. 2019/755), regs. 1, **2(2)(a)**)

## Termination of appointment

**7.39.**—(1) The appointment of the provisional liquidator may be terminated by the court on the application of the provisional liquidator, or a person specified in rule 7.33(1).

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

(3) The provisional liquidator must give notice of termination of the appointment as provisional liquidator, unless the termination is on the making of a winding-up order or the court directs otherwise.

(4) The notice referred to in paragraph (3)—

<sup>F25</sup>(a) must be delivered as soon as reasonably practicable to—

(i) the registrar of companies; and

(ii) if a moratorium under Part A1 of the Act is in force for the company, the monitor;]

(b) must be gazetted as soon as reasonably practicable; and

(c) may be advertised in such other manner as the provisional liquidator thinks fit.

(5) The notice under paragraph (3) must state—

(a) that the appointment as provisional liquidator has been terminated;

(b) the date of that termination; and

(c) that the appointment terminated otherwise than on the making of a winding-up order.

#### Textual Amendments

**F25** Rule 7.39(4)(a) substituted (1.10.2021) by [The Insolvency \(England and Wales\) \(No.2\) \(Amendment\) Rules 2021 \(S.I. 2021/1028\)](#), rules 1, **39** (with rules 4, 5)

## CHAPTER 6

### Statement of affairs and other information

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

#### Notice requiring statement of affairs (section 131)

**7.40.**—(1) Where, under section 131, the official receiver requires a nominated person to provide the official receiver with a statement of the affairs of the company, the official receiver must deliver a notice to that person.

(2) The notice must be headed “Notice requiring statement of affairs” and must—

(a) identify the company immediately below the heading;

(b) require a nominated person to prepare and submit to the official receiver a statement of affairs of the company;

(c) inform the nominated person—

(i) of the names and addresses of any other nominated person to whom such a notice has been delivered, and

(ii) of the date by which the statement must be delivered; and

(d) state the effect of section 131(7) (penalty for non-compliance) and section 235 (duty to co-operate) as it applies to the official receiver.

(3) The official receiver must inform the nominated person that a document for the preparation of the statement of affairs capable of completion in compliance with rule 7.41 can be supplied by the official receiver if requested.

## Statement of affairs

**7.41.**—(1) The statement of affairs must be headed “Statement of affairs” and must contain [<sup>F26</sup>the following, or, where paragraph (1B) applies, the information specified in that paragraph]—

- (a) identification details for the company;
- (b) a statement that it is a statement of the affairs of the company on a date which is specified, being—
  - (i) the date of the winding-up order, or
  - (ii) the date directed by the official receiver;
- (c) a list of the company's shareholders with the following information about each one—
  - (i) name and postal address,
  - (ii) the type of shares held,
  - (iii) the nominal amount of the shares held,
  - (iv) the number of shares held,
  - (v) the amount per share called up, and
  - (vi) the total amount of shares called up;
- (d) the total amount of shares called up held by all shareholders;
- (e) a summary of the assets of the company, setting out the book value and estimated realisable value of—
  - (i) any assets subject to a fixed charge,
  - (ii) any assets subject to a floating charge,
  - (iii) any uncharged assets, and
  - (iv) the total value of all the assets available for preferential creditors;
- (f) a summary of the liabilities of the company, setting out—
  - (i) the amount of preferential debts,
  - (ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts,
  - (iii) an estimate of the prescribed part, if applicable,
  - (iv) an estimate of the total assets available to pay debts secured by floating charges,
  - (v) the amount of debts secured by floating charges,
  - (vi) an estimate of the deficiency with respect to debts secured by floating charges or the surplus available after paying the debts secured by fixed or floating charges,
  - (vii) the amount of unsecured debts (excluding preferential debts),
  - (viii) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts,
  - (ix) any issued and called-up capital, and
  - (x) an estimate of the deficiency with respect to, or surplus available to, members of the company;
- (g) a list of the company's creditors (as required by section 131(2)) with the following particulars required by paragraph (2) indicating—
  - (i) any creditors under hire-purchase, chattel leasing or conditional sale agreements,
  - (ii) any creditors who are consumers claiming amounts paid in advance of the supply of goods or services, and

(iii) any creditors claiming retention of title over property in the company's possession.

[<sup>F27</sup>(1A) Paragraph (1B) applies if a moratorium under Part A1 of the Act is or has been in force for the company at any time within the period of 12 weeks ending with the day on which the winding up petition is presented.

(1B) Where this paragraph applies the statement of affairs must contain—

- (a) the matters specified in paragraph (1)(a) to (e) and (g); and
- (b) the information specified in paragraph (1)(f) but with the modifications specified in paragraph (1C).

(1C) The modifications referred to in paragraph (1B)(b) are that—

- (a) the summary of the liabilities of the company must, in addition, set out which of the debts owed by the company are—
  - (i) moratorium debts, and
  - (ii) priority pre-moratorium debts,within the meaning given by section 174A, and
- (b) sub-paragraph 1(e)(iv) has effect as if the reference to preferential creditors included references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A.
- (c) paragraph (1)(f)(i), (ii) and (vii) has effect as if the reference to preferential debts included references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A.]

(2) The particulars required by this paragraph are as follows—

- (i) the name and postal address,
- (ii) the amount of the debt owed to the creditor,
- (iii) details of any security held by the creditor,
- (iv) the date the security was given, and
- (v) the value of any such security.

(3) Paragraph (4) applies where the particulars required by paragraph (2) relate to creditors who are either—

- (a) employees or former employees of the company; or
- (b) consumers claiming amounts paid in advance for the supply of goods or services.

(4) Where this paragraph applies—

- (a) the statement of affairs itself must state separately for each of paragraph (3)(a) and (b) the number of such creditors and the total of the debts owed to them; and
- (b) the particulars required by paragraph (2) in respect of those creditors must be set out in separate schedules to the statement of affairs for each of paragraph (3)(a) and (b).

(5) The statement of affairs must be verified by a statement of truth by the nominated person, or all of them if more than one, making the statement of affairs.

(6) The nominated person (or one of them, if more than one) must deliver the statement of affairs verified as required by paragraph (5) to the official receiver together with a copy.

(7) The official receiver must deliver the verified copy of the statement of affairs and any statements of concurrence delivered under rule 7.42 to the registrar of companies.

(8) However the official receiver must not deliver to the registrar of companies with the statement of affairs any schedule required by paragraph (4)(b).



### Textual Amendments

- F26** Words in rule 7.41(1) inserted (1.10.2021) by [The Insolvency \(England and Wales\) \(No.2\) \(Amendment\) Rules 2021 \(S.I. 2021/1028\)](#), rules 1, **40(2)** (with rules 4, 5)
- F27** [Rules 7.41\(1A\)-\(1C\)](#) inserted (1.10.2021) by [The Insolvency \(England and Wales\) \(No.2\) \(Amendment\) Rules 2021 \(S.I. 2021/1028\)](#), rules 1, **40(3)** (with rules 4, 5)

### Statement of affairs: statement of concurrence

**7.42.—**(1) The official receiver may require a person mentioned in section 131(3) (“a relevant person”) to deliver to the official receiver a statement of concurrence.

(2) A statement of concurrence is a statement, verified by a statement of truth, that that person concurs in the statement of affairs submitted by a nominated person.

(3) The official receiver must inform the nominated person who has been required to submit a statement of affairs that the relevant person has been required to deliver a statement of concurrence.

(4) The nominated person must deliver a copy of the statement of affairs to every relevant person who has been required to submit a statement of concurrence.

(5) A statement of concurrence—

(a) must identify the company; and

(b) may be qualified in relation to matters dealt with in the statement of affairs, where the relevant person—

(i) is not in agreement with the statement of affairs,

(ii) considers the statement of affairs to be erroneous or misleading, or

(iii) is without the direct knowledge necessary for concurring in it.

(6) The relevant person must deliver the required statement of concurrence (with a copy) to the official receiver before the end of the period of five business days (or such other period as the official receiver may agree) beginning with the day on which the relevant person receives the statement of affairs.

### Order limiting disclosure of statement of affairs etc.

**7.43.—**(1) Where the official receiver thinks that disclosure of the whole or part of the statement of affairs or of any statement of concurrence would be likely to prejudice the conduct of the winding up or might reasonably be expected to lead to violence against any person, the official receiver may apply to the court for an order that the statement of affairs, statement of concurrence or any specified part of them must not be filed with the registrar of companies.

(2) The court may order that the whole or a specified part of the statement of affairs or of a statement of concurrence must not be delivered to the registrar of companies.

(3) The official receiver must as soon as reasonably practicable deliver to the registrar of companies a copy of the order, and the statement of affairs and any statement of concurrence to the extent allowed by the order.

### Release from duty to submit statement of affairs: extension of time (section 131)

**7.44.—**(1) The official receiver may exercise the power in section 131(5) to release a person from an obligation to submit a statement of affairs imposed under section 131(1) or (2), or to grant an extension of time, either at the official receiver's own discretion, or at the request of a nominated person.

(2) A nominated person may apply to the court for a release or an extension of time if the official receiver refuses that person's request.

(3) On receipt of an application, the court may, if it is satisfied that no sufficient cause is shown for it, dismiss it without giving notice to any party other than the applicant.

(4) Unless the application is dismissed, the court must fix a venue for it to be heard.

(5) The applicant must, at least 14 days before any hearing, deliver to the official receiver a notice stating the venue with a copy of the application and of any evidence on which the applicant intends to rely.

(6) The official receiver may do either or both of the following—

(a) file a report of any matters which the official receiver thinks ought to be drawn to the court's attention; or

(b) appear and be heard on the application.

(7) If a report is filed, the official receiver must deliver a copy of it to the applicant not later than five business days before the hearing.

(8) The court must deliver sealed copies of any order made on the application to the nominated person and the official receiver.

(9) The applicant must pay the applicant's own costs in any event and, unless and to the extent that the court orders otherwise those costs will not be an expense of the winding up.

#### **Statement of affairs: expenses**

**7.45.**—(1) If a nominated person cannot personally prepare a proper statement of affairs, the official receiver may, as an expense of the winding up, employ a person or firm to assist in the preparation of the statement.

(2) At the request of a nominated person, made on the grounds that the nominated person cannot personally prepare a proper statement, the official receiver may authorise an allowance, payable as an expense of the winding up, of all or part of the expenses to be incurred by the nominated person in employing a person or firm to assist the nominated person in preparing it.

(3) Any such request by the nominated person must be accompanied by an estimate of the expenses involved; and the official receiver must only authorise the employment of a named person or a named firm, approved by the official receiver.

(4) An authorisation given by the official receiver under this rule must be subject to such conditions (if any) as the official receiver thinks fit to impose relating to the manner in which any person may obtain access to relevant documents and other records.

(5) Nothing in this rule relieves a nominated person from any obligation relating to the preparation, verification and submission of the statement of affairs, or to the provision of information to the official receiver or the liquidator.

(6) Any payment made as an expense of the winding up under this rule must be made in the prescribed order of priority.

(7) Paragraphs (2) to (6) of this rule may be applied, on application to the official receiver by any nominated person, in relation to the making of a statement of concurrence.

#### **Delivery of accounts to official receiver**

**7.46.**—(1) Any of the persons specified in section 235(3) must, at the request of the official receiver, deliver to the official receiver accounts of the company of such nature, as at such date, and for such period, as the official receiver may specify.

(2) The period specified may begin from a date up to three years before the date of the presentation of the winding-up petition, or from an earlier date to which audited accounts of the company were last prepared.

(3) The court may, on the official receiver's application, require accounts for any earlier period.

(4) Rule 7.45 applies (with the necessary modifications) in relation to accounts to be delivered under this rule as it applies in relation to the statement of affairs.

(5) The accounts must, if the official receiver so requires, be verified by a statement of truth and (whether or not so verified) be delivered to the official receiver within 21 days of the request under paragraph (1), or such longer period as the official receiver may allow.

### **Further disclosure**

**7.47.**—(1) The official receiver may at any time require a nominated person to deliver (in writing) further information amplifying, modifying or explaining any matter contained in the statement of affairs, or in accounts delivered under the Act or these Rules.

(2) The information must, if the official receiver so directs, be verified by a statement of truth, and (whether or not so verified) be delivered to the official receiver within 21 days of the requirement under paragraph (1), or such longer period as the official receiver may allow.

## **CHAPTER 7**

### **Reports and information to creditors and contributories**

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

### **Reports by official receiver**

**7.48.**—(1) The official receiver must deliver a report on the winding up and the state of the company's affairs to the creditors and contributories at least once after the making of the winding-up order.

(2) The report must contain—

- (a) identification details for the proceedings;
- (b) contact details for the official receiver;
- (c) a summary of the assets and liabilities of the company as known to the official receiver at the date of the report;
- (d) such comments on the summary and the company's affairs as the official receiver thinks fit; and
- (e) any other information of relevance to the creditors or contributories.

(3) The official receiver may apply to the court to be relieved of any duty imposed by this rule or to be authorised to carry out the duty in another way.

(4) On such an application the court must have regard to the cost of carrying out the duty, to the amount of the assets available, and to the extent of the interest of creditors or contributories, or any particular class of them.

(5) If proceedings in a winding-up are stayed by order of the court any duty of the official receiver to deliver a report under this rule ceases.

### **Reports by official receiver: estimate of prescribed part**

**7.49.**—(1) The official receiver must include in a report under rule 7.48(1) estimates to the best of the official receiver's knowledge and belief of the value of—

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Insolvency (England and Wales) Rules 2016*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- (a) the prescribed part (whether or not the official receiver might be required under section 176A to make the prescribed part available for the satisfaction of unsecured debts); and
  - (b) the company's net property (as defined by section 176A(6)).
- (2) If the official receiver (as liquidator) proposes to make an application to court under section 176A(5) the report must say so and give the reason for the application.
- (3) The official receiver may exclude from an estimate under paragraph (1) information the disclosure of which could seriously prejudice the commercial interests of the company.
- (4) If the exclusion of such information affects the calculation of the estimate, the report must say so.

### Further information where winding up follows administration

- 7.50.**—(1) This rule applies where an administrator is appointed by the court under section 140 as the company's liquidator and becomes aware of creditors not formerly known to that person as administrator.
- (2) The liquidator must deliver to those creditors a copy of any statement previously sent by the administrator to creditors in accordance with paragraph 49(4)<sup>M3</sup> of Schedule B1 and rule 3.35.

#### Marginal Citations

**M3** Paragraph 49(4) is amended by paragraph 10(2) of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

### Notice of stay of winding up

**7.51.** Where the court grants a stay in a winding up it may include in its order such requirements on the company as it thinks just with a view to bringing the stay to the notice of creditors and contributories.

## CHAPTER 8

### The liquidator

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

### Choosing a person to be liquidator

- 7.52.**—(1) This rule applies where nominations are sought by the official receiver from the company's creditors and contributories under section 136 for the purpose of choosing a person to be liquidator of the company in place of the official receiver<sup>M4</sup>.
- (2) The official receiver must deliver to the creditors and contributories a notice inviting proposals for a liquidator.
- (3) The notice must explain that the official receiver is not obliged to seek the creditors' views on any proposals that do not meet the requirements of paragraphs (4) and (5).
- (4) A proposal must state the name and contact details of the proposed liquidator, and contain a statement that the proposed liquidator is qualified to act as an insolvency practitioner in relation to the company and has consented to act as liquidator of the company.
- (5) A proposal must be received by the official receiver within five business days of the date of the notice under paragraph (2).

(6) Following the end of the period for inviting proposals under paragraph (2), where any proposals are received the official receiver must seek a decision on the nomination of a liquidator from the creditors (on any proposals received from creditors) and from the contributories (on any proposals received from contributories) by—

- (a) a decision procedure; or
- (b) the deemed consent procedure.

(7) Where a decision is sought under paragraph (6) following the official receiver's decision under section 136(5)(a) to seek a nomination, the decision date must be not more than four months from the date of the winding-up order.

(8) Where the official receiver is required under section 136(5)(c) to seek such a decision, the official receiver must send a notice to the creditors and contributories which complies with rule 15.7 or 15.8 so far as relevant.

(9) The notice must also—

- (a) identify any liquidator proposed to be nominated by a creditor (in the case of a notice to creditors) or by a contributory (in the case of a notice to contributories) in accordance with this rule; and
- (b) contain a statement explaining the effect of section 137(2)<sup>M5</sup> (duty of official receiver to consider referral of need for appointment of liquidator to the Secretary of State where no person is chosen to be liquidator).

(10) The decision date in the notice must be no later than 21 days after the date for receiving proposals has passed.

(11) The creditors and contributories must be given at least 14 days' notice of the decision date.

(12) Where no proposal is received by the official receiver under paragraph (2), the official receiver has no obligation to seek a decision from creditors or contributories on a liquidator.

(13) Nothing in this rule affects the official receiver's ability under section 137(1), at any time when liquidator of the company, to apply to the Secretary of State to appoint a liquidator in place of the official receiver.

#### Marginal Citations

**M4** Section 136(4) to (6) is amended by paragraph 31(1) to (4) of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

**M5** Section 137(2) is amended by paragraph 32(2) of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

#### Appointment of liquidator by creditors or contributories

**7.53.—**(1) This rule applies where a person is appointed as liquidator by the creditors or contributories.

(2) The convener of the decision procedure or deemed consent procedure, or the chair in the case of a meeting must certify the appointment, but not unless and until the appointee has provided to the convener or the chair a statement to the effect that the appointee is an insolvency practitioner qualified under the Act to be the liquidator and consents to act.

(3) The certificate must be authenticated and dated by the convener or chair and must—

- (a) identify the company;
- (b) identify and provide contact details for the person appointed as liquidator;
- (c) state the date on which the liquidator was appointed;

- (d) state that the appointee—
- (i) has provided a statement of being qualified to act as an insolvency practitioner in relation to the company,
  - (ii) has consented to act, and
  - (iii) was appointed as liquidator of the company.

(4) Where two or more liquidators are appointed the certificate must also specify (as required by section 231) whether any act required or authorised under any enactment to be done by the liquidator is to be done by all or any one or more of them.

(5) The liquidator's appointment is effective from the date on which the appointment is certified, that date to be endorsed on the certificate.

(6) The convener or chair (if that person is not the official receiver) must deliver the certificate to the official receiver.

(7) The official receiver must in any case deliver the certificate to the liquidator.

### Decision on nomination

**7.54.**—(1) In the case of a decision on the nomination of a liquidator—

- (a) if on any vote there are two nominees, the person who obtains the most support is appointed;
- (b) if there are three or more nominees, and one of them has a clear majority over both or all the others together, that one is appointed; and
- (c) in any other case, the convener or chair must continue to take votes (disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support last time) until a clear majority is obtained for any one nominee.

(2) In the case of a decision being made at a meeting, the chair may at any time put to the meeting a resolution for the joint nomination of any two or more nominees.

### Invitation to creditors and contributories to form a liquidation committee

**7.55.**—(1) Where a decision is sought from the company's creditors and contributories on the appointment of a liquidator, the convener of the decision must at the same time deliver to the creditors and contributories a notice inviting them to decide whether a liquidation committee should be established if sufficient creditors are willing to be members of the committee.

(2) The notice must also invite nominations for membership of the committee, such nominations to be received by a date specified in the notice.

(3) The notice must—

- (a) state that nominations must be delivered to the convener by the specified date;
- (b) state, in the case of creditors, that nominations can only be accepted if the convener is satisfied as to the creditors' eligibility under rule 17.4; and
- (c) explain the effect of section 141(2) and (3) <sup>M6</sup> on whether a committee is to be established under Part 17.

#### Marginal Citations

**M6** Section 141(2) and (3) are substituted by paragraph 36 of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

## Appointment by the court

**7.56.**—(1) This rule applies where the liquidator is appointed by the court under section 139(4) (different persons nominated by creditors and contributories) or section 140<sup>M7</sup> (winding up following administration or CVA).

(2) The court must not make the order unless and until the person being appointed has filed with the court a statement to the effect that that person is an insolvency practitioner, duly qualified under the Act to be the liquidator, and consents to act.

(3) The order of the court 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) the capacity in which the applicant made the application;
- (e) identification and contact details for the proposed liquidator;
- (f) a statement that the proposed liquidator has filed—
  - (i) a statement of qualification to act as an insolvency practitioner in relation to the company, and
  - (ii) a consent to act;
- (g) the order that the proposed liquidator is appointed liquidator of the company; and
- (h) the date on which the order is made.

(4) Where two or more liquidators are appointed the order must also specify (as required by section 231) whether any act required or authorised under any enactment to be done by the liquidator is to be done by all or any one or more of them.

(5) The court must deliver two copies of the order to the official receiver one of which must be sealed.

(6) The official receiver must deliver the sealed copy of the order to the person appointed as liquidator.

(7) The liquidator's appointment takes effect from the date of the order or such other date as the court orders.

(8) Within 28 days from appointment, the liquidator must—

- (a) deliver notice of the appointment to the creditors and to the contributories of the company of whom the liquidator is aware; or
- (b) advertise the appointment in accordance with any directions given by the court.

(9) In the notice under this rule the liquidator must—

- (a) state whether the liquidator proposes to seek decisions from creditors and contributories for the purpose of establishing a liquidation committee, or proposes only to seek a decision from creditors for that purpose; and
- (b) if the liquidator does not propose to seek any such decision, set out the powers of the creditors under the Act to require the liquidator to seek one.

---

### Marginal Citations

**M7** Section 140(3) is amended by paragraph 35 of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

### **Appointment by the Secretary of State**

**7.57.**—(1) This rule applies where the official receiver applies to the Secretary of State to appoint a liquidator in place of the official receiver, or refers to the Secretary of State the need for an appointment.

(2) If the Secretary of State makes an appointment, the Secretary of State must deliver a copy of the certificate of appointment to the official receiver, who must deliver it to the person appointed.

(3) The certificate must specify the date from which the liquidator's appointment is to be effective.

### **Cost of liquidator's security (section 390(3))**

**7.58.** The cost of the liquidator's security required by section 390(3) for the proper performance of the liquidator's functions is an expense of the winding up.

### **Appointment to be gazetted and notice given to registrar of companies**

**7.59.**—(1) The liquidator—

(a) must gazette a notice of the appointment as soon as reasonably practicable after appointment; and

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

(2) The notice must state—

(a) that a liquidator has been appointed; and

(b) the date of the appointment.

(3) As soon as reasonably practicable the liquidator must deliver notice of the appointment to the registrar of companies.

### **Hand-over of assets by official receiver to liquidator**

**7.60.**—(1) This rule only applies where the liquidator is appointed in succession to the official receiver acting as liquidator.

(2) When the liquidator's appointment takes effect, the official receiver must as soon as reasonably practicable do all that is required for putting the liquidator into possession of the assets.

(3) On taking possession of the assets, the liquidator must discharge any balance due to the official receiver on account of—

(a) expenses properly incurred by the official receiver and payable under the Act or these Rules; and

(b) any advances made by the official receiver in respect of the assets, together with interest on such advances at the rate specified in section 17 of the Judgments Act 1838 <sup>M8</sup> at the date of the winding-up order.

(4) Alternatively, the liquidator may (before taking office) give to the official receiver a written undertaking to discharge any such balance out of the first realisation of assets.

(5) The official receiver has a charge on the assets in respect of any sums due to the official receiver under paragraph (3) until they have been discharged, subject only to the deduction from realisations by the liquidator of the proper costs and expenses of such realisations.

(6) The liquidator must from time to time out of the realisation of assets discharge all guarantees properly given by the official receiver for the benefit of the insolvent estate, and must pay all the official receiver's expenses.



(7) The official receiver must give to the liquidator all such information relating to the affairs of the company and the course of the winding up as the official receiver considers to be reasonably required for the effective discharge by the liquidator of the liquidator's duties.

(8) The official receiver must also deliver to the liquidator a copy of any report made by the official receiver under Chapter 7 of Part 7.

#### Marginal Citations

**M8** 1838 c.110. Section 17 is amended by the [Statute Law Revision \(No 2\) Act 1888 \(c.57\)](#), [article 2](#) of [S.I. 1993/564](#), [article 3](#) of [S.I. 1998/2940](#), [Part 1](#) of the Schedule to the [Civil Procedure Acts Repeal Act 1879 \(c.59\)](#) and article 3(c) of [S.I. 1998/3132](#).

### Liquidator's resignation

**7.61.**—(1) A liquidator may resign only—

- (a) on grounds of ill health;
- (b) because of the intention to cease to practise as an insolvency practitioner;
- (c) because the further discharge of the duties of liquidator is prevented or made impracticable by—
  - (i) a conflict of interest, or
  - (ii) a change of personal circumstances;
- (d) where two or more persons are acting as liquidator jointly, and it is the opinion of both or all of them that it is no longer expedient that there should continue to be that number of joint liquidators.

(2) Before resigning, the liquidator must deliver a notice to creditors, and invite the creditors by a decision procedure, or by deemed consent procedure, to consider whether a replacement should be appointed, except where the resignation is under sub-paragraph (1)(d).

(3) The notice must—

- (a) state the liquidator's intention to resign;
- (b) state that under rule 7.61(7) of these Rules the liquidator will be released 21 days after the date of delivery of the notice of resignation to the court under section 172(6), unless the court orders otherwise; and
- (c) comply with rule 15.7 or 15.8 so far as applicable.

(4) The notice may suggest the name of a replacement liquidator.

(5) The notice must be accompanied by a summary of the liquidator's receipts and payments.

(6) The decision date must be not more than five business days before the date on which the liquidator intends to give notice under section 172(6).

(7) The resigning liquidator's release is effective 21 days after the date on which the notice of resignation under section 172(6) is filed with the court.

### Notice to official receiver of intention to vacate office

**7.62.**—(1) This rule applies where the liquidator intends to vacate office, whether by resignation or otherwise, and as a result there will be a vacancy in the office of liquidator (so that by virtue of section 136(3) the official receiver is liquidator until the vacancy is filled).

(2) The liquidator must deliver notice of that intention to the official receiver at least 21 days before the liquidator intends to vacate office.

(3) The liquidator must include in the notice to the official receiver the following details of any property of the company which has not been realised, applied, distributed or otherwise fully dealt with in the winding up—

- (a) the nature of the property;
- (b) its value (or the fact that it has no value);
- (c) its location;
- (d) any action taken by the liquidator to deal with the property or any reason for the liquidator not dealing with it; and
- (e) the current position in relation to it.

### **Decision of creditors to remove liquidator**

**7.63.**—(1) This rule applies where the convener of the decision procedure or chair of the meeting (as the case may be) is other than the official receiver, and a decision is made, using a decision procedure, to remove the liquidator

(2) The convener or chair must within three business days of the decision to remove the liquidator deliver a certificate to that effect to the official receiver.

(3) If the creditors decided to appoint a new liquidator, the certificate of the new liquidator's appointment must also be delivered to the official receiver within that time; and the certificate must comply with the requirements in rule 7.53.

(4) The certificate of the liquidator's removal must—

- (a) identify the company;
- (b) identify and provide contact details for the removed liquidator;
- (c) state that the creditors of the company decided on the date specified in the certificate that the liquidator specified in the certificate be removed from office as liquidator of the company;
- (d) state the decision procedure used, and the decision date;
- (e) state that the creditors either—
  - (i) did not decide against the liquidator being released, or
  - (ii) decided that the liquidator should not be released; and
- (f) be authenticated and dated by the convener or chair.

(5) The liquidator's removal is effective from the date of the certificate of removal.

### **Procedure on removal by creditors**

**7.64.**—(1) Where the creditors have decided that the liquidator be removed, the official receiver must file the certificate of removal with the court.

(2) The official receiver must deliver a copy of the certificate as soon as reasonably practicable to the removed liquidator and deliver a notice of the removal to the registrar of companies.

### **Removal of liquidator by the court (section 172(2))**

**7.65.**—(1) This rule applies where an application is made to the court under section 172(2)<sup>M9</sup> for the removal of the liquidator, or for an order directing the liquidator to initiate a decision procedure of creditors for the purpose of removing the liquidator.

(2) On receipt of an application, the court may, if it is satisfied that no sufficient cause is shown for it, dismiss it without giving notice to any party other than the applicant.

- (3) Unless the application is dismissed, the court must fix a venue for it to be heard.
- (4) The applicant must, at least 14 days before any hearing, deliver to the liquidator and the official receiver a notice stating the venue with a copy of the application and of any evidence on which the applicant intends to rely.
- (5) A respondent may apply for security for costs of the application and the court may make such an order if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order.
- (6) The liquidator and the official receiver may do either or both of the following—
- (a) file a report of any matters which the liquidator or the official receiver thinks ought to be drawn to the court's attention; or
  - (b) appear and be heard on the application.
- (7) On a successful application the court's order must contain—
- (a) the name of the court (and hearing centre if applicable) in which the order is made;
  - (b) the name and title of the judge making the order;
  - (c) the name and postal address of the applicant;
  - (d) the capacity in which the applicant made the application;
  - (e) identification and contact details for the liquidator;
  - (f) identification details for the company;
  - (g) an order either—
    - (i) that that the liquidator is removed from office; or
    - (ii) that the liquidator must initiate a decision procedure of the company's creditors (specifying which procedure is to be used) on or before the date specified in the order for the purpose of considering the liquidator's removal from office; and
  - (h) the date the order is made.
- (8) The costs of the application are not payable as an expense of the winding up unless the court orders otherwise.
- (9) Where the court removes the liquidator—
- (a) it must deliver the sealed order of removal to the former liquidator and a copy of the order to the official receiver; and
  - (b) the former liquidator must deliver a copy of the order to the registrar of companies as soon as reasonably practicable.
- (10) If the court appoints a new liquidator, rule 7.56 applies.

---

**Marginal Citations**

**M9** Section 172(2) is amended by paragraph 43(2) of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

**Removal of liquidator by the Secretary of State (section 172(4))**

**7.66.—**(1) This rule applies where the Secretary of State decides to direct under section 172(4) the removal of a liquidator appointed by the Secretary of State.

(2) Before doing so the Secretary of State must deliver to the liquidator and the official receiver a notice of the Secretary of State's decision and the grounds for the decision.

(3) The notice must specify a period within which the liquidator may make representations against implementation of the decision.

(4) If the Secretary of State directs the removal of the liquidator, the Secretary of State must as soon as reasonably practicable—

- (a) deliver notice of the Secretary of State's decision to the registrar of companies, the liquidator and the official receiver; and
- (b) file notice of the decision with the court.

(5) Where the Secretary of State directs the liquidator be removed the court may make any order that it could have made if the liquidator had been removed by the court.

### Deceased liquidator

**7.67.**—(1) If the liquidator (not being the official receiver) dies a notice of the fact and date of death must be delivered to the official receiver by one of the following—

- (a) a surviving joint liquidator;
- (b) a member of the deceased liquidator's firm (if the deceased was a member or employee of a firm);
- (c) an officer of the deceased liquidator's company (if the deceased was an officer or employee of a company);
- (d) a personal representative of the deceased liquidator.

(2) If no such notice has been delivered within the 21 days following the liquidator's death then any other person may deliver the notice.

(3) The official receiver must—

- (a) file notice of the death with the court, for the purpose of fixing the date of the deceased liquidator's release under section 174(4)(a) <sup>M10</sup>; and
- (b) deliver a copy of the notice to the registrar of companies.

#### Marginal Citations

**M10** Section 174 is amended by paragraph 45 of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#)

### Loss of qualification as insolvency practitioner

**7.68.**—(1) This rule applies where the liquidator vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the company.

(2) A notice of the fact must be delivered as soon as reasonably practicable to the official receiver by one of the following—

- (a) the liquidator who has vacated office;
- (b) a continuing joint liquidator;
- (c) the recognised professional body which was the source of the vacating liquidator's authorisation to act in relation to the company.

(3) The notice must be authenticated and dated by the person delivering the notice.

(4) The official receiver must—

- (a) deliver a notice of receiving such a notice to the Secretary of State; and

- (b) deliver a copy to the registrar of companies.

#### **Application by liquidator for release (section 174(4)(b) or (d))**

**7.69.**—(1) An application by a liquidator to the Secretary of State for release under section 174(4)(b) or (d) must contain—

- (a) identification details for the proceedings;
- (b) identification and contact details for the liquidator;
- (c) a statement that the liquidator of the company is applying to the Secretary of State to grant the liquidator with a certificate of the liquidator's release as liquidator as a result of the circumstances specified in the application;
- (d) details of the circumstances referred to in sub-paragraph (c) under which the liquidator has ceased to act as liquidator.

(2) The application must be authenticated and dated by the liquidator.

(3) When the Secretary of State releases the former liquidator, the Secretary of State must certify the release and deliver the certificate to the former liquidator whose release is effective from the date of the certificate or such other date as the certificate specifies.

(4) The Secretary of State must deliver notice of the release to the registrar of companies.

#### **Release of official receiver**

**7.70.**—(1) The official receiver must, before giving notice to the Secretary of State under section 174(3) (that the winding up is for practical purposes complete), deliver notice of intention to do so to the creditors.

(2) The notice must be accompanied by a summary of the official receiver's receipts and payments as liquidator.

(3) The summary of receipts and payments must also include a statement as to the amount paid to unsecured creditors under section 176A (prescribed part).

(4) When the Secretary of State has determined the date from which the official receiver's release is to be effective, the Secretary of State must—

- (a) notify the official receiver of the release; and
- (b) deliver a notice of the release to the registrar of companies accompanied by the summary of the official receiver's receipts and payments.

#### **Final account prior to dissolution (section 146)**

**7.71.**—(1) The final account which the liquidator is required to make up under section 146(2)<sup>M11</sup> and deliver to creditors must comply with the requirements of rule 18.14.

(2) When the account is delivered to the creditors it must be accompanied by a notice which states—

- (a) that the company's affairs are fully wound up;
- (b) that the creditor has the right to request information from the liquidator under rule 18.9;
- (c) that a creditor has the right to challenge the liquidator's remuneration and expenses under rule 18.34;
- (d) that a creditor may object to the release of the liquidator by giving notice in writing to the liquidator before the end of the prescribed period;
- (e) that the prescribed period is the period ending at the later of —

- (i) eight weeks after delivery of the notice, or
  - (ii) if any request for information under rule 18.9 or any application to court under that rule or rule 18.34 is made when that request or application is finally determined;
  - (f) that the liquidator will vacate office under section 172(8)<sup>M12</sup> as soon as the liquidator has complied with section 146(4) by filing with the court and delivering to the registrar of companies the final account and notice containing the statement required by section 146(4)(b) of whether any creditors have objected to the liquidator's release; and
  - (g) that the liquidator will be released under section 174(4)(d)(ii)<sup>M13</sup> at the same time as vacating office unless any of the creditors objected to the release.
- (3) The liquidator must deliver a copy of the notice under section 146(4) to the Secretary of State.
- (4) Rule 7.69 applies to an application by the liquidator to the Secretary of State for release.

#### Marginal Citations

- M11** Section 146 is substituted by paragraph 38 of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).
- M12** A new subsection (8) is substituted by paragraph 43(4) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015.
- M13** A new subsection (4)(d)(ii) is substituted by paragraph 45(4) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015.

#### Relief from, or variation of, duty to report

**7.72.**—(1) The court may, on the application of the liquidator or the official receiver, relieve the liquidator or official receiver of any duty imposed on the liquidator or official receiver by rule 7.70 or rule 7.71, or authorise the liquidator or official receiver to carry out the duty in a way other than required by either of those rules.

(2) In considering whether to act under this rule, the court must have regard to the cost of carrying out the duty, to the amount of the assets available, and to the extent of the interest of creditors or contributories, or any particular class of them.

#### Liquidator's duties on vacating office

**7.73.**—(1) A liquidator who ceases to be in office in consequence of removal, resignation or ceasing to be qualified to act as an insolvency practitioner in relation to the company, must as soon as reasonably practicable deliver to the successor as liquidator—

- (a) the assets (after deduction of any expenses properly incurred, and distributions made, by the previous liquidator);
- (b) the records of the winding up, including correspondence, proofs and other documents relating to the winding up while it was within the former liquidator's responsibility; and
- (c) the company's documents and other records.

(2) Where the liquidator vacates office under section 172(8) (final report to creditors), the liquidator must deliver to the official receiver the company's documents and other records which have not already been disposed of in accordance with general regulations in the course of the winding up.

### **Power of court to set aside certain transactions**

**7.74.**—(1) If in dealing with the insolvent estate the liquidator enters into any transaction with a person who is an associate of the liquidator, the court may, on the application of any interested person, set the transaction aside and order the liquidator to compensate the company for any loss suffered in consequence of it.

(2) This does not apply if either—

- (a) the transaction was entered into with the prior consent of the court; or
- (b) it is shown to the court's satisfaction that the transaction was for value, and that it was entered into by the liquidator without knowing, or having any reason to suppose, that the person concerned was an associate.

(3) Nothing in this rule is to be taken as prejudicing the operation of any rule of law or equity relating to a liquidator's dealings with trust property, or the fiduciary obligations of any person.

### **Rule against improper solicitation**

**7.75.**—(1) Where the court is satisfied that any improper solicitation has been used by or on behalf of the liquidator in obtaining proxies or procuring the liquidator's appointment, it may order that no remuneration be allowed as an expense of the winding up to any person by whom, or on whose behalf, the solicitation was exercised.

(2) An order of the court under this rule overrides any resolution of the liquidation committee or the creditors, or any other provision of these Rules relating to the liquidator's remuneration.

## **CHAPTER 9**

### **Duties and powers of liquidator**

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

### **General duties of liquidator**

**7.76.**—(1) The duties which the Act imposes on the court relating to the collection of the company's assets and their application in discharge of the company's liabilities are discharged by the liquidator as an officer of the court subject to its control.

(2) In the discharge of the liquidator's duties, the liquidator, for the purposes of acquiring and retaining possession of the company's property, has the same powers as a receiver appointed by the High Court, and the court may on the application of the liquidator enforce such acquisition or retention accordingly.

### **Permission for exercise of powers by liquidator**

**7.77.**—(1) Where the Act or these Rules require permission for the liquidator to exercise a power any permission given must not be a general permission but must relate to a particular proposed exercise of the liquidator's power.

(2) A person dealing with the liquidator in good faith and for value is not concerned to enquire whether any such permission has been given.

(3) Where the liquidator has done anything without such permission, the court or the liquidation committee may, for the purpose of enabling the liquidator to meet the liquidator's expenses out of the assets, ratify what the liquidator has done; but neither must do so unless satisfied that the liquidator has acted in a case of urgency and has sought ratification without undue delay.

(4) In this rule “permission” includes “sanction”.

### **Enforced delivery up of company's property (section 234)**

**7.78.**—(1) The powers conferred on the court by section 234 (enforced delivery of company property) are exercisable by the liquidator or, where a provisional liquidator has been appointed, by the provisional liquidator.

(2) Any person on whom a requirement under section 234(2) is imposed by the liquidator or provisional liquidator must, without avoidable delay, comply with it.

## **CHAPTER 10**

### **Settlement of list of contributories**

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

### **Delegation to liquidator of power to settle list of contributories**

**7.79.**—(1) The duties of the court under section 148 in relation to settling the list of contributories are, by virtue of these Rules and in accordance with section 160<sup>M14</sup>, delegated to the liquidator.

(2) The liquidator's duties in settling the list of contributories are performed as an officer of the court subject to the court's control.

#### **Marginal Citations**

**M14** A new subsection (1)(a) is amended by paragraph 39 of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

### **Duty of liquidator to settle list (section 148)**

**7.80.** The liquidator must, as soon as reasonably possible after the liquidator's appointment, exercise the court's power to settle a list of the company's contributories for the purposes of section 148 and, with the court's approval, rectify the register of members.

### **Contents of list**

**7.81.**—(1) The list must identify—

- (a) the several classes of the company's shares (if more than one); and
- (b) the several classes of contributories, distinguishing between those who are contributories in their own right and those who are so as representatives of, or liable for the debts of, others.

(2) In the case of each contributory the list must state—

- (a) the address of the contributory;
- (b) the number and class of shares, or the extent of any other interest to be attributed to the contributory; and
- (c) if the shares are not fully paid up, the amounts which have been called up and paid in respect of them (and the equivalent, if any, where the interest of the contributory is other than shares).

### **Procedure for settling list**

**7.82.**—(1) Having settled the list, the liquidator must as soon as reasonably practicable deliver a notice, to each person included in the list, that this has been done.



- (2) The notice given to each person must state—
- (a) in what character, and for what number of shares or what interest, that person is included in the list;
  - (b) what amounts have been called up and paid up in respect of the shares or interest; and
  - (c) that in relation to any shares or interest not fully paid up, that person's inclusion in the list may result in the unpaid capital being called.
- (3) The notice must inform a person to whom it is given that, if that person objects to any entry in, or omission from, the list, that person should so inform the liquidator in writing within 21 days from the date of the notice.
- (4) On receipt of an objection, the liquidator must within 14 days deliver a notice to the objector either—
- (a) that the liquidator has amended the list (specifying the amendment); or
  - (b) that the liquidator considers the objection to be not well-founded and declines to amend the list.
- (5) The notice must in either case inform the objector of the effect of rule 7.83.

#### **Application to court for variation of the list**

**7.83.**—(1) If a person (“the objector”) objects to any entry in, or exclusion from, the list of contributories as settled by the liquidator and, notwithstanding notice by the liquidator declining to amend the list, the objector maintains the objection, the objector may apply to the court for an order removing the entry objected to or (as the case may be) otherwise amending the list.

(2) The application must be made within 21 days of the delivery to the applicant of the liquidator's notice under rule 7.82(4).

#### **Variation of, or addition to, the list**

**7.84.** The liquidator may from time to time vary or add to the list of contributories as previously settled by the liquidator, but subject in all respects to the preceding rules in this Chapter.

#### **Costs of applications to vary etc. the list of contributories**

**7.85.** Where a person applies to set aside or vary any act or decision of the liquidator in settling the list of contributories then—

- (a) the liquidator (if other than the official receiver) is not liable for any costs incurred by that person in relation to the application unless the court makes an order to that effect; and
- (b) the official receiver is not personally liable for such costs.

### **CHAPTER 11**

#### **Calls on contributories**

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

#### **Making of calls by the liquidator (sections 150 and 160)**

**7.86.**—(1) Subject as follows the powers relating to the making of calls on contributories are exercisable by the liquidator as an officer of the court.

(2) However as provided by section 160(2) the making of a call requires either the sanction of the liquidation committee or the court's special permission.

### **Sanction of the liquidation committee for making a call**

**7.87.**—(1) Where the liquidator proposes to make a call, and there is a liquidation committee, the liquidator may summon a meeting of the committee for the purpose of obtaining its sanction.

(2) The liquidator must deliver a notice of the meeting to each member of the committee giving at least five business days' notice of the meeting.

(3) The notice must state the purpose of making the call and the proposed amount of the call.

### **Application to court for permission to make a call (sections 150 and 160)**

**7.88.**—(1) Where the liquidator proposes to make a call the liquidator may apply to the court without notice to any other party for permission to make a call on any contributories of the company.

(2) The application must state the amount of the proposed call, and the contributories on whom it is to be made.

(3) The application must be supported by a witness statement accompanied by a schedule.

(4) The witness statement must have the title “Witness statement of liquidator in support of application for call” and must contain—

- (a) identification and contact details for the liquidator;
- (b) identification details for the company;
- (c) the number of persons on the list of contributories settled by the liquidator;
- (d) the total number of shares to which the proposed call relates;
- (e) the statement that in addition to the amount of the assets of the company mentioned in the schedule the liquidator believes a further sum will be required to satisfy the debts and liabilities of the company, and pay the expenses of and incidental to the winding up;
- (f) the additional sum required;
- (g) a statement that in order to provide the additional sum it is necessary to make a call upon the persons on the settled list of contributories, and that as it is probable that some of those contributories will partly or wholly fail to pay the amount of the call, the liquidator believes that it is necessary that a call of a specified amount per share be made in order to realise the amount required;
- (h) the specified amount per share.

(5) The accompanying schedule must show—

- (a) the amount due in respect of debts already proved;
  - (b) the estimated amount of—
    - (i) further liabilities of the company, and
    - (ii) the expenses of the winding up;
  - (c) the total of the amounts referred to in sub-paragraphs (a) and (b); and
  - (d) a list of the assets in hand belonging to the company with their total value.
- (6) The schedule must be verified by a statement of truth made by the liquidator.

### **Order giving permission to make a call**

**7.89.**—(1) The court's order giving permission to make a call must have the title “Order giving permission to make a call” and must contain—

- (a) the name of the court (and hearing centre if applicable) in which the order is made;
- (b) the name and title of the judge making the order;

- (c) identification and contact details for the liquidator;
- (d) identification details for the company;
- (e) an order that the liquidator may make a call of the amount per share specified in the order on the contributories who are specified in the order;
- (f) the amount per share of the call;
- (g) the names of the contributories of the company on whom the liquidator is to make the call;
- (h) an order that each such contributory must on or before the date specified in the order pay to the liquidator of the company the amount due from that contributory in respect of the call; and
- (i) the date of the order.

(2) The court may direct that notice of the order be delivered to the contributories concerned, or to other contributories, or may direct that the notice be publicly advertised.

### **Making and enforcement of the call**

**7.90.**—(1) The liquidator must deliver a notice of the call to each of the contributories concerned.

(2) The notice must contain—

- (a) identification details for the company;
- (b) identification and contact details for the liquidator;
- (c) a statement that a call on the contributories specified in the notice of the amount per share stated in the notice was sanctioned by—
  - (i) a resolution of the liquidation committee of the company passed on the date which is stated in the notice, or
  - (ii) an order of the court named in the notice on the date which is stated in the notice;
- (d) the amount per share of the call;
- (e) the amount or balance due from the contributory to whom the notice is addressed in respect of the call;
- (f) the date by which the sum must be paid;
- (g) a warning to the contributory that, if the required sum is not paid by the date specified in the notice, interest at the rate specified in the notice will be charged on the unpaid amount from that date until payment; and
- (h) the specified annual interest rate.

(3) The notice must be accompanied by a copy of the resolution of the liquidation committee sanctioning the call or of the court's order giving permission as the case may be.

### **Court order to enforce payment of call by a contributory**

**7.91.**—(1) The court may make an order to enforce payment of the amount due from a contributory.

(2) The order must have the title “Order for payment of call due from contributory” and must contain—

- (a) the name of the court (and hearing centre if applicable) in which the order is made;
- (b) identification and contact details for the liquidator who made the application;
- (c) the name and title of the judge making the order;
- (d) identification details for the company;

- (e) the name and postal address of the contributory who is the subject of the order;
- (f) the amount per share of the call;
- (g) an order that the contributory pay the liquidator the sum stated in the order in respect of the call on or before the date stated in the order or within four business days after service of the order whichever is the later;
- (h) an order that the contributory pay the liquidator interest at the rate stated in the order for the period commencing from the date specified in the order to the date of payment;
- (i) an order that the contributory pay the liquidator a stated sum in respect of the liquidator's costs of the application within the same period as the amount of the call must be paid;
- (j) a warning to the contributory that if the required sums are not paid within the time specified in the order further steps will be taken to compel the contributory to comply with the order; and
- (k) the date of the order.

## CHAPTER 12

### Special manager

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

#### **Application of this Chapter and interpretation**

**7.92.** This Chapter applies to applications for the appointment of a special manager by a liquidator and by a provisional liquidator (where one has been appointed), and so references to the liquidator are to be read as including a provisional liquidator.

#### **Appointment and remuneration of special manager (section 177)**

**7.93.—(1)** An application made by the liquidator under section 177 for the appointment of a special manager must be supported by a report setting out the reasons for the application.

(2) The report must include the applicant's estimate of the value of the business or property in relation to which the special manager is to be appointed.

(3) The court's order appointing the special manager must have the title “Order of appointment of special manager” and must contain—

- (a) identification details for the proceedings;
- (b) the name and address of the person who made the application;
- (c) the name and title of the judge making the order;
- (d) the name and address of the proposed special manager;
- (e) the order that the proposed special manager is appointed as special manager of the company;
- (f) details of the special manager's responsibility over the company's business or property;
- (g) the powers to be entrusted to the special manager under section [F28 177(3)];
- (h) the time allowed for the special manager to give the required security for the appointment;
- (i) the duration of the special manager's appointment being one of the following—
  - (i) for a fixed period stated in the order,
  - (ii) until the occurrence of a specified event, or
  - (iii) until the court makes a further order;

- (j) an order that the special manager's remuneration will be fixed from time to time by the court; and
  - (k) the date of the order.
- (4) The appointment of a special manager may be renewed by order of the court.
- (5) The special manager's remuneration will be fixed from time to time by the court.
- (6) The acts of the special manager are valid notwithstanding any defect in the special manager's appointment or qualifications.

#### Textual Amendments

**F28** Word in [rule 7.93\(3\)\(g\)](#) substituted (6.4.2017) by [The Insolvency \(England and Wales\) \(Amendment\) Rules 2017 \(S.I. 2017/366\)](#), rules 1, **21**

### Security

**7.94.**—(1) The appointment of the special manager does not take effect until the person appointed has given (or, if the court allows, undertaken to give) security to the applicant for the appointment.

(2) A person appointed as a special manager may give security either specifically for a particular winding up, or generally for any winding up in relation to which that person may be employed as special manager.

(3) The amount of the security must be not less than the value of the business or property in relation to which the special manager is appointed, as estimated in the applicant's report which accompanied the application for appointment.

(4) When the special manager has given security to the applicant that person must file with the court a certificate as to the adequacy of the security.

(5) The cost of providing the security must be paid in the first instance by the special manager; but—

- (a) where a winding-up order is not made, the special manager is entitled to be reimbursed out of the property of the company, and the court may order accordingly; and
- (b) where a winding-up order is made, the special manager is entitled to be reimbursed as an expense of the winding up in the prescribed order of priority.

### Failure to give or keep up security

**7.95.**—(1) If the special manager fails to give the required security within the time allowed for that purpose by the order of appointment, or any extension of that time that may be allowed, the liquidator must report the failure to the court, which may discharge the order appointing the special manager.

(2) If the special manager fails to keep up the security, the liquidator must report the failure to the court, which may remove the special manager, and make such order as it thinks just as to costs.

(3) If the court discharges the order appointing the special manager or makes an order removing the special manager, the court must give directions as to whether any, and if so what, steps should be taken for the appointment of another special manager.

### Accounting

**7.96.**—(1) The special manager must produce accounts, containing details of the special manager's receipts and payments, for the approval of the liquidator.

- (2) The accounts must be for—
- (a) each three month period for the duration of the special manager's appointment; or
  - (b) any shorter period ending with the termination of the special manager's appointment.
- (3) When the accounts have been approved, the special manager's receipts and payments must be added to those of the liquidator.

### **Termination of appointment**

- 7.97.**—(1) The special manager's appointment terminates—
- (a) if the winding-up petition is dismissed; or
  - (b) in a case where a provisional liquidator was appointed under section 135, if the appointment is discharged without a winding-up order having been made.
- (2) If the liquidator is of the opinion that the employment of the special manager is no longer necessary or beneficial for the company, the liquidator must apply to the court for directions, and the court may order the special manager's appointment to be terminated.
- (3) The liquidator must make the same application if the creditors decide that the appointment should be terminated.

## **CHAPTER 13**

### **Public examination of company officers and others (section 133)**

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

#### **Applications relating to promoters, past managers etc. (section 133(1)(c))**

- 7.98.**—(1) An application under section 133(1) for the public examination of a person falling within paragraph (c) of subsection (1) (promoters, past managers, etc.) must be accompanied by a report by the official receiver indicating—
- (a) the grounds on which the official receiver thinks the person is within that paragraph; and
  - (b) whether the official receiver thinks it is likely that the order can be served on the person at a known address and, if so, by what means.
- (2) If the official receiver thinks that there is no reasonable certainty that service at a known address will be effective, the court may direct that the order be served by some means other than, or in addition to, service in such manner.

#### **Request by a creditor for a public examination (section 133(2))**

- 7.99.**—(1) A request made under section 133(2) by a creditor to the official receiver for the public examination of a person must contain—
- (a) identification details for the company;
  - (b) the name and postal address of the creditor;
  - (c) the name and postal address of the proposed examinee;
  - (d) a description of the relationship which the proposed examinee has, or has had, with the company;
  - (e) a request by the creditor to the official receiver to apply to the court for a public examination of the proposed examinee under section 133(2);
  - (f) the amount of the creditor's claim in the winding up;

- (g) a statement that the total amount of the creditor's and any concurring creditors' claims is believed to represent not less than one-half in value of the debts of the company;
  - (h) a statement that the creditor understands the requirement to deposit with the official receiver such sum as the official receiver may determine to be appropriate by way of security for the expenses of holding a public examination; and
  - (i) a statement that the creditor believes that a public examination is required for the reason stated in the request.
- (2) The request must be authenticated and dated by the creditor.
- (3) The request must be accompanied by—
- (a) a list of the creditors concurring with the request and the amounts of their respective claims in the winding up, with their respective values; and
  - (b) from each concurring creditor, confirmation of the creditor's concurrence.

### **Request by a contributory for a public examination**

**7.100.**—(1) A request made under section 133(2) by a contributory to the official receiver for the public examination of a person must contain—

- (a) identification details for the company;
  - (b) the name and postal address of the contributory;
  - (c) the name and postal address of the proposed examinee;
  - (d) a description of the relationship which the proposed examinee has, or has had, with the company;
  - (e) a request by the contributory to the official receiver to apply to the court for a public examination of the proposed examinee under section 133(2);
  - (f) the number of shares held in the company by the contributory;
  - (g) the number of votes to which the contributory is entitled;
  - (h) a statement that the total amount of the contributory's and any concurring contributories' shares and votes is believed to represent not less than three-quarters in value of the company's contributories;
  - (i) a statement that the contributory understands the requirement to deposit with the official receiver such sum as the official receiver may determine to be appropriate by way of security for the expenses of holding a public examination; and
  - (j) a statement that the contributory believes that a public examination is required for the reason specified in the request.
- (2) The request must be authenticated and dated by the contributory.
- (3) The request must be accompanied by—
- (a) a list of the contributories concurring with the request and the number of shares and votes each holds in the company; and
  - (b) from each concurring contributory, confirmation of the concurrence and of the number of shares and votes held in the company.

### **Further provisions about requests by a creditor or contributory for a public examination**

**7.101.**—(1) A request by a creditor or contributory for a public examination does not require the support of concurring creditors or contributories if the requisitioning creditor's debt or, as the case may be, requisitioning contributory's shares, is sufficient alone under section 133(2).

(2) Before the official receiver makes the requested application, the creditor or contributory 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).

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

- (a) within 28 days of receiving the creditor's or contributory's request (if no security is required under paragraph (2)); or
- (b) within 28 days of the creditor or contributory (as the case may be) depositing the required security.

(4) 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.

(5) If the application for an order under paragraph (4) is made without notice to any other party and the court makes such an order then the official receiver must deliver a notice of the order as soon as reasonably practicable to the creditors or contributories who requested the examination.

(6) If the court dismisses the official receiver's application under paragraph (4), the official receiver must make the application under section 133(2) as soon as reasonably practicable.

### **Order for public examination**

**7.102.**—(1) An order for a public examination must have the title “Order for Public Examination” and must contain the following—

- (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 person to be examined;
- (d) the venue for the public examination;
- (e) the order that the person named in the order must attend the specified venue for the purpose of being publicly examined;
- (f) the date of the order; and
- (g) a warning to the person to be examined that failure without reasonable excuse to attend the public examination at the time and place specified in the order will make the person liable to be arrested without further notice under section 134(2); and that the person will also be guilty of contempt of court under section 134(1) and be liable to be committed to prison or fined.

(2) The official receiver must serve a copy of the order on the person to be examined as soon as reasonably practicable after the order is made.

(3) The court must rescind an order for the public examination of a person who was said to fall within section 133(1)(c) if that person satisfies the court that it is not so.

[Note: rule 81.9 (as amended) of the CPR requires a warning as mentioned in paragraph (1)(g) to be displayed prominently on the front of the order.]

### **Notice of the public examination**

**7.103.**—(1) The official receiver must give at least 14 days' notice of the public examination to—

- (a) the liquidator (if a liquidator has been nominated or appointed);
- (b) the special manager (if a special manager has been appointed); and
- (c) the creditors and all the contributories of the company who are known to the official receiver (subject to any contrary direction of the court).



(2) Where the official receiver thinks fit additional notice of the order may be given by gazetting the notice.

(3) The official receiver may in addition to gazetting the notice advertise it in such other manner as the official receiver thinks fit;

(4) The notice must state—

- (a) the purpose of the public examination; and
- (b) the venue.

(5) Unless the court directs otherwise, the official receiver must not give notice under paragraph (2) of an order relating to a person falling within section 133(1)(c) until at least five business days have elapsed since the examinee was served with the order.

### **Examinee unfit for examination**

**7.104.**—(1) Where the examinee is a person who lacks capacity within the meaning of the Mental Capacity Act 2005<sup>M15</sup> or is unfit to undergo or attend for public examination, the court may—

- (a) stay the order for the examinee's public examination; or
- (b) order that it is to be conducted in such manner and at such place as it thinks just.

(2) The applicant for an order under paragraph (1) must be—

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

(3) Where the application is made by a person other than the official receiver, then—

- (a) the application must, unless the examinee is a person who lacks capacity within the meaning of the Mental Capacity Act 2005, be supported by the witness statement of a registered medical practitioner as to the examinee's mental and physical condition;
- (b) at least five business days' notice of the application must be given to the official receiver and the liquidator (if other than the official receiver); and
- (c) before any order is made on the application, the applicant must deposit with the official receiver such sum as the latter certifies to be necessary for the additional expenses of an examination.

(4) An order must contain—

- (a) identification details for the proceedings;
- (b) the name and postal address of the applicant;
- (c) the name and title of the judge making the order;
- (d) the capacity in which the applicant (other than the official receiver) made the application;
- (e) the name and postal address of the examinee;
- (f) the date of the order for the examinee's public examination (“the original order”);
- (g) a statement that the court is satisfied that the examinee specified in the order lacks capacity within the meaning of the Mental Capacity Act 2005 to manage and administer the examinee's property and affairs or is unfit to undergo a public examination;
- (h) an order that—
  - (i) the original order is to be stayed on the grounds that the examinee is unfit to undergo a public examination, or

(ii) the original order is varied (as specified in this order) on the grounds that the examinee is unfit to attend the public examination fixed by the original order; and

(i) the date of the order.

(5) Where a person other than the official receiver makes the application, 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 as an expense of the winding up.

(6) 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.

#### **Marginal Citations**

M15 2005 c.9.

### **Procedure at public examination**

**7.105.**—(1) At the public examination the examinee must—

- (a) be examined on oath; and
- (b) answer all the questions which the court puts, or allows to be put.

(2) A person allowed by section 133(4) to question the examinee may—

- (a) with the approval of the court appear by an appropriately qualified legal representative; or
- (b) in writing authorise another person to question the examinee on that person's behalf.

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

(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 examinee in the course of the public examination.

(6) If criminal proceedings have been instituted against the examinee, and the court is of the opinion that continuing 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 (3) to be displayed prominently on the front of the order.]

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

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

- (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.

(3) An order adjourning the public examination to a fixed date must contain a warning to the examinee that failure without reasonable excuse to attend the public examination at the time and

place specified in the order will make the examinee liable to be arrested without further notice under section 134(2); and that the examinee will also be guilty of contempt of court under section 134(1) and be liable to be committed to prison or fined.

(4) Where an application to resume an examination is made by the examinee, the court may grant it on terms that the examinee must pay the expenses of giving the notices required by paragraph (2) and that, before a venue for the resumed public examination is fixed, the examinee must deposit with the official receiver such sum as the official receiver considers necessary to cover those expenses.

### **Expenses of examination**

**7.107.**—(1) Where a public examination of the examinee has been ordered by the court on a request by a creditor under rule 7.99 or by a contributory under rule 7.100, the court may order that some or all of the expenses of the examination are to be paid out of the deposit required under those rules, instead of as an expense of the winding up.

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

## **CHAPTER 14**

### **Priority of payment of costs and expenses, etc.**

#### **General rule as to priority**

**7.108.**—(1) All fees, costs, charges and other expenses incurred in the course of the winding up are to be treated as expenses of the winding up.

[<sup>F29</sup>(1A) The costs of an application by the liquidator under rule 1A.27 are to be treated as an expense of the winding up unless the court orders otherwise.]

[<sup>F30</sup>(2) The expenses of the winding up are payable out of—

- (a) assets of the company available for the payment of general creditors, including—
  - (i) proceeds of any legal action which the liquidator has power to bring in the liquidator's own name or in the name of the company;
  - (ii) proceeds arising from any award made under any arbitration or other dispute resolution procedure which the liquidator has power to bring in the liquidator's own name or in the name of the company;
  - (iii) any payments made under any compromise or other agreement intended to avoid legal action or recourse to arbitration or to any other dispute resolution procedure;
  - (iv) payments made as a result of an assignment or a settlement of any such action, arrangement or procedure in lieu of or before any judgment being given or award being made; and
- (b) subject as provided in rules 7.111 to 7.116, property comprised in or subject to a floating charge created by the company.]

(3) The expenses associated with the prescribed part must be paid out of the prescribed part.

(4) Subject as provided in [<sup>F31</sup>paragraphs (5) and (6), rule 7.108A, and] rules 7.112 to 7.116, the expenses are payable in the following order of priority—

- (a) the following expenses, which rank equally in order of priority—
  - (i) expenses that are properly chargeable or incurred by the provisional liquidator in carrying out the functions conferred on the provisional liquidator by the court,
  - (ii) expenses that are properly chargeable or incurred by the official receiver or the liquidator in preserving, realising or getting in any of the assets of the company or otherwise in the preparation, conduct or assignment of any legal proceedings,

- arbitration or other dispute resolution procedures, which the official receiver or liquidator has power to bring in the official receiver's or liquidator's own name or bring or defend in the name of the company or in the preparation or conduct of any negotiations intended to lead or leading to a settlement or compromise of any legal action or dispute to which the proceedings or procedures relate,
- (iii) expenses that relate to the employment of a shorthand writer, if appointed by an order of the court made at the instance of the official receiver in connection with an examination, and
  - (iv) expenses that are incurred in holding a hearing under rule 7.104 (examinee unfit) where the application for it was made by the official receiver;
- (b) any other expenses incurred or disbursements made by the official receiver or under the official receiver's authority, including those incurred or made in carrying on the business of the company;
  - (c) the fees payable under any order made under section 414 or section 415A <sup>M16</sup>, including those payable to the official receiver (other than the fee referred to in sub-paragraph (d)), and any remuneration payable to the official receiver under general regulations;
  - (d) the fee payable under any order made under section 414 for the performance by the official receiver of the general duties of the official receiver and any repayable sum deposited under any such order as security for the fee;
  - (e) the cost of any security provided by a provisional liquidator, liquidator or special manager in accordance with the Act or these Rules;
  - (f) the remuneration of the provisional liquidator (if any);
  - (g) any sum deposited on an application for the appointment of a provisional liquidator;
  - (h) the costs of the petitioner, and of any person appearing on the petition whose costs are allowed by the court;
  - (i) the remuneration of the special manager (if any);
  - (j) any amount payable to a person employed or authorised, under Chapter 6 of this Part, to assist in the preparation of a statement of affairs or of accounts;
  - (k) any allowance made, by order of the court, in respect of costs on an application for release from the obligation to submit a statement of affairs, or for an extension of time for submitting such a statement;
  - (l) the costs of employing a shorthand writer in any case other than one appointed by an order of the court at the instance of the official receiver in connection with an examination;
  - (m) any necessary disbursements by the liquidator in the course of the administration of the winding up (including any <sup>F32</sup>... expenses incurred by members of the liquidation committee or their representatives and allowed by the liquidator under rule 17.24, but not including any payment of corporation tax in circumstances referred to in sub-paragraph (p));
  - (n) the remuneration or emoluments of any person who has been employed by the liquidator to perform any services for the company, as required or authorised by or under the Act or these Rules;
  - (o) the remuneration of the liquidator, up to an amount not exceeding that which is payable under Schedule 11 (determination of insolvency office-holder's remuneration);
  - (p) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company (irrespective of the person by whom the realisation is effected);
  - (q) the balance, after payment of any sums due under sub-paragraph (o) above, of any remuneration due to the liquidator; and

- (r) any other expenses properly chargeable by the liquidator in carrying out the liquidator's functions in the winding up.

[<sup>F33</sup>(5) This paragraph applies where—

- (a) a moratorium has been in force for a company under Part A1 of the Act,
- (b) proceedings for the winding up of the company are begun before the end of the period of 12 weeks beginning with the day after the end of the moratorium, and
- (c) there are claims in respect of any prescribed fees or expenses of the official receiver which, in accordance with section 174A(2), fall to be paid in preference to all other claims.

(6) Where paragraph (5) applies, then, in consequence of those claims of the official receiver falling to be paid in preference to all other claims by virtue of section 174A(2), the order of priority referred to in paragraph (4) is modified as follows—

- (a) sub-paragraph (a)(ii) is omitted in relation to any expenses chargeable or incurred by the official receiver,
- (b) sub-paragraph (a)(iii) and (iv) are omitted, and
- (c) sub-paragraphs (b) to (d) are omitted in relation to any expenses incurred by, or fee payable to, the official receiver.]

#### Textual Amendments

- F29** Rule 7.108(1A) inserted (1.10.2021) by The Insolvency (England and Wales) (No.2) (Amendment) Rules 2021 (S.I. 2021/1028), rules 1, **41(2)** (with rules 4, 5)
- F30** Rule 7.108(2) substituted (6.4.2017) by The Insolvency (England and Wales) (Amendment) Rules 2017 (S.I. 2017/366), rules 1, **26**
- F31** Words in rule 7.108(4) inserted (1.10.2021) by The Insolvency (England and Wales) (No.2) (Amendment) Rules 2021 (S.I. 2021/1028), rules 1, **41(3)** (with rules 4, 5)
- F32** Words in rule 7.108(4)(m) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 83** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
- F33** Rule 7.108(5)(6) inserted (1.10.2021) by The Insolvency (England and Wales) (No.2) (Amendment) Rules 2021 (S.I. 2021/1028), rules 1, **41(4)** (with rules 4, 5)

#### Modifications etc. (not altering text)

- C4** Rule 7.108 applied (23.4.2019) by S.I. 2004/353, **reg. 30(1)** (as amended by The Financial Services and Markets (Insolvency) (Amendment of Miscellaneous Enactments) Regulations 2019 (S.I. 2019/755), regs. 1, **4(8)(a)**)
- C5** Rule 7.108 applied (with modifications) (23.4.2019) by S.I. 2008/346, **Sch. 2 para. 7(2)** (as amended by The Financial Services and Markets (Insolvency) (Amendment of Miscellaneous Enactments) Regulations 2019 (S.I. 2019/755), regs. 1, **7(2)(b)**)

#### Marginal Citations

- M16** Section 415A was inserted by section 270 of the [Enterprise Act 2002 \(c.40\)](#) and is amended by section 17(5) and paragraph 22(5) of Schedule 6 to the [Deregulation Act 2015 \(c.20\)](#) and sections 139(2) and 140(2) of the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

#### [<sup>F34</sup>Priority of moratorium debts in subsequent winding up

**7.108A.**—(1) Where section 174A applies the moratorium debts and priority pre-moratorium debts mentioned in subsection (2)(b) of that section are payable in the following order of priority—

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Insolvency (England and Wales) Rules 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (a) amounts payable in respect of goods or services supplied during the moratorium under a contract where, but for section 233B(3) or (4), the supplier would not have had to make that supply,
- (b) wages or salary arising under contract of employment,
- (c) other debts or other liabilities apart from the monitor's remuneration or expenses, and
- (d) the monitor's remuneration or expenses.]

#### Textual Amendments

**F34** Rule 7.108A inserted (1.10.2021) by [The Insolvency \(England and Wales\) \(No.2\) \(Amendment\) Rules 2021 \(S.I. 2021/1028\)](#), rules 1, **42** (with rules 4, 5)

### Winding up commencing as voluntary

**7.109.** Where the winding up by the court immediately follows a voluntary winding up (whether members' voluntary or creditors' voluntary), such remuneration of the voluntary liquidator and costs and expenses of the voluntary winding up as the court may allow are to rank in priority with the expenses specified in rule 7.108(4)(a).

#### Modifications etc. (not altering text)

**C6** Rule 7.109 applied (with modifications) (23.4.2019) by [S.I. 2008/346, Sch. 2 para. 7\(2\)](#) (as amended by [The Financial Services and Markets \(Insolvency\) \(Amendment of Miscellaneous Enactments\) Regulations 2019 \(S.I. 2019/755\)](#), regs. 1, **7(2)(b)**)

### Saving for powers of the court (section 156)

**7.110.**—(1) The priorities laid down by rules 7.108 and 7.109 are subject to the power of the court to make orders under section 156, where the assets are insufficient to satisfy the liabilities.

(2) Nothing in those rules—

- (a) applies to or affects the power of any court, in proceedings by or against the company, to order costs to be paid by the company, or the liquidator; or
- (b) affects the rights of any person to whom such costs are ordered to be paid.

## CHAPTER 15

### Litigation expenses and property subject to a floating charge

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

### Interpretation

**7.111.** In this Chapter—

“approval” and “authorisation” respectively mean—

- (a) where yet to be incurred, the approval, and
  - (b) where already incurred, the authorisation,
- of expenses specified in section 176ZA(3) <sup>M17</sup>;

“the creditor” means—

(za) [<sup>F35</sup>a creditor in respect of a debt which is a moratorium debt or a priority pre-moratorium debt within the meaning given by section 174A;]

- (a) a preferential creditor of the company; or
- (b) a holder of a debenture secured by, or a holder of, a floating charge created by the company;

“legal proceedings” means—

- (a) proceedings under sections 212, 213, 214<sup>M18</sup>, 238, 239, 244 and 423 and any arbitration or other dispute resolution proceedings invoked for purposes corresponding to those to which the sections relate and any other proceedings, including arbitration or other dispute resolution procedures, which a liquidator has power to bring in the liquidator's own name for the purpose of preserving, realising, or getting in any of the assets of the company;
- (b) legal actions and proceedings, arbitration or any other dispute resolution procedures which a liquidator has power to bring or defend in the name of the company; and
- (c) negotiations intended to lead or leading to a settlement or compromise of any action, proceeding or procedure to which sub-paragraphs (a) or (b) relate;

“litigation expenses” means expenses of a winding up which—

- (a) are properly chargeable or incurred in the preparation or conduct of any legal proceedings; and
- (b) as expenses in the winding up, exceed, or in the opinion of the liquidator are likely to exceed (and only in so far as they exceed or are likely to exceed), in the aggregate £5,000; and

“specified creditor” means a creditor identified under rule 7.113(2).

#### Textual Amendments

**F35** Words in rule 7.111 inserted (1.10.2021) by [The Insolvency \(England and Wales\) \(No.2\) \(Amendment\) Rules 2021 \(S.I. 2021/1028\)](#), rules 1, **43** (with rules 4, 5)

#### Marginal Citations

**M17** Section 176ZA was inserted by section 1282 of the [Companies Act 2006 \(c.46\)](#).

**M18** Section 214(2)(b) and 3 are amended and (6A) is inserted by section 117(3) of the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

### Priority of litigation expenses

**7.112.** Litigation expenses will not have the priority provided by section 176ZA over any claims to property comprised in or subject to a floating charge created by the company and must not be paid out of any such property unless and until approved or authorised in accordance with rules 7.113 to 7.116.

### Requirement for approval or authorisation of litigation expenses

**7.113.**—(1) Subject to rules 7.114 to 7.116 either paragraphs (3) and (4) apply or paragraph (5) applies where, in the course of winding up a company, the liquidator—

- (a) ascertains that property is comprised in or subject to a floating charge;
- (b) has personally instituted or proposes to institute or continue legal proceedings or is in the process of defending or proposes to defend any legal proceeding brought or likely to be brought against the company; and

- (c) before or at any stage in those proceedings, is of the opinion that—
- (i) the assets of the company available for payment of general creditors are or will be insufficient to pay litigation expenses, and
  - (ii) in order to pay litigation expenses the liquidator will have to have recourse to property comprised in or subject to a floating charge created by the company.
- (2) As soon as reasonably practicable after the date on which the liquidator forms the opinion referred to in paragraph (1), the liquidator must identify the creditor who, in the liquidator's opinion at that time—
- (a) has a claim to property comprised in or subject to a floating charge created by the company; and
  - (b) taking into account the value of that claim and any subsisting property then comprised in or secured by such a charge, appears to the liquidator to be the creditor most immediately likely of any persons having such claims to receive some payment in respect of a claim but whose claim would not be paid in full.
- (3) The liquidator must request from the specified creditor the approval or authorisation of such amount for litigation expenses as the liquidator thinks fit.
- (4) Where the liquidator identifies two or more specified creditors, the liquidator must seek from each of them approval or authorisation of such amount of litigation expenses as the liquidator thinks fit, apportioned between them (“the apportioned amount”) according to the value of the property to the extent covered by their charges.
- (5) For so long as the conditions specified in paragraph (1) subsist, the liquidator may, in the course of a winding up, make such further requests to the specified creditor or creditors for approval or authorisation of such further amount for litigation expenses as the liquidator thinks fit to be paid out of property comprised in or subject to a floating charge created by the company, taking into account any amount for litigation expenses previously approved or authorised and the value of the property comprised in or subject to the floating charge.

### **Requests for approval or authorisation**

- 7.114.**—(1) All requests made by the liquidator for approval or authorisation must include the following—
- (a) a statement describing the nature of the legal proceedings, including, where relevant, the statutory provision under which proceedings are or are to be brought and the grounds upon which the liquidator relies;
  - (b) a statement specifying the amount or apportioned amount of litigation expenses for which approval or authorisation is sought (“the specified amount”);
  - (c) notice that approval or authorisation or other reply to the request must be made in writing within 28 days from the date of its being received (“the specified time limit”); and
  - (d) a statement explaining the consequences of a failure to reply within the specified time limit.
- (2) Where anything in paragraph (1) requires the inclusion of any information, the disclosure of which could be seriously prejudicial to the winding up of the company, the liquidator may—
- (a) exclude such information from any of the above statements or notices if accompanied by a statement to that effect; or
  - (b) include it on terms—
    - (i) that bind the creditor to keep the information confidential, and



(ii) that include an undertaking on the part of the liquidator to apply to the court for an order that so much of the information as may be kept in the files of the court, is not be open to public inspection.

(3) The creditor may within the specified time limit apply to the liquidator in writing for such further particulars as is reasonable and in such a case, the time limit specified in paragraph (1)(c) will apply from the date of the creditor's receipt of the liquidator's response to any such request.

(4) Where the liquidator requires the approval or authorisation of two or more creditors, the liquidator must deliver a request to each creditor, containing the matters listed in paragraph (1) and also giving—

- (a) the number of creditors concerned;
- (b) the total value of their claims, or if not known, as it is estimated to be by the liquidator immediately before delivering any such request; and

[<sup>F36</sup>(c) notice to—

- (i) each preferential creditor, and
- (ii) each creditor of the kind described in rule 7.111(za),

that approval or authorisation of the specified amount will be taken to be given where a majority in value of those creditors referred to in sub-paragraphs (i) and (ii) who respond within the specified time limit are in favour of it; or]

- (d) where rule 7.113 applies, notice to the specified creditors that the amount of litigation expenses will be apportioned between them in accordance with that rule and notice of the value of the portion allocated to, and the identity of, the specified creditors affected by that apportionment.

#### Textual Amendments

**F36** Rule 7.114(4)(c) substituted (1.10.2021) by [The Insolvency \(England and Wales\) \(No.2\) \(Amendment\) Rules 2021 \(S.I. 2021/1028\)](#), rules 1, 44 (with rules 4, 5)

#### Grant of approval or authorisation

**7.115.**—(1) Where the liquidator fails to include in the liquidator's request any one of the matters, statements or notices required by paragraph (1) or paragraphs (1) and (4), of rule 7.114, the request for approval or authorisation will be treated as not having been made.

(2) Subject to paragraphs (3), (4) and (5), approval or authorisation will be taken to have been given where the specified amount has been requested by the liquidator, and—

- (a) that amount is approved or authorised within the specified time limit; or
- (b) a different amount is approved or authorised within the specified time limit and the liquidator considers it sufficient.

[<sup>F37</sup>(3) Paragraph (3A) applies where the liquidator requires the approval or authorisation of—

- (a) two or more—
  - (i) preferential creditors, or
  - (ii) creditors of the kind described in rule 7.111(za); or
- (b) one or more preferential creditors together with one or more creditors of the kind described in rule 7.111(za).]

[<sup>F38</sup>(3A) Where this paragraph applies approval or authorisation will be taken to be given where a majority in value of those creditors referred to in sub-paragraphs (3)(a)(i) or (ii) or (3)(b) (as the case may be) who respond within the specified time limit approve or authorise—

- (a) the specified amount; or
- (b) a different amount which the liquidator considers sufficient.]

[<sup>F39</sup>(4) Where a majority in value of—

- (a) two or more—
  - (i) preferential creditors, or
  - (ii) creditors of the kind described in rule 7.111(za); or
- (b) one or more preferential creditors together with one or more creditors of the kind described in rule 7.111(za),

propose an amount other than that specified by the liquidator, they will be taken to have approved or authorised an amount equal to the lowest of the amounts so proposed.]

(5) In any case in which there is no response in writing within the specified time limit to the liquidator's request—

- (a) at all; or
- (b) at any time following the liquidator's provision of further particulars under rule 7.114(3);

the liquidator's request will be taken to have been approved or authorised from the date of the expiry of that time limit.

#### Textual Amendments

- F37** Rule 7.115(3) substituted (1.10.2021) by [The Insolvency \(England and Wales\) \(No.2\) \(Amendment\) Rules 2021 \(S.I. 2021/1028\)](#), rules 1, **45(2)** (with rules 4, 5)
- F38** Rule 7.115(3A) inserted (1.10.2021) by [The Insolvency \(England and Wales\) \(No.2\) \(Amendment\) Rules 2021 \(S.I. 2021/1028\)](#), rules 1, **45(3)** (with rules 4, 5)
- F39** Rule 7.115(4) substituted (1.10.2021) by [The Insolvency \(England and Wales\) \(No.2\) \(Amendment\) Rules 2021 \(S.I. 2021/1028\)](#), rules 1, **45(4)** (with rules 4, 5)

#### Application to the court by the liquidator

**7.116.**—(1) In the circumstances specified below the court may, upon the application of the liquidator, approve or authorise such amount of litigation expenses as it thinks just.

(2) Except where paragraph (3) applies, the liquidator may apply to the court for an order approving or authorising an amount for litigation expenses only where the specified creditor (or, if more than one, any of them)—

- (a) is or is intended to be a defendant in the legal proceedings in relation to which the litigation expenses have been or are to be incurred; or
- (b) has been requested to approve or authorise the amount specified under rule 7.114(1)(b) and has—
  - (i) declined to approve or authorise, as the case may be, the specified amount,
  - (ii) approved or authorised an amount which is less than the specified amount and which lesser amount the liquidator considers insufficient, or
  - (iii) made such application for further particulars or other response to the liquidator's request as is, in the liquidator's opinion, unreasonable.

(3) Where the liquidator thinks that circumstances are such that the liquidator requires urgent approval or authorisation of litigation expenses, the liquidator may apply to the court for approval or authorisation either—

- (a) without seeking approval or authorisation from the specified creditor; or
- (b) if sought, before the expiry of the specified time limit.

(4) The court may grant such application for approval or authorisation—

- (a) if the liquidator satisfies the court of the urgency of the case; and
- (b) subject to such terms and conditions as the court thinks just.

(5) The liquidator must, at the same time as making any application to the court under this rule, deliver copies of it to the specified creditor, unless the court orders otherwise.

(6) The specified creditor (or, if more than one, any of them) is entitled to be heard on any such application unless the court orders otherwise.

(7) The court may grant approval or authorisation subject to such terms and conditions as it may think just, including terms and conditions relating to the amount or nature of the litigation expenses and as to any obligation to make further applications to the court under this rule.

(8) The costs of the liquidator's application under this rule, including the costs of any specified creditor appearing or represented on it, will be an expense of the winding up unless the court orders otherwise.

## CHAPTER 16

### MISCELLANEOUS RULES

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

#### *Sub-division A: Return of capital*

#### **Application to court for order authorising return of capital**

**7.117.**—(1) This rule applies where the liquidator intends to apply to the court for an order authorising a return of capital.

(2) The application must be accompanied by a list of the persons to whom the return is to be made.

(3) The list must include the same details of those persons as appears in the settled list of contributories, with any necessary alterations to take account of matters after settlement of the list, and the amount to be paid to each person.

(4) Where the court makes an order authorising the return, it must deliver a sealed copy of the order to the liquidator.

#### **Procedure for return**

**7.118.**—(1) The liquidator must inform each person to whom a return is made of the rate of return per share, and whether it is expected that any further return will be made.

(2) Any payments made by the liquidator by way of the return may be delivered by post, unless for any reason another method of making the payment has been agreed with the payee.

---

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Insolvency (England and Wales) Rules 2016*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

---

*Sub-division B: Dissolution after winding up*

**Secretary of State's directions under sections 203 and 205 and appeal**

- 7.119.**—(1) This rule applies where the Secretary of State gives a direction under—
- (a) section 203 (where official receiver applies to the registrar of companies for a company's early dissolution); or
  - (b) section 205<sup>M19</sup> (application by interested person for postponement of dissolution).
- (2) The Secretary of State must deliver the direction to the applicant for it.
- (3) The applicant must deliver a copy of the direction to the registrar of companies, to comply with section 203(5) or, as the case may be, section 205(6).
- (4) Following an appeal under section 203(4) or 205(4) (against a decision of the Secretary of State under the applicable section) the court must deliver a sealed copy of its order to the person in whose favour the appeal was determined.
- (5) That person must deliver a copy to the registrar of companies to comply with section 203(5) or, as the case may be, section 205(6).

**Marginal Citations**

**M19** Section 205 is amended by the substitution of subsection (1)(a) and the amendment of subsection (2) by paragraph 51 of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

**Changes to legislation:**

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Insolvency (England and Wales) Rules 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- rule 16.01-16.07 applied (with modifications) by [S.I. 2024/229 rule 5138139Sch.](#)
- rule 16.09 applied (with modifications) by [S.I. 2024/229 rule 5140Sch.](#)