STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE SECOND GROUP OF PARTS

PART 6

BANKRUPTCY

CHAPTER 1

THE STATUTORY DEMAND

Form and content of statutory demand

6.1.—(1) A statutory demand under section 268 must be dated, and be signed either by the creditor himself or by a person stating himself to be authorised to make the demand on the creditor's behalf.

(2) The statutory demand must specify whether it is made under section 268(1) (debt payable immediately) or section 268(2) (debt not so payable).

(3) The demand must state the amount of the debt, and the consideration for it (or, if there is no consideration, the way in which it arises) and—

(a) if made under section 268(1) and founded on a judgment or order of a court, it must give details of the judgment or order, and

(b) if made under section 268(2), it must state the grounds on which it is alleged that the debtor appears to have no reasonable prospect of paying the debt.

(4) If the amount claimed in the demand includes—

(a) any charge by way of interest not previously notified to the debtor as a liability of his, or

(b) any other charge accruing from time to time,

the amount or rate of the charge must be separately identified, and the grounds on which payment of it is claimed must be stated.

In either case the amount claimed must be limited to that which has accrued due at the date of the demand.

(5) If the creditor holds any security in respect of the debt, the full amount of the debt shall be specified, but—

(a) there shall in the demand be specified the nature of the security, and the value which the creditor puts upon it as at the date of the demand, and

(b) the amount of which payment is claimed by the demand shall be the full amount of the debt, less the amount specified as the value of the security.

Information to be given in statutory demand

6.2.—(1) The statutory demand must include an explanation to the debtor of the following matters—

(a) the purpose of the demand, and the fact that, if the debtor does not comply with the demand, bankruptcy proceedings may be commenced against him;

(b) the time within which the demand must be complied with, if that consequence is to be avoided;

(c) the methods of compliance which are open to the debtor; and

(d) his right to apply to the court for the statutory demand to be set aside.

(2) The demand must specify one or more named individuals with whom the debtor may, if he wishes, enter into communication with a view to securing or compounding for the debt to the satisfaction of the creditor or (as the case may be) establishing to the creditor's satisfaction that there is a reasonable prospect that the debt will be paid when it falls due.

In the case of any individual so named in the demand, his address and telephone number (if any) must be given.

Requirements as to service

6.3.—(1) Rule 6.11 in Chapter 2 below has effect as regards service of the statutory demand, and proof of that service by affidavit to be filed with a bankruptcy petition.

(2) The creditor is, by virtue of the Rules, under an obligation to do all that is reasonable for the purpose of bringing the statutory demand to the debtor's attention and, if practicable in the particular circumstances, to cause personal service of the demand to be effected.

(3) Where the statutory demand is for payment of a sum due under a judgment or order of any court and the creditor knows, or believes with reasonable cause—

(a) that the debtor has absconded or is keeping out of the way with a view to avoiding service, and

(b) there is no real prospect of the sum due being recovered by execution or other process,

the demand may be advertised in one or more newspapers; and the time limited for compliance with the demand runs from the date of the advertisement's appearance or (as the case may be) its first appearance.

Application to set aside statutory demand

6.4.—(1) The debtor may, within the period allowed by this Rule, apply to the appropriate court for an order setting the statutory demand aside.

That period is 18 days from the date of the service on him of the statutory demand or, where the demand is advertised in a newspaper pursuant to Rule 6.3, from the date of the advertisement's appearance or (as the case may be) its first appearance.

(2) Where the creditor issuing the statutory demand is a Minister of the Crown or a Government Department, and—

(a) the debt in respect of which the demand is made, or a part of it equal to or exceeding the bankruptcy level (within the meaning of section 267, is the subject of a judgment or order of any court, and

(b) the statutory demand specifies the date of the judgment or order and the court in which it was obtained, but indicates the creditor's intention to present a bankruptcy petition against the debtor in the High Court,

the appropriate court under this Rule is the High Court; and in any other case it is that to which the debtor would, in accordance with paragraphs (1) and (2) of Rule 6.40 in Chapter 3 below, present his own bankruptcy petition.

(3) As from (inclusive) the date on which the application is filed in court, the time limited for compliance with the statutory demand ceases to run, subject to any order of the court under Rule 6.5(6).

(4) The debtor's application shall be supported by an affidavit—

(a) specifying the date on which the statutory demand came into his hands, and

(b) stating the grounds on which he claims that it should be set aside.

The affidavit shall have exhibited to it a copy of the statutory demand.

Hearing of application to set aside

6.5.—(1) On receipt of an application under Rule 6.4, the court may, if satisfied that no sufficient cause is shown for it, dismiss it without giving notice to the creditor. As from (inclusive) the date on which the application is dismissed, the time limited for compliance with the statutory demand runs again.

(2) If the application is not dismissed under paragraph (1), the court shall fix a venue for it to be heard, and shall give at least 7 days' notice of it to—

(a) the debtor or, if the debtor's application was made by a solicitor acting for him, to the solicitor,

(b) the creditor, and

(c) whoever is named in the statutory demand as the person with whom the debtor may enter into communication with reference to the demand (or, if more than one person is so named, the first of them).

(3) On the hearing of the application, the court shall consider the evidence then available to it, and may either summarily determine the application or adjourn it, giving such directions as it thinks appropriate.

(4) The court may grant the application if—

(a) the debtor appears to have a counterclaim, set-off or cross demand which equals or exceeds the amount of the debt or debts specified in the statutory demand; or

(b) the debt is disputed on grounds which appear to the court to be substantial; or

(c) it appears that the creditor holds some security in respect of the debt claimed by the demand, and either Rule 6.1(5) is not complied with in respect of it, or the court is satisfied that the value of the security equals or exceeds the full amount of the debt; or

(d) the court is satisfied, on other grounds, that the demand ought to be set aside.

(5) Where the creditor holds some security in respect of his debt, and Rule 6.1(5) is complied with in respect of it but the court is satisfied that the security is under-valued in the statutory demand, the creditor may be required to amend the demand accordingly (but without prejudice to his right to present a bankruptcy petition by reference to the original demand).

(6) If the court dismisses the application, it shall make an order authorising the creditor to present a bankruptcy petition either forthwith, or on or after a date specified in the order.

A copy of the order shall be sent by the court forthwith to the creditor.

CHAPTER 2

BANKRUPTCY PETITION (CREDITOR'S)

Preliminary

6.6. The Rules in this Chapter relate to a creditor's petition, and the making of a bankruptcy order thereon; and in those Rules "the debt" means ,except where the context otherwise requires, the debt (or debts) in respect of which the petition is presented.

Those Rules also apply to a petition under section 264(1)(c) (supervisor of, or person bound by, voluntary arrangement), with any necessary modifications.

Identification of debtor

6.7.—(1) The petition shall state the following matters with respect to the debtor, so far as they are within the petitioner's knowledge—

(a) his name, place of residence and occupation (if any);

(b) the name or names in which he carries on business, if other than his true name, and whether, in the case of any business of a specified nature, he carries it on alone or with others;

(c) the nature of his business, and the address or addresses at which he carries it on;

(d) any name or names, other than his true name, in which he has carried on business at or after the time when the debt was incurred, and whether he has done so alone or with others;

(e) any address or addresses at which he has resided or carried on business at or after that time, and the nature of that business.

(2) The particulars of the debtor given under this Rule determine the full title of the proceedings.

(3) If to the petitioner's personal knowledge the debtor has used any name other than the one specified under paragraph (1)(a), that fact shall be stated in the petition.

Identification of debt

6.8.—(1) There shall be stated in the petition, with reference to every debt in respect of which it is presented—

(a) the amount of the debt, the consideration for it (or, if there is no consideration, the way in which it arises) and the fact that it is owed to the petitioner;

(b) when the debt was incurred or became due;

(c) if the amount of the debt includes—

(i) any charge by way of interest not previously notified to the debtor as a liability of his, or

(ii) any other charge accruing from time to time,

the amount or rate of the charge (separately identified) and the grounds on which it is claimed to form part of the debt;

(d) either—

(i) that the debt is for a liquidated sum payable immediately, and the debtor appears to be unable to pay it, or

(ii) that the debt is for a liquidated sum payable at some certain, future time (that time to be specified), and the debtor appears to have no reasonable prospect of being able to pay it,

and, in either case (subject to section 269) that the debt is unsecured.

(2) Where the debt is one for which, under section 268, a statutory demand must have been served on the debtor—

(a) there shall be specified the date and manner of service of the statutory demand, and

(b) it shall be stated that, to the best of the creditor's knowledge and belief—

(i) the demand has been neither complied with nor set aside in accordance with the Rules, and

(ii) no application to set it aside is outstanding.

(3) If the case is within section 268(1)(b) (debt arising under judgment or order of court; execution returned unsatisfied), the court from which the execution or other process issued shall be specified, and particulars shall be given relating to the return.

Court in which petition to be presented

6.9.—(1) In the following cases, the petition shall be presented to the High Court—

(a) if the petition is presented by a Minister of the Crown or a Government Department, and either in any statutory demand on which the petition is based the creditor has indicated the intention to present a bankruptcy petition to that Court, or the petition is presented under section 268(1)(b), or

(b) if the debtor has resided or carried on business within the London insolvency district for the greater part of the 6 months immediately preceding the presentation of the petition, or for a longer period in those 6 months than in any other insolvency district, or

(c) if the debtor is not resident in England and Wales, or

(d) if the petitioner is unable to ascertain the residence of the debtor, or his place of business.

(2) In any other case the petition shall be presented to the county court for the insolvency district in which the debtor has resided or carried on business for the longest period during those 6 months.

(3) If the debtor has for the greater part of those 6 months carried on business in one insolvency district and resided in another, the petition shall be presented to the court for the insolvency district in which he has carried on business.

(4) If the debtor has during those 6 months carried on business in more than one insolvency district, the petition shall be presented to the court for the insolvency district in which is, or has been for the longest period in those 6 months, his principal place of business.

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

Procedure for presentation and filing

6.10.—(1) The petition, verified by affidavit in accordance with Rule 6.12(1) below, shall be filed in court.

(2) No petition shall be filed unless there is produced with it the receipt for the deposit payable on presentation.

(3) The following copies of the petition shall also be delivered to the court with the petition—

(a) one for service on the debtor, and

(b) one to be exhibited to the affidavit verifying that service.

Each of these copies shall have applied to it the seal of the court, and shall be issued to the petitioner.

(4) The date and time of filing the petition shall be endorsed on the petition and on any copy issued under paragraph (3).

(5) The court shall fix a venue for hearing the petition, and this also shall be endorsed on the petition and on any copy so issued.

Proof of service of statutory demand

6.11.—(1) Where under section 268 the petition must have been preceded by a statutory demand, there must be filed in court, with the petition, an affidavit proving service of the demand.

(2) The affidavit must have exhibited to it a copy of the demand as served.

(3) Subject to the next paragraph, if the demand has been served personally on the debtor, the affidavit must be made by the person who effected that service.

(4) If service of the demand (however effected) has been acknowledged in writing either by the debtor himself, or by some person stating himself in the acknowledgement to be authorised to accept service on the debtor's behalf, the affidavit must be made either by the creditor or by a person acting on his behalf, and the acknowledgement of service must be exhibited to the affidavit.

(5) If neither paragraph (3) nor paragraph (4) applies, the affidavit must be made by a person having direct personal knowledge of the means adopted for serving the statutory demand, and must—

(a) give particulars of the steps which have been taken with a view to serving the demand, and

(b) state the means whereby (those steps having been ineffective) it was sought to bring the demand to the debtor's attention, and

(c) specify a date by which, to the best of the knowledge, information and belief of the person making the affidavit, the demand will have come to the debtor's attention.

(6) The steps of which particulars are given for the purposes of paragraph (5)(a) must be such as would have sufficed to justify an order for substituted service of a petition.

(7) If the affidavit specifies a date for the purposes of compliance with paragraph (5)(c), then unless the court otherwise orders, that date is deemed for the purposes of the Rules to have been the date on which the statutory demand was served on the debtor.

(8) Where the creditor has taken advantage of Rule 6.3(3) (newspaper advertisement), the affidavit must be made either by the creditor himself or by a person having direct personal knowledge of the circumstances; and there must be specified in the affidavit—

(a) the means of the creditor's knowledge or (as the case may be) belief required for the purposes of that Rule, and

(b) the date or dates on which, and the newspaper in which, the statutory demand was advertised under that Rule;

and there shall be exhibited to the affidavit a copy of any advertisement of the statutory demand.

(9) The court may decline to file the petition if not satisfied that the creditor has discharged the obligation imposed on him by Rule 6.3(2).

Verification of petition

6.12.—(1) The petition shall be verified by an affidavit that the statements in the petition are true, or are true to the best of the deponent's knowledge, information and belief.

(2) If the petition is in respect of debts to different creditors, the debts to each creditor must be separately verified.

(3) The petition shall be exhibited to the affidavit verifying it.

(4) The affidavit shall be made—

(a) by the petitioner (or if there are two or more petitioners, any one of them), or

(b) by some person such as a director, company secretary or similar company officer, or a solicitor, who has been concerned in the matters giving rise to the presentation of the petition, or

(c) by some responsible person who is duly authorised to make the affidavit and has the requisite knowledge of those matters.

(5) Where the maker of the affidavit is not the petitioner himself, or one of the petitioners, he must in the affidavit identify himself and state—

(a) the capacity in which, and the authority by which, he makes it, and

(b) the means of his knowledge of the matters sworn to in the affidavit.

(6) The affidavit is prima facie evidence of the truth of the statements in the petition to which it relates.

(7) If the petition is based upon a statutory demand, and more than 4 months have elapsed between the service of the demand and the presentation of the petition, the affidavit must also state the reasons for the delay.

Notice to Chief Land Registrar

6.13. When the petition is filed, the court shall forthwith send to the Chief Land Registrar notice of the petition together with a request that it may be registered in the register of pending actions.

Service of petition

6.14.—(1) Subject as follows, the petition shall be served personally on the debtor by an officer of the court, or by the petitioning creditor or his solicitor, or by a person instructed by the creditor or his solicitor for that purpose; and service shall be effected by delivering to him a sealed copy of the petition.

(2) If the court is satisfied by affidavit or other evidence on oath that prompt personal service cannot be effected because the debtor is keeping out of the way to avoid service of the petition or other legal process, or for any other cause, it may order substituted service to be effected in such manner as it thinks fit.

(3) Where an order for substituted service has been carried out, the petition is deemed duly served on the debtor.

Proof of service

6.15.—(1) Service of the petition shall be proved by affidavit.

(2) The affidavit shall have exhibited to it—

(a) a sealed copy of the petition, and

(b) if substituted service has been ordered, a sealed copy of the order;

and it shall be filed in court immediately after service.

Death of debtor before service

6.16. If the debtor dies before service of the petition, the court may order service to be effected on his personal representatives, or on such other persons as it thinks fit.

Security for costs (s. 268(2) only)

6.17.—(1) This Rule applies where the debt in respect of which the petition is presented is for a liquidated sum payable at some future time, it being claimed in the petition that the debtor appears to have no reasonable prospect of being able to pay it.

(2) The petitioning creditor may, on the debtor's application, be ordered to give security for the debtor's costs.

(3) The nature and amount of the security to be ordered is in the court's discretion.

(4) If an order is made under this Rule, there shall be no hearing of the petition until the whole amount of the security has been given.

Hearing of petition

6.18.—(1) Subject as follows, the petition shall not be heard until at least 14 days have elapsed since it was served on the debtor.

(2) The court may, on such terms as it thinks fit, hear the petition at an earlier date, if it appears that the debtor has absconded, or the court is satisfied that it is a proper case for an expedited hearing, or the debtor consents to a hearing within the 14 days.

(3) Any of the following may appear and be heard, that is to say; the petitioning creditor, the debtor and any creditor who has given notice under Rule 6.23 below.

Petition against two or more debtors

6.19. Where two or more debtors are named in the petition, and the petition has not been served on both or all of them, the petition may be heard separately or collectively as regards any of those who have been served, and may subsequently be heard (separately or collectively) as regards the others, as and when service on them is effected.

Petition by moneylender

6.20. A petition in respect of a moneylending transaction made before 27th January 1980 of a creditor who at the time of the transaction was a licensed moneylender shall at the hearing of the petition be supported by an affidavit incorporating a statement setting out in detail the particulars mentioned in section 9(2) of the Moneylenders Act 1927

Petition opposed by debtor

6.21. Where the debtor intends to oppose the petition, he shall not later than 7 days before the day fixed for the hearing—

(a) file in court a notice specifying the grounds on which he will object to the making of a bankruptcy order, and

(b) send a copy of the notice to the petitioning creditor or his solicitor.

Amendment of petition

6.22. With the leave of the court (given on such terms, if any, as the court thinks fit to impose), the petition may be amended at any time after presentation by the omission of any creditor or any debt.

Notice by persons intending to appear

6.23.—(1) Every creditor who intends to appear on the hearing of the petition shall give to the petitioning creditor notice of his intention in accordance with this Rule.

(2) The notice shall specify—

(a) the name and address of the person giving it, and any telephone number and reference which may be required for communication with him or with any other person (to be also specified in the notice) authorised to speak or act on his behalf;

(b) whether his intention is to support or oppose the petition; and

(c) the amount and nature of his debt.

(3) The notice shall be sent so as to reach the addressee not later than 16.00 hours on the business day before that which is appointed for the hearing (or, where the hearing has been adjourned, for the adjourned hearing).

(4) A person failing to comply with this Rule may appear on the hearing of the petition only with the leave of the court.

List of appearances

6.24.—(1) The petitioning creditor shall prepare for the court a list of the creditors (if any) who have given notice under Rule 6.23, specifying their names and addresses and (if known to him) their respective solicitors.

(2) Against the name of each creditor in the list it shall be stated whether his intention is to support the petition, or to oppose it.

(3) On the day appointed for the hearing of the petition, a copy of the list shall be handed to the court before the commencement of the hearing.

(4) If any leave is given under Rule 6.23(4), the petitioner shall add to the list the same particulars in respect of the person to whom leave has been given.

Decision on the hearing

6.25.—(1) On the hearing of the petition, the court may make a bankruptcy order if satisfied that the statements in the petition are true, and that the debt on which it is founded has not been paid, or secured or compounded for.

(2) If the petition is brought in respect of a judgment debt, or a sum ordered by any court to be paid, the court may stay or dismiss the petition on the ground that an appeal is pending from the judgment or order, or that execution of the judgment has been stayed.

(3) A petition preceded by a statutory demand shall not be dismissed on the ground only that the amount of the debt was over-stated in the demand, unless the debtor, within the time allowed for complying with the demand, gave notice to the creditor disputing the validity of the demand on that ground; but, in the absence of such notice, the debtor is deemed to have complied with the demand if he has, within the time allowed, paid the correct amount.

Non-appearance of creditor

6.26. If the petitioning creditor fails to appear on the hearing of the petition, no subsequent petition against the same debtor, either alone or jointly with any other person, shall be presented by the same creditor in respect of the same debt, without the leave of the court to which the previous petition was presented.

Vacating registration on dismissal of petition

6.27. If the petition is dismissed or withdrawn by leave of the court, an order shall be made at the same time permitting vacation of the registration of the petition as a pending action; and the court shall send to the debtor two sealed copies of the order.

Extension of time for hearing

6.28.—(1) The petitioning creditor may, if the petition has not been served, apply to the court to appoint another venue for the hearing.

(2) The application shall state the reasons why the petition has not been served.

(3) No costs occasioned by the application shall be allowed in the proceedings except by order of the court.

(4) If the court appoints another day for the hearing, the petitioning creditor shall forthwith notify any creditor who has given notice under Rule 6.23.

Adjournment

6.29.—(1) If the court adjourns the hearing of the petition, the following applies.

(2) Unless the court otherwise directs, the petitioning creditor shall forthwith send—

(a) to the debtor, and

(b) where any creditor has given notice under Rule 6.23 but was not present at the hearing, to him,

notice of the making of the order of adjournment. The notice shall state the venue for the adjourned hearing.

Substitution of petitioner

6.30.—(1) This Rule applies where a creditor petitions and is subsequently found not entitled to do so, or where the petitioner—

(a) consents to withdraw his petition or to allow it to be dismissed, or consents to an adjournment, or fails to appear in support of his 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

(b) appears, but does not apply for an order in the terms of the prayer of his petition.

(2) The court may, on such terms as it thinks just, order that there be substituted as petitioner any creditor who—

(a) has under Rule 6.23 given notice of his intention to appear at the hearing,

(b) is desirous of prosecuting the petition, and

(c) was, at the date on which the petition was presented, in such a position in relation to the debtor as would have enabled him (the creditor) on that date to present a bankruptcy petition in respect of a debt or debts owed to him by the debtor, paragraphs (a) to (d) of section 267(2) being satisfied in respect of that debt or those debts.

Change of carriage of petition

6.31.—(1) On the hearing of the petition, any person who claims to be a creditor of the debtor, and who has given notice under Rule 6.23 of his intention to appear at the hearing, may apply to the court for an order giving him carriage of the petition in place of the petitioning creditor, but without requiring any amendment of the petition.

(2) The court may, on such terms as it thinks just, make a change of carriage order if satisfied that—

(a) the applicant is an unpaid and unsecured creditor of the debtor, and

(b) the petitioning creditor either—

(i) intends by any means to secure the postponement, adjournment or withdrawal of the petition, or

(ii) does not intend to prosecute the petition, either diligently or at all.

(3) The court shall not make the order if satisfied that the petitioning creditor's debt has been paid, secured or compounded for by means of—

(a) a disposition of property made by some person other than the debtor, or

(b) a disposition of the debtor's own property made with the approval of, or ratified by, the court.

(4) A change of carriage order may be made whether or not the petitioning creditor appears at the hearing.

(5) If the order is made, the person given the carriage of the petition is entitled to rely on all evidence previously adduced in the proceedings (whether by affidavit or otherwise).

Petitioner seeking dismissal or leave to withdraw

6.32.—(1) Where the petitioner applies to the court for the petition to be dismissed, or for leave to withdraw it, he must, unless the court otherwise orders, file in court an affidavit specifying the grounds of the application and the circumstances in which it is made.

(2) If, since the petition was filed, any payment has been made to the petitioner by way of settlement (in whole or in part) of the debt or debts in respect of which the petition was brought, or any arrangement has been entered into for securing or compounding it or them, the affidavit must state—

(a) what dispositions of property have been made for the purposes of the settlement or arrangement, and

(b) whether, in the case of any disposition, it was property of the debtor himself, or of some other person, and

(c) whether, if it was property of the debtor, the disposition was made with the approval of, or has been ratified by, the court (if so, specifying the relevant court order).

(3) No order giving leave to withdraw a petition shall be given before the petition is heard.

Settlement and content of bankruptcy order

6.33.—(1) The bankruptcy order shall be settled by the court.

(2) The order shall—

(a) state the date of the presentation of the petition on which the order is made, and the date and time of the making of the order, and

(b) contain a notice requiring the bankrupt, forthwith after service of the order on him, to attend on the official receiver at the place stated in the order.

(3) Subject to section 346 (effect of bankruptcy on enforcement procedures), the order may include provision staying any action or proceeding against the bankrupt.

(4) Where the petitioning creditor is represented by a solicitor, the order shall be endorsed with the latter's name, address, telephone number and reference (if any).

Action to follow making of order

6.34.—(1) At least two sealed copies of the bankruptcy order shall be sent forthwith by the court to the official receiver, who shall forthwith send one of them to the bankrupt.

(2) Subject to the next paragraph, the official receiver shall—

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

(b) cause the order to be advertised in such local paper as the official receiver thinks fit, and

(c) cause the order to be gazetted.

(3) The court may, on the application of the bankrupt or a creditor, order the official receiver to suspend action under paragraph (2), pending a further order of the court.

An application under this paragraph shall be supported by an affidavit stating the grounds on which it is made.

(4) Where an order is made under paragraph (3) the applicant for the order shall forthwith deliver a copy of it to the official receiver.

Amendment of title of proceedings

6.35.—(1) At any time after the making of a bankruptcy order, the official receiver or the trustee may apply to the court for an order amending the full title of the proceedings.

(2) Where such an order is made, the official receiver shall forthwith send notice of it to the Chief Land Registrar, for corresponding amendment of the register; and, if the court so directs he shall also cause notice of the order to be gazetted, and to be advertised in such local newspaper as the official receiver thinks fit.

Old bankruptcy notices

6.36.—(1) Subject as follows, a person who has before the appointed day for the purposes of the Act served a bankruptcy notice under the Bankruptcy Act 1914 may, on or after that day, proceed on the notice as if it were a statutory demand duly served under Chapter 1 of this Part of the Rules.

(2) The conditions of the application of this Rule are that—

(a) the debt in respect of which the bankruptcy notice was served has not been paid, secured or compounded for in the terms of the notice and the Act of 1914;

(b) the date by which compliance with the notice was required was not more than 3 months before the date of presentation of the petition; and

(c) there has not, before the appointed day, been presented any bankruptcy petition with reference to an act of bankruptcy arising from non-compliance with the bankruptcy notice.

(3) If before, on or after the appointed day, application is made (under the Act of 1914) to set the bankruptcy notice aside, that application is to be treated, on and after that day, as an application duly made (on the date on which it was in fact made) to set aside a statutory demand duly served on the date on which the bankruptcy notice was in fact served.

CHAPTER 3

BANKRUPTCY PETITION (DEBTOR'S)

Preliminary

6.37. The Rules in this Chapter relate to a debtor's petition, and the making of a bankruptcy order thereon.

Identification of debtor

6.38.—(1) The petition shall state the following matters with respect to the debtor—

(a) his name, place of residence and occupation (if any);

(b) the name or names in which he carries on business, if other than his true name, and whether, in the case of any business of a specified nature, he carries it on alone or with others;

(c) the nature of his business, and the address or addresses at which he carries it on;

(d) any name or names, other than his true name, in which he has carried on business in the period in which any of his bankruptcy debts were incurred and, in the case of any such business, whether he has carried it on alone or with others; and

(e) any address or addresses at which he has resided or carried on business during that period, and the nature of that business.

(2) The particulars of the debtor given under this Rule determine the full title of the proceedings.

(3) If the debtor has at any time used a name other than the one given under paragraph (1)(a), that fact shall be stated in the petition.

Admission of insolvency

6.39.—(1) The petition shall contain the statement that the petitioner is unable to pay his debts, and a request that a bankruptcy order be made against him.

(2) If within the period of 5 years ending with the date of the petition the petitioner has been adjudged bankrupt, or has made a composition with his creditors in satisfaction of his debts or a scheme of arrangement of his affairs, or he has entered into any voluntary arrangement or been subject to an administration order under Part VI of the County Courts Act 1984, particulars of these matters shall be given in the petition.

Court in which petition to be filed

6.40.—(1) In the following cases, the petition shall be presented to the High Court—

(a) if the debtor has resided or carried on business in the London insolvency district for the greater part of the 6 months immediately preceding the presentation of the petition, or for a longer period in those 6 months than in any other insolvency district, or

(b) if the debtor is not resident in England and Wales.

(2) In any other case, the petition shall (subject to paragraph (3) below), be presented to the debtor's own county court, which is—

(a) the county court for the insolvency district in which he has resided or carried on business for the longest period in those 6 months, or

(b) if he has for the greater part of those 6 months carried on business in one insolvency district and resided in another, the county court for that in which he has carried on business, or

(c) if he has during those 6 months carried on business in more than one insolvency district, the county court for that in which is, or has been for the longest period in those 6 months, his principal place of business.

(3) If, in a case not falling within paragraph (1), it is more expedient for the debtor with a view to expediting his petition, it may be presented to whichever county court is specified by Schedule 2 to the Rules as being, in relation to the debtor's own county court, the nearest full-time court.

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

Statement of affairs

6.41.—(1) The petition shall be accompanied by a statement of the debtor's affairs, verified by affidavit.

(2) Section B of Chapter 5 below applies with respect to the statement of affairs.

Procedure for presentation and filing

6.42.—(1) The petition and the statement of affairs shall be filed in court, together with three copies of the petition, and two copies of the statement. No petition shall be filed unless there is produced with it the receipt for the deposit payable on presentation.

(2) The court may hear the petition forthwith. If it does not do so, it shall fix a venue for the hearing.

(3) Of the three copies of the petition delivered—

(a) one shall be returned to the petitioner, endorsed with any venue fixed;

(b) another, so endorsed, shall be retained by the court, to be sent to the official receiver if he is appointed interim receiver or a bankruptcy order is made; and

(c) the remaining copy shall be retained by the court, to be sent to an insolvency practitioner (if appointed under section 273(2)).

(4) Of the two copies of the statement of affairs—

(a) one shall be retained by the court, to be sent to the official receiver if he is appointed interim receiver or a bankruptcy order is made; and

(b) the other shall be retained by the court to be sent to the insolvency practitioner (if appointed).

(5) The affidavit verifying the debtor's statement of affairs may be sworn before an officer of the court duly authorised in that behalf.

Notice to Chief Land Registrar

6.43. When the petition is filed, the court shall forthwith send to the Chief Land Registrar notice of the petition, for registration in the register of pending actions.

Report of insolvency practitioner

6.44.—(1) If the court under section 273(2) appoints an insolvency practitioner to act in the debtor's case, it shall forthwith—

(a) send to the person appointed—

(i) a sealed copy of the order of appointment, and

(ii) copies of the petition and statement of affairs,

(b) fix a venue for the insolvency practitioner's report to be considered, and

(c) send notice of the venue to the insolvency practitioner and the debtor.

(2) The insolvency practitioner shall file his report in court with one copy, and send one copy of it to the debtor, so as to be in his hands not less than 3 days before the date fixed for consideration of the report.

(3) The debtor is entitled to attend when the report is considered, and shall attend if so directed by the court. If he attends, the court shall hear any representations which he makes with respect to any of the matters dealt with in the report.

(4) If the official receiver is appointed interim receiver or a bankruptcy order is made, a copy of the insolvency practitioner's report, the debtor's petition and his statement of affairs shall be sent by the court to the official receiver.

Settlement and content of bankruptcy order

6.45.—(1) The bankruptcy order shall be settled by the court.

(2) The order shall—

(a) state the date of the presentation of the petition on which the order is made, and the date and time of the making of the order, and

(b) contain a notice requiring the bankrupt, forthwith after the service of the order on him, to attend on the official receiver at the place stated in the order.

(3) Subject to section 346 (effect of bankruptcy on enforcement procedures), the order may include provision staying any action or proceeding against the bankrupt.

(4) Where the bankrupt is represented by a solicitor, the order shall be endorsed with the latter's name, address, telephone number and reference.

Action to follow making of order

6.46.—(1) At least two sealed copies of the bankruptcy order shall be sent forthwith by the court to the official receiver, who shall forthwith send one of them to the bankrupt.

(2) Subject to the next paragraph, the official receiver shall—

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

(b) cause the order to be advertised in such local paper as the official receiver thinks fit, and

(c) cause notice of the order to be gazetted.

(3) The court may, on the application of the bankrupt or a creditor, order the official receiver to suspend action under paragraph (2), pending a further order of the court.

An application under this paragraph shall be supported by an affidavit stating the grounds on which it is made.

(4) Where an order is made under paragraph (3), the applicant shall forthwith deliver a copy of it to the official receiver.

Amendment of title of proceedings

6.47.—(1) At any time after the making of the bankruptcy order, the official receiver or the trustee may apply to the court for an order amending the full title of the proceedings.

(2) Where such an order is made, the official receiver shall forthwith send notice of it to the Chief Land Registrar, for corresponding amendment of the register; and, if the court so directs, he shall also—

(a) cause notice of the order to be gazetted, and

(b) cause notice of the order to be advertised in such local paper as the official receiver thinks appropriate.

Certificate of summary administration

6.48.—(1)

(1) If the court under section 275 issues a certificate for the summary administration of the bankrupt's estate, the certificate may be included in the bankruptcy order.

(2) If the certificate is not so included, the court shall forthwith send copies of it to the official receiver and the bankrupt.

Duty of official receiver in summary administration

6.49.—(1) Where a trustee has been appointed, the official receiver shall send a copy of the certificate of summary administration (whether or not included in the bankruptcy order) to him.

(2) Within 12 weeks after the issue of the certificate the official receiver shall (insofar as he has not already done so) give notice to creditors of the making of the bankruptcy order.

Revocation of certificate of summary administration

6.50.—(1) The court may under section 275(3) revoke a certificate for summary administration, either of its own motion or on the application of the official receiver.

(2) If the official receiver applies for the certificate to be revoked, he shall give at least 14 days' notice of the application to the bankrupt.

(3) If the court revokes the certificate, it shall forthwith give notice to the official receiver and the bankrupt.

(4) If at the time of revocation there is a trustee other than the official receiver, the official receiver shall send a copy of the court's notice to him.

CHAPTER 4

THE INTERIM RECEIVER

Application for appointment of interim receiver

6.51.—(1) An application to the court for the appointment of an interim receiver under section 286 may be made by a creditor or by the debtor, or by an insolvency practitioner appointed under section 273(2).

(2) The application must be supported by an affidavit stating—

(a) the grounds on which it is proposed that the interim receiver should be appointed,

(b) whether or not the official receiver has been informed of the application and, if so, has been furnished with a copy of it,

(c) whether to the applicant's knowledge there has been proposed or is in force a voluntary arrangement under Part VIII of the Act, and

(d) the applicant's estimate of the value of the property or business in respect of which the interim receiver is to be appointed.

(3) If an insolvency practitioner has been appointed under section 273, and it is proposed that he (and not the official receiver) should be appointed interim receiver, and it is not the insolvency practitioner himself who is the applicant under this Rule, the affidavit under paragraph (2) must state that he has consented to act.

(4) The applicant shall send copies of the application and the affidavit to the person proposed to be appointed interim receiver. If that person is the official receiver and an insolvency practitioner has been appointed under section 273 (and he is not himself the applicant), copies of the application and affidavit shall be sent by the applicant to the insolvency practitioner.

If, in any case where a copy of the application is to be sent to a person under this paragraph, it is for any reason not practicable to send a copy, that person must be informed of the application in sufficient time to enable him to be present at the hearing.

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

(6) The court may on the application, if satisfied that sufficient grounds are shown for the appointment, make it on such terms as it thinks fit.

Order of appointment

6.52.—(1) The order appointing the interim receiver shall state the nature and a short description of the property of which the person appointed is to take possession, and the duties to be performed by him in relation to the debtor's affairs.

(2) The court shall, forthwith after the order is made, send 2 sealed copies of it to the person appointed interim receiver (one of which shall be sent by him forthwith to the debtor).

Deposit

6.53.—(1) Before an order appointing the official receiver as interim receiver is issued, the applicant for it shall deposit with him, or otherwise secure to his satisfaction, such sum as the court directs to cover his remuneration and expenses.

(2) If the sum deposited or secured subsequently proves to be insufficient, the court may, on application by the official receiver, order that an additional sum be deposited or secured. If the order is not complied with within 2 days after service on the person to whom the order is directed, the court may discharge the order appointing the interim receiver.

(3) If a bankruptcy order is made after an interim receiver has been appointed, any money deposited under this Rule shall (unless it is required by reason of insufficiency of assets for payment of remuneration and expenses of the interim receiver, or the deposit was made by the debtor out of his own property) be repaid to the person depositing it (or as that person may direct) out of the bankrupt's estate, in the prescribed order of priority.

Security

6.54.—(1) The following applies where an insolvency practitioner is appointed to be interim receiver under section 286(2).

(2) The cost of providing the security required under the Act shall be paid in the first instance by the interim receiver; but—

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

(b) if a bankruptcy order is made, he is entitled to be reimbursed out of the estate in the prescribed order of priority.

Failure to give or keep up security

6.55.—(1) If the interim receiver fails to give or keep up his security, the court may remove him, and make such order as it thinks fit as to costs.

(2) If an order is made under this Rule removing the interim receiver, or discharging the order appointing him, the court shall give directions as to whether any, and if so what, steps should be taken for the appointment of another person in his place.

Remuneration

6.56.—(1) The remuneration of the interim receiver (other than the official receiver) shall be fixed by the court from time to time on his application.

(2) In fixing the interim receiver's remuneration, the court shall take into account—

(a) the time properly given by him (as interim receiver) and his staff in attending to the debtor's affairs,

(b) the complexity (or otherwise) of the case,

(c) any respects in which, in connection with the debtor's affairs, there falls on the interim receiver any responsibility of an exceptional kind or degree,

(d) the effectiveness with which the interim receiver appears to be carrying out, or to have carried out, his duties as such, and

(e) the value and nature of the property with which he has to deal.

(3) The interim receiver's remuneration (whether the official receiver or another) shall be paid to him, and the amount of any expenses incurred by him reimbursed—

(a) if a bankruptcy order is not made, out of the property of the debtor (and the court may make an order on the debtor accordingly), and

(b) if a bankruptcy order is made, out of the estate in the prescribed order of priority,

or, in either case (the relevant funds being insufficient), out of the deposit under Rule 6.53.

Termination of appointment

6.57.—(1) The appointment of the interim receiver may be terminated by the court on his application, or on that of the official receiver, the debtor or any creditor.

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

(3) The court may under paragraph (2)—

(a) direct that any expenses properly incurred by the interim receiver during the period of his appointment, and any remuneration to which he is entitled, be paid out of property of the debtor, and

(b) authorise him to retain out of that property such sums as are required for meeting his expenses and remuneration.

Alternatively, the court may make such order as it thinks fit with respect to those matters.

CHAPTER 5

DISCLOSURE BY BANKRUPT WITH RESPECT TO THE STATE OF HIS AFFAIRS

SECTION A: CREDITOR'S PETITION

Preliminary

6.58. The Rules in this Section apply with respect to the statement of affairs required by section 288(1) to be submitted by the bankrupt, following a bankruptcy order made on a creditor's petition, and the further and other disclosure which is required of him in that case.

The statement of affairs

6.59. The bankrupt's statement of affairs shall be in Form 6.33, and contain all the particulars required by that form.

Verification and filing

6.60.—(1) The bankrupt shall be furnished by the official receiver with instructions for the preparation of his statement of affairs, and the forms required for that purpose.

(2) The statement of affairs shall be verified by affidavit and delivered to the official receiver, together with one copy.

(3) The official receiver shall file the verified statement in court.

(4) The affidavit may be sworn before an official receiver or a deputy official receiver, or before an officer of the Department or the court duly authorised in that behalf.

Limited disclosure

6.61.—(1) Where the official receiver thinks that it would prejudice the conduct of the bankruptcy for the whole or part of the statement of affairs to be disclosed, he may apply to the court for an order of limited disclosure in respect of the statement, or any specified part of it.

(2) The court may on the application order that the statement or, as the case may be, the specified part of it be not filed in court, or that it is to be filed separately and not be open to inspection otherwise than with leave of the court.

Release from duty to submit statement of affairs; extension of time

6.62.—(1) The power of the official receiver under section 288(3) to release the bankrupt from his duty to submit a statement of affairs, or to grant an extension of time, may be exercised at the official receiver's own discretion, or at the bankrupt's request.

(2) The bankrupt may, if he request a release or extension of time and it is refused by the official receiver, apply to the court for it.

(3) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the bankrupt has had an opportunity to attend the court for an ex parte hearing, of which he has been given at least 7 days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the bankrupt accordingly.

(4) The bankrupt shall, at least 14 days before the hearing, send to the official receiver a notice stating the venue and accompanied by a copy of the application, and of any evidence which he (the bankrupt) intends to adduce in support of it.

(5) The official receiver may appear and be heard on the application; and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the court's attention.

If such a report is filed, a copy of it shall be sent by the official receiver to the bankrupt, not later than 5 days before the hearing.

(6) Sealed copies of any order made on the application shall be sent by the court to the bankrupt and the official receiver.

(7) On any application under this Rule the bankrupt's costs shall be paid in any event by him and, unless the court otherwise orders, no allowance towards them shall be made out of the estate.

Expenses of statement of affairs

6.63.—(1) If the bankrupt cannot himself prepare a proper statement of affairs, the official receiver may, at the expense of the estate, employ some person or persons to assist in the preparation of the statement.

(2) At the request of the bankrupt, made on the grounds that he cannot himself prepare a proper statement, the official receiver may authorise an allowance payable out of the estate (in accordance with the prescribed order of priority) towards expenses to be incurred by the bankrupt in employing some person or persons to assist him in preparing it.

(3) Any such request by the bankrupt shall be accompanied by an estimate of the expenses involved; and the official receiver shall only authorise the employment of a named person or a named firm, being in either case approved by him.

(4) An authorisation given by the official receiver under this Rule shall be subject to such conditions (if any) as he thinks fit to impose with respect to the manner in which any person may obtain access to relevant books and papers.

(5) Nothing in this Rule relieves the bankrupt from any obligation with respect to the preparation, verification and submission of his statement of affairs, or to the provision of information to the official receiver or the trustee.

Requirement to submit accounts

6.64.—(1) The bankrupt shall, at the request of the official receiver, furnish him with accounts relating to his affairs of such nature, as at such date and for such period as he may specify.

(2) The period specified may begin from a date up to 3 years preceding the date of the presentation of the bankruptcy petition.

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

(4) Rule 6.63 applies (with the necessary modifications) in relation to accounts to be furnished under this Rule as it applies in relation to the statement of affairs.

Submission and filing of accounts

6.65.—(1) The accounts to be furnished under Rule 6.64 shall, if the official receiver so requires, be verified by affidavit, and (whether or not so verified) delivered to him within 21 days of the request under Rule 6.64(1), or such longer period as he may allow.

(2) Two copies of the accounts and (where required) the affidavit shall be delivered by the bankrupt to the official receiver, who shall file one copy in court (with the affidavit, if any).

Further disclosure

6.66.—(1) The official receiver may at any time require the bankrupt to submit (in writing) further information amplifying, modifying or explaining any matter contained in his statement of affairs, or in accounts submitted in pursuance of the Act or the Rules.

(2) The information shall, if the official receiver so directs, be verified by affidavit, and (whether or not so verified) delivered to him within 21 days of the requirement under this Rule, or such longer period as he may allow.

(3) Two copies of the documents containing the information and (where verification is directed) the affidavit shall be delivered by the bankrupt to the official receiver, who shall file one copy in court (with the affidavit, if any).

SECTION B: DEBTOR'S PETITION

Preliminary

6.67. The Rules in this Section apply with respect to the statement of affairs required in the case of a person petitioning for a bankruptcy order to be made against him, and the further disclosure which is required of him in that case.

Contents of statement

6.68. The statement of affairs required by Rule 6.41 to accompany the debtor's petition shall be in Form 6.28, and contain all the particulars required by that form.

Requirement to submit accounts

6.69.—(1) The bankrupt shall, at the request of the official receiver, furnish him with accounts relating to his affairs of such nature, as at such date and for such period as he may specify.

(2) The period specified may begin from a date up to 3 years preceding the date of the presentation of the bankruptcy petition.

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

Submission and filing of accounts

6.70.—(1) The accounts to be furnished under Rule 6.69 shall, if the official receiver so requires, be verified by affidavit, and (whether or not so verified) delivered to him within 21 days of the request under Rule 6.69, or such longer period as he may allow.

(2) Two copies of the accounts and (where required) the affidavit shall be delivered by the bankrupt to the official receiver, who shall file one copy in court (with the affidavit, if any).

Expenses of preparing accounts

6.71.—(1) If the bankrupt cannot himself prepare proper accounts under Rule 6.69, the official receiver may, at the expense of the estate, employ some person or persons to assist in their preparation.

(2) At the request of the bankrupt, made on the grounds that he cannot himself prepare the accounts, the official receiver may authorise an allowance payable out of the estate (in accordance with the prescribed order of priority) towards expenses to be incurred by the bankrupt in employing some person or persons to assist him in their preparation.

(3) Any such request by the bankrupt shall be accompanied by an estimate of the expenses involved; and the official receiver shall only authorise the employment of a named person or a named firm, being in either case approved by him.

(4) An authorisation given by the official receiver under this Rule shall be subject to such conditions (if any) as he thinks fit to impose with respect to the manner in which any person may obtain access to relevant books and papers.

(5) Nothing in this Rule relieves the bankrupt from any obligation with respect to the preparation and submission of accounts, or to the provision of information to the official receiver or the trustee.

Further disclosure

6.72.—(1) The official receiver may at any time require the bankrupt to submit (in writing) further information amplifying, modifying or explaining any matter contained in his statement of affairs, or in accounts submitted in pursuance of the Act or the Rules.

(2) The information shall, if the official receiver so directs, be verified by affidavit, and (whether or not so verified) delivered to him within 21 days from the date of the requirement under paragraph (1), or such longer period as he may allow.

(3) Two copies of the documents containing the information and (where verification is directed) the affidavit shall be delivered by the bankrupt to the official receiver, who shall file one copy in court, with the affidavit (if any).

CHAPTER 6

INFORMATION TO CREDITORS

General duty of official receiver

6.73. In accordance with this Chapter, the official receiver shall, at least once after the making of the bankruptcy order, send a report to creditors with respect to the bankruptcy proceedings, and the state of the bankrupt's affairs.

Those entitled to be informed

6.74. Any reference in this Chapter to creditors is to creditors of the bankrupt who are known to the official receiver or, where the bankrupt has submitted a statement of affairs, are identified in the statement.

Report where statement of affairs lodged

6.75.—(1) Where the bankrupt has submitted a statement of affairs, and it has been filed in court, the official receiver shall send out to creditors a report containing a summary of the statement and such observations (if any) as he thinks fit to make with respect to it or to the bankrupt's affairs generally.

(2) The official receiver need not comply with paragraph (1) if he has previously reported to creditors with respect to the bankrupt's affairs (so far as known to him) and he is of opinion that there are no additional matters which ought to be brought to their attention.

Statement of affairs dispensed with

6.76.—(1) This Rule applies where the bankrupt has been released from the obligation to submit a statement of affairs.

(2) As soon as may be after the release has been granted, the official receiver shall send to creditors a report containing a summary of the bankrupt's affairs (so far as within his knowledge), and his observations (if any) with respect to it or the bankrupt's affairs generally.

(3) The official receiver need not comply with paragraph (2) if he has previously reported to creditors with respect to the bankrupt's affairs (so far as known to him) and he is of opinion that there are no additional matters which ought to be brought to their attention.

General rule as to reporting

6.77.—(1) The court may, on the official receiver's application, relieve him of any duty imposed on him by this Chapter of the Rules, or authorise him to carry out the duty in a way other than there required.

(2) In considering whether to act as above, the court shall have regard to the cost of carrying out the duty, to the amount of the funds available in the estate, and to the extent of the interest of creditors or any particular class of them.

Bankruptcy order annulled

6.78. If the bankruptcy order is annulled, the duty of the official receiver to send reports under the preceding Rules in this Chapter ceases.

CHAPTER 7

CREDITORS' MEETINGS

First meeting of creditors

6.79.—(1) If under section 293(1) the official receiver decides to summon a meeting of creditors, he shall fix a venue for the meeting; not more than 4 months from the date of the bankruptcy order.

(2) When a venue has been fixed, notice of the meeting shall be given—

(a) to the court, and

(b) to every creditor of the bankrupt who is known to the official receiver or is identified in the bankrupt's statement of affairs.

(3) Notice to the court shall be given forthwith; and the notice to creditors shall be given at least 21 days before the date fixed for the meeting.

(4) The notice to creditors shall specify a time and date, not more than 4 days before the date fixed for the meeting, by which they must lodge proofs and (if applicable) proxies, in order to be entitled to vote at the meeting.

(5) Notice of the meeting shall also be given by public advertisement.

(6) Where the official receiver receives a request by a creditor under section 294 for a meeting of creditors to be summoned, and it appears to him that the request is properly made in accordance with the Act, he shall—

(a) withdraw any notice already given by him under section 293(2) (that he has decided not to summon such a meeting), and

(b) fix the venue of the meeting for not more than 3 months from his receipt of the creditor's request, and

(c) act in accordance with paragraphs (2) to (5) above, as if he had decided under section 293(1) to summon the meeting.

(7) A meeting summoned by the official receiver under section 293 or 294 is known as "the first meeting of creditors".

Business at first meeting

6.80.—(1) At the first meeting of creditors, no resolutions shall be taken other than the following—

(a) a resolution to appoint a named insolvency practitioner to be trustee in bankruptcy or two or more named insolvency practitioners as joint trustees;

(b) a resolution to establish a creditors' committee;

(c) (unless it has been resolved to establish a creditors' committee) a resolution specifying the terms on which the trustee is to be remunerated, or to defer consideration of that matter;

(d) (if, and only if, two or more persons are appointed to act jointly as trustee) a resolution specifying whether acts are to be done by both or all of them, or by only one;

(e) (where the meeting has been requisitioned under section 294) a resolution authorising payment out of the estate, as an expense of the bankruptcy, of the cost of summoning and holding the meeting;

(f) a resolution to adjourn the meeting for not more than 3 weeks;

(g) any other resolution which the chairman thinks it right to allow for special reasons.

(2) No resolution shall be proposed which has for its object the appointment of the official receiver as trustee.

General power to call meetings

6.81.—(1) The official receiver or the trustee may at any time summon and conduct meetings of creditors for the purpose of ascertaining their wishes in all matters relating to the bankruptcy.

In relation to any meeting of creditors, the person summoning it is referred to as "the convener".

(2) When a venue for the meeting has been fixed, notice of the meeting shall be given by the convener to every creditor who is known to him or is identified in the bankrupt's statement of affairs.

The notice shall be given at least 21 days before the date fixed for the meeting.

(3) The notice to creditors shall specify the purpose for which the meeting is summoned, and a time and date (not more than 4 days before the meeting) by which creditors must lodge proxies and those who have not already lodged proofs must do so, in order to be entitled to vote at the meeting.

(4) Additional notice of the meeting may be given by public advertisement if the convener thinks fit, and shall be so given if the court so orders.

The chairman at a meeting

6.82.—(1) Where the convener of a meeting is the official receiver, he, or a person nominated by him, shall be chairman.

A nomination under this paragraph shall be in writing, unless the nominee is another official receiver or a deputy official receiver.

(2) Where the convener is other than the official receiver, the chairman shall be he, or a person nominated by him in writing to act.

A person nominated under this paragraph must be either—

(a) one who is qualified to act as an insolvency practitioner in relation to the bankrupt, or

(b) an employee of the trustee or his firm who is experienced in insolvency matters.

Requisitioned meetings

6.83.—(1) A request by creditors to the official receiver for a meeting of creditors to be summoned shall be accompanied by—

(a) a list of the creditors concurring with the request and the amount of their respective claims in the bankruptcy,

(b) from each creditor concurring, written confirmation of his concurrence, and

(c) a statement of the purpose of the proposed meeting.

Sub-paragraphs (a) and (b) do not apply if the requisitioning creditor's debt is alone sufficient, without the concurrence of other creditors.

(2) The official receiver, if he considers the request to be properly made in accordance with the Act, shall—

(a) fix a venue for the meeting, to take place not more than 35 days from the receipt of the request, and

(b) give 21 days' notice of the meeting, and of the venue for it, to creditors.

(3) Where a request for a creditors' meeting is made to the trustee, this Rule applies to him as it does to the official receiver.

Attendance at meeting of bankrupt, etc

6.84.—(1) Whenever a meeting of creditors is summoned, the convener shall give at least 21 days' notice of the meeting to the bankrupt.

(2) If the meeting is adjourned, the chairman of the meeting shall (unless for any reason it appears to him to be unnecessary or impracticable) give notice of the fact to the bankrupt, if the latter was not himself present at the meeting.

(3) The convener may, if he thinks fit, give notice to the bankrupt that he is required to be present, or in attendance.

(4) In the case of any meeting, the bankrupt or any other person may, if he has given reasonable notice of his wish to be present, be admitted; but this is at the discretion of the chairman.

The chairman's decision is final as to what (if any) intervention may be made by the bankrupt, or by any other person admitted to the meeting under this paragraph.

(5) If the bankrupt is not present, and it is desired to put questions to him, the chairman may adjourn the meeting with a view to obtaining his attendance.

(6) Where the bankrupt is present at a creditors' meeting, only such questions may be put to him as the chairman may in his discretion allow.

Notice of meetings by advertisement only

6.85.—(1) In the case of any meeting to be held under the Act or the Rules, the court may order that notice of it be given by public advertisement, and not by individual notice to the persons concerned.

(2) In considering whether to act under this Rule, the court shall have regard to the cost of public advertisement, to the amount of the funds available in the estate, and to the extent of the interest of creditors or any particular class of them.

Venue of meetings

6.86.—(1) In fixing the venue for a meeting of creditors, the person summoning the meeting shall have regard to the convenience of the creditors.

(2) Meetings shall in all cases be summoned for commencement between the hours of 10.00 and 16.00 hours on a business day, unless the court otherwise directs.

(3) With every notice summoning a creditors' meeting there shall be sent out forms of proxy.

Expenses of summoning meetings

6.87.—(1) Subject to paragraph (3) below, the expenses of summoning and holding a meeting of creditors at the instance of any person other, than the official receiver or the trustee shall be paid by

that person, who shall deposit security for their payment with the trustee or, if no trustee has been appointed, with the official receiver.

(2) The sum to be deposited shall be such as the trustee or (as the case may be) the official receiver determines to be appropriate; and neither shall act without the deposit having been made.

(3) Where a meeting is so summoned, it may vote that the expenses of summoning and holding it shall be payable out of the estate, as an expense of the bankruptcy.

(4) To the extent that any deposit made under this Rule is not required for the payment of expenses of summoning and holding the meeting, it shall be repaid to the person who made it.

Resolutions

6.88.—(1) At a meeting of creditors, a resolution is passed when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of the resolution.

(2) In the case of a resolution for the appointment of a trustee—

(a) if on any vote there are two nominees for appointment, 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 chairman shall 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.

(3) The chairman may at any time put to the meeting a resolution for the joint appointment of any two or more nominees.

(4) Where a resolution is proposed which affects a person in respect of his remuneration or conduct as trustee, or as proposed or former trustee, the vote of that person, and of any partner or employee of his, shall not be reckoned in the majority required for passing the resolution.

This paragraph applies with respect to a vote given by a person either as creditor or as proxy for a creditor (but subject to Rule 8.6 in Part 8 of the Rules).

Chairman of meeting as proxy-holder

6.89. Where the chairman at a meeting holds a proxy for a creditor, which requires him to vote for a particular resolution, and no other person proposes that resolution—

(a) he shall himself propose it, unless he considers that there is good reason for not doing so, and

(b) if he does not propose it, he shall forthwith after the meeting notify his principal of the reason why not.

Suspension of meeting

6.90. Once only in the course of any meeting, the chairman may, in his discretion and without an adjournment, declare the meeting suspended for any period up to one hour.

Adjournment

6.91.—(1) The chairman at any meeting may, in his discretion, and shall if the meeting so resolves, adjourn it to such time and place as seems to him to be appropriate in the circumstances.

This is subject to Rule 6.129(3) in a case where the trustee or his nominee is chairman and a resolution has been proposed for the trustee's removal.

(2) If within a period of 30 minutes from the time appointed for the commencement of a meeting a quorum is not present, then by virtue of this Rule the meeting stands adjourned to such time and place as may be appointed by the chairman.

(3) An adjournment under this Rule shall not be for a period of more than 21 days; and Rule 6.86(1) and (2) applies with regard to the venue of the adjourned meeting.

(4) If there is no person present to act as chairman, some other person present (being entitled to vote) may make the appointment under paragraph (2), with the agreement of others present (being persons so entitled).

Failing agreement, the adjournment shall be to the same time and place in the next following week or, if that is not a business day, to the business day immediately following.

(5) Where a meeting is adjourned under this Rule, proofs and proxies may be used if lodged at any time up to midday on the business day immediately before the adjourned meeting.

Quorum

6.92.—(1) A creditors' meeting is not competent to act for any purpose, except—

(a) the election of a chairman,

(b) the admission by the chairman of creditors' proofs, for the purpose of their entitlement to vote, and

(c) the adjournment of the meeting,

unless there are present in person or by proxy at least 3 creditors, or all the creditors, if their number does not exceed 3, being in either case persons entitled to vote.

(2) One person present constitutes a quorum if—

(a) he is himself a creditor with entitlement to vote and he holds a number of proxies sufficient to ensure that, with his own vote, paragraph (1) of this Rule is complied with, or

(b) being the chairman or any other person, he holds that number of proxies.

Entitlement to vote

6.93.—(1) Subject as follows, at a meeting of creditors a person is entitled to vote as a creditor only if—

(a) there has been duly lodged, by the time and date stated in the notice of the meeting, a proof of the debt claimed to be due to him from the bankrupt, and the claim has been admitted under Rule 6.94 for the purpose of entitlement to vote, and

(b) there has been lodged, by that time and date, any proxy requisite for that entitlement.

(2) The court may, in exceptional circumstances, by order declare the creditors, or any class of them, entitled to vote at creditors' meetings, without being required to prove their debts.

Where a creditor is so entitled, the court may, on the application of the trustee, make such consequential orders as it thinks fit (as for example an order treating a creditor as having proved his debt for the purpose of permitting payment of dividend).

(3) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote and admits his proof for that purpose.

(4) A secured creditor is entitled to vote only in respect of the balance (if any) of his debt after deducting the value of his security as estimated by him.

(5) A creditor shall not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing—

(a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the bankrupt, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in his hands, and

(b) to estimate the value of the security and (for the purpose of entitlement to vote, but not for dividend) to deduct it from his proof.

Admission and rejection of proof

6.94.—(1) At any creditors' meeting the chairman has power to admit or reject a creditor's proof for the purpose of his entitlement to vote; and the power is exercisable with respect to the whole or any part of the proof.

(2) The chairman's decision under this Rule, or in respect of any matter arising under Rule 6.93, is subject to appeal to the court by any creditor, or by the bankrupt.

(3) If the chairman is in doubt whether a proof should be admitted or rejected, he shall mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the proof is sustained.

(4) If on an appeal the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that another meeting be summoned, or make such other order as it thinks just.

(5) Neither the official receiver nor any person nominated by him to be chairman is personally liable for costs incurred by any person in respect of an application to the court under this Rule; and the chairman (if other than the official receiver or a person so nominated) is not so liable unless the court makes an order to that effect.

Record of proceedings

6.95.—(1) The chairman at any creditors' meeting shall cause minutes of the proceedings at the meeting, signed by him, to be retained by him as part of the records of the bankruptcy.

(2) He shall also cause to be made up and kept a list of all the creditors who attended the meeting.

(3) The minutes of the meeting shall include a record of every resolution passed; and it is the chairman's duty to see to it that particulars of all such resolutions, certified by him, are filed in court not more than 21 days after the date of the meeting.

CHAPTER 8

PROOF OF BANKRUPTCY DEBTS

SECTION A: PROCEDURE FOR PROVING

Meaning of "prove"

6.96.—(1) A person claiming to be a creditor of the bankrupt and wishing to recover his debt in whole or in part must (subject to any order of the court under Rule 6.93(2)) submit his claim in writing to the official receiver, where acting as receiver and manager, or to the trustee.

(2) The creditor is referred to as "proving" for his debt; and the document by which he seeks to establish his claim is his "proof".

(3) Subject to the next two paragraphs, the proof must be in the form known as "proof of debt" (whether the form prescribed by the Rules, or a substantially similar form), which shall be made out by or under the directions of the creditor, and signed by him or a person authorised in that behalf.

(4) Where a debt is due to a Minister of the Crown or a Government Department, the proof need not be in that form, provided that there are shown all such particulars of the debt as are required in the form used by other creditors, and as are relevant in the circumstances.

(5) Where an existing trustee proves in a later bankruptcy under section 335(5), the proof must be in FORM 6.38.

(6) In certain circumstances, specified below in this Chapter, the proof must be in the form of an affidavit.

Supply of forms

6.97.—(1) Forms to be used for the purpose of proving bankruptcy debts shall be sent out by the official receiver or the trustee to every creditor of the bankrupt who is known to the sender, or is identified in the bankrupt's statement of affairs.

(2) The forms shall accompany (whichever is first)—

(a) the notice to creditors under section 293(2) (official receiver's decision not to call meeting of creditors), or

(b) the first notice calling a meeting of creditors, or

(c) where a certificate of summary administration has been issued by the court, the notice sent by the official receiver under Rule 6.49(2), or

(d) where a trustee is appointed by the court, the notice of his appointment sent by him to creditors.

(3) Where, with the leave of the court under section 297(7), the trustee advertises his appointment, he shall send proofs to the creditors within 4 months after the date of the bankruptcy order.

(4) The above paragraphs of this Rule are subject to any order of the court dispensing with the requirement to send out forms of proof, or altering the time at which the forms are to be sent.

Contents of proof

6.98.—(1) The following matters shall be stated in a creditor's proof of debt—

(a) the creditor's name and address;

(b) the total amount of his claim as at the date of the bankruptcy order;

(c) whether or not that amount includes outstanding uncapitalised interest;

(d) whether or not the claim includes value added tax;

(e) whether the whole or any part of the debt falls within any (and if so which) of the categories of preferential debts under section 386 of, and Schedule 6 to, the Act (as read with Schedule 3 to the Social Security Pensions Act 1975;

(f) particulars of how and when the debt was incurred by the debtor;

(g) particulars of any security held, the date when it was given and the value which the creditor puts upon it; and

(h) the name, address and authority of the person signing the proof (if other than the creditor himself).

(2) There shall be specified in the proof any documents by reference to which the debt can be substantiated; but (subject as follows) it is not essential that such documents be attached to the proof or submitted with it.

(3) The trustee, or the convener or chairman of any meeting, may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

Claim established by affidavit

6.99.—(1) The trustee may, if he thinks it necessary, require a claim of debt to be verified by affidavit, for which purpose there shall be used the form known as "affidavit of debt".

(2) An affidavit may be required notwithstanding that a proof of debt has already been lodged.

(3) The affidavit may be sworn before an official receiver or a deputy official receiver, or before an officer of the Department or of the court duly authorised in that behalf.

Cost of proving

6.100.—(1) Subject as follows, every creditor bears the cost of proving his own debt, including such as may be incurred in providing documents or evidence under Rule 6.98(3).

(2) Costs incurred by the trustee in estimating the value of a bankruptcy debt under section 322(3) (debts not bearing a certain value) fall on the estate, as an expense of the bankruptcy.

(3) Paragraphs (1) and (2) apply unless the court otherwise orders.

Trustee to allow inspection of proofs

6.101. The trustee shall, so long as proofs lodged with him are in his hands, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

(a) any creditor who has submitted his proof of debt (unless his proof has been wholly rejected for purposes of dividend or otherwise),

(b) the bankrupt, and

(c) any person acting on behalf of either of the above.

Proof of licensed moneylender

6.102. A proof of debt in respect of a moneylending transaction made before 27th January 1980, where the creditor was at the time of the transaction a licensed moneylender, shall have endorsed on or annexed to it a statement setting out in detail the particulars mentioned in section 9(2) of the Moneylenders Act 1927.

Transmission of proofs to trustee

6.103.—(1) Where a trustee is appointed, the official receiver shall forthwith transmit to him all the proofs which he has so far received, together with an itemised list of them.

(2) The trustee shall sign the list by way of receipt for the proofs, and return it to the official receiver.

(3) From then on, all proofs of debt shall be sent to the trustee and retained by him.

Admission and rejection of proofs for dividend

6.104.—(1) A proof may be admitted for dividend either for the whole amount claimed by the creditor, or for part of that amount.

(2) If the trustee rejects a proof in whole or in part, he shall prepare a written statement of his reasons for doing so, and send it forthwith to the creditor.

Appeal against decision on proof

6.105.—(1) If a creditor is dissatisfied with the trustee's decision with respect to his proof (including any decision on the question of preference), he may apply to the court for the decision to be reversed or varied.

The application must be made within 21 days of his receiving the statement sent under Rule 6.104(2).

(2) The bankrupt or any other creditor may, if dissatisfied with the trustee's decision admitting or rejecting the whole or any part of a proof, make such an application within 21 days of becoming aware of the trustee's decision.

(3) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant to the creditor who lodged the proof in question (if it is not himself) and to the trustee.

(4) The trustee shall, on receipt of the notice, file in court the relevant proof, together (if appropriate) with a copy of the statement sent under Rule 6.104(2).

(5) After the application has been heard and determined, the proof shall, unless it has been wholly disallowed, be returned by the court to the trustee.

(6) The official receiver is not personally liable for costs incurred by any person in respect of an application under this Rule; and the trustee (if other than the official receiver) is not so liable unless the court makes an order to that effect.

Withdrawal or variation of proof

6.106. A creditor's proof may at any time, by agreement between himself and the trustee, be withdrawn or varied as to the amount claimed.

Expunging of proof by the court

6.107.—(1) The court may expunge a proof or reduce the amount claimed—

(a) on the trustee's application, where he thinks that the proof has been improperly admitted, or ought to be reduced; or

(b) on the application of a creditor, if the trustee declines to interfere in the matter.

(2) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant—

(a) in the case of an application by the trustee, to the creditor who made the proof; and

(b) in the case of an application by a creditor, to the trustee and to the creditor who made the proof (if not himself).

SECTION B: QUANTIFICATION OF CLAIM

Negotiable instruments, etc

6.108. Unless the trustee allows, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor or his authorised representative to be a true copy.

Secured creditors

6.109.—(1) If a secured creditor realises his security, he may prove for the balance of his debt, after deducting the amount realised.

(2) If a secured creditor voluntarily surrenders his security for the general benefit of creditors, he may prove for his whole debt, as if it were unsecured.

Discounts

6.110. There shall in every case be deducted from the claim all trade and other discounts which would have been available to the bankrupt but for his bankruptcy, except any discount for immediate, early or cash settlement.

Debt in foreign currency

6.111.—(1) For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt shall be converted into sterling at the official exchange rate prevailing on the date of the bankruptcy order.

(2) "The official exchange rate" is the middle market rate at the Bank of England, as published for the date in question. In the absence of any such published rate, it is such rate as the court determines.

Payments of a periodical nature

6.112.—(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date of the bankruptcy order.

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have fallen due at that date, if accruing from day to day.

Interest

6.113.—(1) In the following circumstances the creditor's claim may include interest on the debt for periods before the bankruptcy order, although not previously reserved or agreed.

(2) If the debt is due by virtue of a written instrument and payable at a certain time, interest may be claimed for the period from that time to the date of the bankruptcy order.

(3) If the debt is due otherwise, interest may only be claimed if, before the presentation of the bankruptcy petition, a demand for payment was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of payment.

In that case interest may be claimed under this Rule for the period from the date of the demand to that of the bankruptcy order.

(4) The rate of interest to be claimed under this Rule is the rate specified in section 17 of the Judgments Act 1838 on the date of the bankruptcy order; except that, where the case falls within paragraph (3), the rate is that specified in the notice there referred to, not exceeding the rate under the Judgments Act as mentioned above.

Debt payable at future time

6.114. A creditor may prove for a debt of which payment was not yet due at the date of the bankruptcy order, but subject to Rule 11.13 in Part 11 of the Rules (adjustment of dividend where payment made before time).

CHAPTER 9

SECURED CREDITORS

Value of security

6.115.—(1) A secured creditor may, with the agreement of the trustee or the leave of the court, at any time alter the value which he has, in his proof of debt, put upon his security.

(2) However, if a secured creditor—

(a) being the petitioner, has in the petition put a value on his security, or

(b) has voted in respect of the unsecured balance of his debt,

he may re-value his security only with leave of the court.

Surrender for non-disclosure

6.116.—(1) If a secured creditor omits to disclose his security in his proof of debt, he shall surrender his security for the general benefit of creditors, unless the court, on application by him, relieves him from the effect of this Rule on the ground that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof of debt to be amended, on such terms as may be just.

Redemption by trustee

6.117.—(1) The trustee may at any time give notice to a creditor whose debt is secured that he proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.

(2) The creditor then has 21 days (or such longer period as the trustee may allow) in which, if he so wishes, to exercise his right to re-value his security (with the leave of the court, where Rule 6.115(2) applies).

If the creditor re-values his security, the trustee may only redeem at the new value.

(3) If the trustee redeems the security, the cost of transferring it is borne by the estate.

(4) A secured creditor may at any time, by a notice in writing, call on the trustee to elect whether he will or will not exercise his power to redeem the security at the value then placed on it; and the trustee then has 6 months in which to exercise the power or determine not to exercise it.

Test of security's value

6.118.—(1) Subject as follows, the trustee, if he is dissatisfied with the value which a secured creditor puts on his security (whether in his proof or by way of re-valuation under Rule 6.117), may require any property comprised in the security to be offered for sale.

(2) The terms of sale shall be such as may be agreed, or as the court may direct; and if the sale is by auction, the trustee on behalf of the estate, and the creditor on his own behalf, may appear and bid.

(3) This Rule does not apply if the security has been re-valued and the re-valuation has been approved by the court.

Realisation of security by creditor

6.119. If a creditor who has valued his security subsequently realises it (whether or not at the instance of the trustee)—

(a) the net amount realised shall be substituted for the value previously put by the creditor on the security, and

(b) that amount shall be treated in all respects as an amended valuation made by him.

CHAPTER 10

THE TRUSTEE IN BANKRUPTCY

SECTION A: APPOINTMENT AND ASSOCIATED FORMALITIES

Appointment by creditors' meeting

6.120.—(1) This Rule applies where a person has been appointed trustee by resolution of a creditors' meeting.

(2) The chairman of the meeting shall certify the appointment, but not unless and until the person to be appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified under the Act to act as trustee in relation to the bankrupt, and that he consents so to act.

(3) The chairman (if not himself the official receiver) shall send the certificate to the official receiver.

(4) The official receiver shall in any case file a copy of the certificate in court; and the trustee's appointment is effective as from the date on which the official receiver files the copy certificate in court, that date to be endorsed on the copy certificate.

The certificate, so endorsed, shall be sent by the official receiver to the trustee.

Appointment by the court

6.121.—(1) This Rule applies where the court under section 297(3), (4) or (5) appoints the trustee.

(2) The court's order shall not issue unless and until the person appointed has filed in court a statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the trustee, and that he consents so to act.

(3) Thereafter, the court shall send 2 copies of the order to the official receiver. One of the copies shall be sealed, and this shall be sent by him to the person appointed as trustee.

(4) The trustee's appointment takes effect from the date of the order.

Appointment by Secretary of State

6.122.—(1) This Rule applies where the official receiver—

(a) under section 295 or 300, refers to the Secretary of State the need for an appointment of a trustee, or

(b) under section 296, applies to the Secretary of State to make the appointment.

(2) If the Secretary of State makes an appointment he shall send two copies of the certificate of appointment to the official receiver, who shall transmit one such copy to the person appointed, and file the other copy in court.

The certificate shall specify the date from which the trustee's appointment is to be effective.

Authentication of trustee's appointment

6.123. Where a trustee is appointed under any of the 3 preceding Rules, a sealed copy of the order of appointment or (as the case may be) a copy of the certificate of his appointment may in any

proceedings be adduced as proof that he is duly authorised to exercise the powers and perform the duties of trustee of the bankrupt's estate.

Advertisement of appointment

6.124.—(1) Where the trustee is appointed by a creditors' meeting, he shall, forthwith after receiving his certificate of appointment, give notice of his appointment in such newspaper as he thinks most appropriate for ensuring that it comes to the notice of the bankrupt's creditors.

(2) The expense of giving the notice shall be borne in the first instance by the trustee; but he is entitled to be reimbursed by the estate, as an expense of the bankruptcy.

The same applies also in the case of the notice or advertisement under section 296(4) (appointment of trustee by Secretary of State), and of the notice or advertisement under section 297(7) (appointment by the court).

Hand-over of estate to trustee

6.125.—(1) This Rule applies only where—

(a) the bankrupt's estate vests in the trustee under Chapter IV of Part IX of the Act, following a period in which the official receiver is the receiver and manager of the estate according to section 287, or

(b) the trustee is appointed in succession to the official receiver acting as trustee.

(2) When the trustee's appointment takes effect, the official receiver shall forthwith do all that is required for putting him into possession of the estate.

(3) On taking possession of the estate, the trustee shall discharge any balance due to the official receiver on account of—

(a) expenses properly incurred by him and payable under the Act or the Rules, and

(b) any advances made by him in respect of the estate, together with interest on such advances at the rate specified in section 17 of the Judgments Act 1838 on the date of the bankruptcy order.

(4) Alternatively, the trustee 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 estate in respect of any sums due to him under paragraph (3). But, where the trustee has realised assets with a view to making those payments, the official receiver's charge does not extend in respect of sums deductible by the trustee from the proceeds of realisation, as being expenses properly incurred therein.

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

(7) The official receiver shall give to the trustee all such information, relating to the affairs of the bankrupt and the course of the bankruptcy, as he (the official receiver) considers to be reasonably required for the effective discharge by the trustee of his duties in relation to the estate.

(8) The trustee shall also be furnished with any report of the official receiver under Chapter 6 of this Part of the Rules.

SECTION B: RESIGNATION AND REMOVAL; VACATION OF OFFICE

Creditors' meeting to receive trustee's resignation

6.126.—(1) Before resigning his office, the trustee must call a meeting of creditors for the purpose of receiving his resignation. Notice of the meeting shall be sent to the official receiver at the same time as it is sent to creditors.

(2) The notice to creditors must be accompanied by an account of the trustee's administration of the bankrupt's estate, including—

(a) a summary of his receipts and payments and

(b) a statement by him that he has reconciled his account with that which is held by the Secretary of State in respect of the bankruptcy.

(3) Subject as follows, the trustee may only proceed under this Rule on grounds of ill health or because—

(a) he intends ceasing to be in practice as an insolvency practitioner, or

(b) there is some conflict of interest or change of personal circumstances which precludes or makes impracticable the further discharge by him of the duties of trustee.

(4) Where two or more persons are acting as trustee jointly, any one of them may proceed under this Rule (without prejudice to the continuation in office of the other or others) on the ground that, in his opinion and that of the other or others, it is no longer expedient that there should continue to be the present number of joint trustees.

Action following acceptance of resignation

6.127.—(1) Where a meeting of creditors is summoned for the purpose of receiving the trustee's resignation, the notice summoning it shall indicate that this is the purpose, or one of the purposes, of the meeting; and the notice shall draw the attention of creditors to Rule 6.135 with respect to the trustee's release.

(2) A copy of the notice shall at the same time also be sent to the official receiver.

(3) Where the chairman of the meeting is other than the official receiver, and there is passed at the meeting any of the following resolutions—

(a) that the trustee's resignation be accepted,

(b) that a new trustee be appointed,

(c) that the resigning trustee be not given his release,

the chairman shall, within 3 days, send to the official receiver a copy of the resolution.

If it has been resolved to accept the trustee's resignation, the chairman shall send to the official receiver a certificate to that effect.

(4) If the creditors have resolved to appoint a new trustee, the certificate of his appointment shall also be sent to the official receiver within that time; and Rule 6.120 above shall be complied with in respect of it.

(5) If the trustee's resignation is accepted, the notice of it required by section 298(7) shall be given by him forthwith after the meeting; and he shall send a copy of the notice to the official receiver.

The notice shall be accompanied by a copy of the account sent to creditors under Rule 6.126(2).

(6) The official receiver shall file a copy of the notice in court.

(7) The trustee's resignation is effective as from the date on which the official receiver files the copy notice in court, that date to be endorsed on the copy notice.

Leave to resign granted by the court

6.128.—(1) If at a creditors' meeting summoned to accept the trustee's resignation it is resolved that it be not accepted, the court may, on the trustee's application, make an order giving him leave to resign.

(2) The court's order under this Rule may include such provision as it thinks fit with respect to matters arising in connection with the resignation, and shall determine the date from which the trustee's release is effective.

(3) The court shall send two sealed copies of the order to the trustee, who shall send one of the copies forthwith to the official receiver.

(4) On sending notice of his resignation to the court, as required by section 298(7), the trustee shall send a copy of it to the official receiver.

Meeting of creditors to remove trustee

6.129.—(1) Where a meeting of creditors is summoned for the purpose of removing the trustee, the notice summoning it shall indicate that this is the purpose, or one of the purposes, of the meeting; and the notice shall draw the attention of creditors to section 299(3) with respect to the trustee's release.

(2) A copy of the notice shall at the same time also be sent to the official receiver.

(3) At the meeting, a person other than the trustee or his nominee may be elected to act as chairman; but if the trustee or his nominee is chairman and a resolution has been proposed for the trustee's removal, the chairman shall not adjourn the meeting without the consent of at least one-half (in value) of the creditors present (in person or by proxy) and entitled to vote.

(4) Where the chairman of the meeting is other than the official receiver, and there is passed at the meeting any of the following resolutions—

(a) that the trustee be removed,

(b) that a new trustee be appointed,

(c) that the removed trustee be not given his release,

the chairman shall, within 3 days, send to the official receiver a copy of the resolution.

If it has been resolved to remove the trustee, the chairman shall send to the official receiver a certificate to that effect.

(5) If the creditors have resolved to appoint a new trustee, the certificate of his appointment shall also be sent to the official receiver within that time; and Rule 6.120 shall be complied with in respect of it.

Court's power to regulate meeting under Rule 6.129

6.130. Where a meeting under Rule 6.129 is to be held, or is proposed to be summoned, the court may on the application of any creditor give directions as to the mode of summoning it, the sending out and return of forms of proxy, the conduct of the meeting, and any other matter which appears to the court to require regulation or control.

Procedure on removal

6.131.—(1) Where the creditors have resolved that the trustee be removed, the official receiver shall file the certificate of removal in court.

(2) The resolution is effective as from the date on which the official receiver files the certificate of removal in court, and that date shall be endorsed on the certificate.

(3) A copy of the certificate, so endorsed, shall be sent by the official receiver to the trustee who has been removed and, if a new trustee has been appointed, to him.

(4) The official receiver shall not file the certificate in court until the Secretary of State has certified to him that the removed trustee has reconciled his account with that held by the Secretary of State in respect of the bankruptcy.

Removal of trustee by the court

6.132.—(1) This Rule applies where application is made to the court for the removal of the trustee, or for an order directing the trustee to summon a meeting of creditors for the purpose of removing him.

(2) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for an ex parte hearing, of which he has been given at least 7 days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard.

(3) The applicant shall, at least 14 days before the hearing, send to the trustee and the official receiver notice stating the venue so fixed; and the notice shall be accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

(4) Subject to any contrary order of the court, the costs of the application do not fall on the estate.

(5) Where the court removes the trustee—

(a) it shall send copies of the order of removal to him and to the official receiver;

(b) the order may include such provision as the court thinks fit with respect to matters arising in connection with the removal; and

(c) if the court appoints a new trustee, Rule 6.121 applies.

Removal of trustee by Secretary of State

6.133.—(1) If the Secretary of State decides to remove the trustee, he shall before doing so notify the trustee and the official receiver of his decision and the grounds of it, and specify a period within which the trustee may make representations against implementation of the decision.

(2) If the Secretary of State directs the removal of the trustee, he shall forthwith—

(a) file notice of his decision in court, and

(b) send notice to the trustee and the official receiver.

(3) If the trustee is removed by direction of the Secretary of State, the court may make any such order in his case as it would have power to make if he had been removed by itself.

Advertisement of resignation or removal

6.134. Where a new trustee is appointed in place of one who has resigned or been removed, the new trustee shall, in the advertisement of his appointment, state that his predecessor has resigned or, as the case may be, been removed and (if it be the case) that he has been given his release.

Release of resigning or removed trustee

6.135.—(1) Where the trustee's resignation is accepted by a meeting of creditors which has not resolved against his release, he has his release from when his resignation is effective under Rule 6.127.

(2) Where the trustee is removed by a meeting of creditors which has not resolved against his release, the fact of his release shall be stated in the certificate of removal.

(3) Where—

(a) the trustee resigns, and the creditors' meeting called to receive his resignation has resolved against his release, or

(b) he is removed by a creditors' meeting which has so resolved, or is removed by the court,

he must apply to the Secretary of State for his release.

(4) When the Secretary of State gives the release, he shall certify it accordingly, and send the certificate to the official receiver, to be filed in court.

(5) A copy of the certificate shall be sent by the Secretary of State to the former trustee, whose release is effective from the date of the certificate.

SECTION C: RELEASE ON COMPLETION OF ADMINISTRATION

Release of official receiver

6.136.—(1) The official receiver shall, before giving notice to the Secretary of State under section 299(2) (that the administration of the estate is for practical purposes complete), send out notice of his intention to do so to all creditors who have proved their debts, and to the bankrupt.

(2) The notice shall in each case be accompanied by a summary of the official receiver's receipts and payments as trustee.

(3) The Secretary of State, when he has under section 299(2) determined the date from which the official receiver is to have his release, shall give notice to the court that he has done so. The notice shall be accompanied by the summary referred to in paragraph (2).

Final meeting of creditors

6.137.—(1) Where the trustee is other than the official receiver, he shall give at least 28 days' notice of the final meeting of creditors to be held under section 331. The notice shall be sent to all creditors who have proved their debts, and to the bankrupt.

(2) The trustee's report laid before the meeting under that section shall include—

(a) a summary of his receipts and payments, and

(b) a statement by him that he has reconciled his account with that which is held by the Secretary of State in respect of the bankruptcy.

(3) At the final meeting, the creditors may question the trustee with respect to any matter contained in his report, and may resolve against him having his release.

(4) The trustee shall give notice to the court that the final meeting has been held; and the notice shall state whether or not he has been given his release, and be accompanied by a copy of the report laid before the final meeting. A copy of the notice shall be sent by the trustee to the official receiver.

(5) If there is no quorum present at the final meeting, the trustee shall report to the court that a final meeting was summoned in accordance with the Rules, but there was no quorum present; and the final meeting is then deemed to have been held, and the creditors not to have resolved against the trustee having his release.

(6) If the creditors at the final meeting have not so resolved, the trustee is released when the notice under paragraph (4) is filed in court. If they have so resolved, the trustee must obtain his release from the Secretary of State, as provided by Rule 6.135.

SECTION D: REMUNERATION

Fixing of remuneration

6.138.—(1) The trustee is entitled to receive remuneration for his services as such.

(2) The remuneration shall be fixed either—

(a) as a percentage of the value of the assets in the bankrupt's estate which are realised or distributed, or of the one value and the other in combination, or

(b) by reference to the time properly given by the insolvency practitioner (as trustee) and his staff in attending to matters arising in the bankruptcy.

(3) Where the trustee is other than the official receiver, it is for the creditors' committee (if there is one) to determine whether his remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.

(4) In arriving at that determination, the committee shall have regard to the following matters—

(a) the complexity (or otherwise) of the case,

(b) any respects in which, in connection with the administration of the estate, there falls on the insolvency practitioner (as trustee) any responsibility of an exceptional kind or degree,

(c) the effectiveness with which the insolvency practitioner appears to be carrying out, or to have carried out, his duties as trustee, and

(d) the value and nature of the assets in the estate with which the trustee has to deal.

(5) If there is no creditors' committee, or the committee does not make the requisite determination, the trustee's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the creditors' committee.

(6) If not fixed as above, the trustee's remuneration shall be on the scale laid down for the official receiver by general regulations.

Other matters affecting remuneration

6.139.—(1) Where the trustee sells assets on behalf of a secured creditor, he is entitled to take for himself, out of the proceeds of sale, a sum by way of remuneration equivalent to the remuneration chargeable in corresponding circumstances by the official receiver under general regulations.

(2) Where there are joint trustees, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred—

(a) to the court, for settlement by order, or

(b) to the creditors' committee or a meeting of creditors, for settlement by resolution.

(3) If the trustee is a solicitor and employs his own firm, or any partner in it, to act on behalf of the estate, profit costs shall not be paid unless this is authorised by the creditors' committee, the creditors or the court.

Recourse of trustee to meeting of creditors

6.140. If the trustee's remuneration has been fixed by the creditors' committee, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors.

Recourse to the court

6.141.—(1) If the trustee considers that the remuneration fixed for him by the creditors' committee, or by resolution of the creditors, or as under Rule 6.138(6), is insufficient, he may apply to the court for an order increasing its amount or rate.

(2) The trustee shall give at least 14 days' notice of his application to the members of the creditors' committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.

(3) If there is no creditors' committee, the trustee's notice of his application shall be sent to such one or more of the bankrupt's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

(4) The court may, if it appears to be a proper case, order the costs of the trustee's application, including the costs of any member of the creditors' committee appearing on it, or any creditor so appearing, to be paid out of the estate.

Creditor's claim that remuneration is excessive

6.142.—(1) Any creditor of the bankrupt may, with the concurrence of at least 25 per cent. in value of the creditors (including himself), apply to the court for an order that the trustee's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

(2) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for an ex parte hearing, of which he has been given at least 7 days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard.

(3) The applicant shall, at least 14 days before the hearing, send to the trustee a notice stating the venue so fixed; and the notice shall be accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

(4) If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

(5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and do not fall on the estate.

SECTION E: SUPPLEMENTARY PROVISIONS

Trustee deceased

6.143.—(1) Subject as follows, where the trustee (other than the official receiver) has died, it is the duty of his personal representatives to give notice of the fact to the official receiver, specifying the date of the death.

This does not apply if notice has been given under any of the following paragraphs of this Rule.

(2) If the deceased trustee was a partner in a firm, notice may be given to the official receiver by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Secretary of State for the authorisation of insolvency practitioners.

(3) Notice of the death may be given by any person producing to the official receiver the relevant death certificate or a copy of it.

(4) The official receiver shall give notice to the court, for the purpose of fixing the date of the deceased trustee's release in accordance with section 299(3)(a).

Loss of qualification as insolvency practitioner

6.144.—(1) This Rule applies where the trustee vacates office, under section 298(6), on his ceasing to be qualified to act as an insolvency practitioner in relation to the bankrupt.

(2) The trustee vacating office shall forthwith give notice of his doing so to the official receiver, who shall give notice to the Secretary of State.

The official receiver shall file in court a copy of his notice under this paragraph.

(3) Rule 6.135 applies as regards the trustee obtaining his release, as if he had been removed by the court.

Notice to official receiver of intention to vacate office

6.145.—(1) Where the trustee intends to vacate office, whether by resignation or otherwise, and there remain in the estate any unrealised assets, he shall give notice of his intention to the official receiver, informing him of the nature, value and whereabouts of the assets in question.

(2) Where there is to be a creditors' meeting to receive the trustee's resignation, or otherwise in respect of his vacation of office, the notice to the official receiver must be given at least 21 days before the meeting.

Trustee's duties on vacating office

6.146.—(1) Where the trustee ceases to be in office as such, in consequence of removal, resignation or cesser of qualification as an insolvency practitioner, he is under obligation forthwith to deliver up to the person succeeding him as trustee the assets of the estate (after deduction of any expenses properly incurred, and distributions made, by him) and further to deliver up to that person—

(a) the records of the bankruptcy, including correspondence, proofs and other related papers appertaining to the bankruptcy while it was within his responsibility, and

(b) the bankrupt's books, papers and other records.

(2) When the administration of the bankrupt's estate is for practical purposes complete, the trustee shall forthwith file in court all proofs remaining with him in the proceedings.

Power of court to set aside certain transactions

6.147.—(1) If in the administration of the estate the trustee enters into any transaction with a person who is an associate of his, the court may, on the application of any person interested, set the transaction aside and order the trustee to compensate the estate 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 trustee 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 with respect to a trustee's dealings with trust property, or the fiduciary obligations of any person.

Rule against solicitation

6.148.—(1) Where the court is satisfied that any improper solicitation has been used by or on behalf of the trustee in obtaining proxies or procuring his appointment, it may order that no

remuneration out of the estate be allowed 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 creditors' committee or the creditors, or any other provision of the Rules relating to the trustee's remuneration.

Enforcement of trustee's obligations to official receiver

6.149.—(1) The court may, on the application of the official receiver, make such orders as it thinks necessary for enforcement of the duties of the trustee under section 305(3) (information and assistance to be given; production and inspection of books and records relating to the bankruptcy).

(2) An order of the court under this Rule may provide that all costs of and incidental to the official receiver's application shall be borne by the trustee.

CHAPTER 11

THE CREDITORS' COMMITTEE

Membership of creditors' committee

6.150.—(1) The creditors' committee shall consist of at least 3, and not more than 5, members.

(2) All the members of the committee must be creditors of the bankrupt; and any creditor (other than one who is fully secured) may be a member, so long as—

(a) he has lodged a proof of his debt, and

(b) his proof has neither been wholly disallowed for voting purposes, nor wholly rejected for the purposes of distribution or dividend.

(3) A body corporate may be a member of the committee, but it cannot act as such otherwise than by a representative appointed under Rule 6.156.

Formalities of establishment

6.151.—(1) The creditors' committee does not come into being, and accordingly cannot act, until the trustee has issued a certificate of its due constitution.

(2) If the chairman of the creditors' meeting which resolves to establish the committee is not the trustee, he shall forthwith give notice of the resolution to the trustee (or, as the case may be, the person appointed as trustee by that same meeting), and inform him of the names and addresses of the persons elected to be members of the committee.

(3) No person may act as a member of the committee unless and until he has agreed to do so; and the trustee's certificate of the committee's due constitution shall not issue before at least 3 persons elected to be members of it have agreed to act.

(4) As and when the others (if any) agree to act, the trustee shall issue an amended certificate.

(5) The certificate, and any amended certificate, shall be filed in court by the trustee.

(6) If after the first establishment of the committee there is any change in its membership, the trustee shall report the change to the court.

Obligations of trustee to committee

6.152.—(1) Subject as follows, it is the duty of the trustee to report to the members of the creditors' committee all such matters as appear to him to be, or as they have indicated to him as being, of concern to them with respect to the bankruptcy.

(2) In the case of matters so indicated to him by the committee, the trustee need not comply with any request for information where it appears to him that—

(a) the request is frivolous or unreasonable, or

(b) the cost of complying would be excessive, having regard to the relative importance of the information, or

(c) the estate is without funds sufficient for enabling him to comply.

(3) Where the committee has come into being more than 28 days after the appointment of the trustee, the latter shall report to them, in summary form, what actions he has taken since his appointment, and shall answer such questions as they may put to him regarding his conduct of the bankruptcy hitherto.

(4) A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report to him by the trustee, otherwise than in summary form, of any matters previously arising.

(5) Nothing in this Rule disentitles the committee, or any member of it, from having access to the trustee's records of the bankruptcy, or from seeking an explanation of any matter within the committee's responsibility.

Meetings of the committee

6.153.—(1) Subject as follows, meetings of the creditors' committee shall be held when and where determined by the trustee.

(2) The trustee shall call a first meeting of the committee to take place within 3 months of his appointment or of the committee's establishment (whichever is the later); and thereafter he shall call a meeting—

(a) if so requested by a member of the committee or his representative (the meeting then to be held within 21 days of the request being received by the trustee), and

(b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

(3) The trustee shall give 7 days' notice in writing of the venue of any meeting to every member of the committee (or his representative, if designated for that purpose), unless in any case the requirement of the notice has been waived by or on behalf of any member.

Waiver may be signified either at or before the meeting.

The chairman at meetings

6.154.—(1) The chairman at any meeting of the creditors' committee shall be the trustee, or a person appointed by him in writing to act.

(2) A person so nominated must be either—

(a) one who is qualified to act as an insolvency practitioner in relation to the bankrupt, or

(b) an employee of the trustee or his firm who is experienced in insolvency matters.

Quorum

6.155. A meeting of the committee is duly constituted if due notice of it has been given to all the members and at least 2 of the members are present or represented.

Committee-members' representatives

6.156.—(1) A member of the creditors' committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose.

(2) A person acting as a committee-member's representative must hold a letter of authority entitling him so to act (either generally or specially). The letter must be signed by or on behalf of the committee-member.

(3) The chairman at any meeting of the committee may call on a person claiming to act as a committee-member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.

(4) No member may be represented by a body corporate, or by a person who is an undischarged bankrupt or is subject to a composition or arrangement with his creditors.

(5) No person shall—

(a) on the same committee, act at one and the same time as representative of more than one committee-member, or

(b) act both as a member of the committee and as representative of another member.

(6) Where the representative of a committee-member signs any document on the latter's behalf, the fact that he so signs must be stated below his signature.

Resignation

6.157. A member of the creditors' committee may resign by notice in writing delivered to the trustee.

Termination of membership

6.158.—(1) A person's membership of the creditors' committee is automatically terminated if—

(a) he becomes bankrupt or compounds or arranges with his creditors, or

(b) at 3 consecutive meetings of the committee he is neither present nor represented (unless at the third of those meetings it is resolved that this Rule is not to apply in his case), or

(c) he ceases to be, or is found never to have been, a creditor.

(2) However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.

Removal

6.159. A member of the creditors' committee may be removed by resolution at a meeting of creditors, at least 14 days' notice having been given of the intention to move that resolution.

Vacancies

6.160.—(1) The following applies if there is a vacancy in the membership of the creditors' committee.

(2) The vacancy need not be filled if the trustee and a majority of the remaining committee-members so agree, provided that the number of members does not fall below the minimum required by Rule 6.150(1).

(3) The trustee may appoint any creditor (being qualified under the Rules to be a member of the committee) to fill the vacancy, if a majority of the other members of the committee agree to the appointment and the creditor concerned consents to act.

(4) Alternatively, a meeting of creditors may resolve that a creditor be appointed (with his consent) to fill the vacancy. In this case at least 14 days' notice must have been given of a resolution to make such an appointment (whether or not of a person named in the notice).

(5) Where the vacancy is filled by an appointment made by a creditors' meeting at which the trustee is not present, the chairman of the meeting shall report to the trustee the appointment which has been made.

Voting rights and resolutions

6.161.—(1) At any meeting of the committee, each member (whether present himself, or by his representative) has one vote; and a resolution is passed when a majority of the members present or represented have voted in favour of it.

(2) Every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting. The record shall be signed by the chairman and kept with the records of the bankruptcy.

Resolutions by post

6.162.—(1) In accordance with this Rule, the trustee may seek to obtain the agreement of members of the creditors' committee to a resolution by sending to every member (or his representative designated for the purpose) a copy of the proposed resolution.

(2) Where the trustee makes use of the procedure allowed by this Rule, he shall send out to members of the committee or their representatives (as the case may be) a statement incorporating the resolution to which their agreement is sought, each resolution (if more than one) being set out in a separate document.

(3) Any member of the committee may, within 7 days from the date of the trustee sending out a resolution, require the trustee to summon a meeting of the committee to consider the matters raised by the resolution.

(4) In the absence of such a request, the resolution is deemed to have been carried in the committee if and when the trustee is notified in writing by a majority of the members that they concur with it.

(5) A copy of every resolution passed under this Rule, and a note that the concurrence of the committee was obtained, shall be kept with the records of the bankruptcy.

Trustee's reports

6.163.—(1) The trustee shall, as and when directed by the creditors' committee (but not more often than once in any period of 2 months), send a written report to every member of the committee setting out the position generally as regards the progress of the bankruptcy and matters arising in connection with it, to which he (the trustee) considers the committee's attention should be drawn.

(2) In the absence of any such directions by the committee, the trustee shall send such a report not less often than once in every period of 6 months.

(3) The obligations of the trustee under this Rule are without prejudice to those imposed by Rule 6.152.

Expenses of members etc

6.164. The trustee shall defray out of the estate, in the prescribed order of priority, any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in respect of their attendance at the committee's meetings, or otherwise on the committee's business.

Dealings by committee-members and others

6.165.—(1) This Rule applies to—

(a) any member of the creditors' committee,

(b) any committee-member's representative,

(c) any person who is an associate of a member of the committee or a committee-member's representative, and

(d) any person who has been a member of the committee at any time in the last 12 months.

(2) Subject as follows, a person to whom this Rule applies shall not enter into any transaction whereby he—

(a) receives out of the estate any payment for services given or goods supplied in connection with the estate's administration, or

(b) obtains any profit from the administration, or

(c) acquires any asset forming part of the estate.

(3) Such a transaction may be entered into by a person to whom this Rule applies—

(a) with the prior leave of the court, or

(b) if he does so as a matter of urgency, or by way of performance of a contract in force before the commencement of the bankruptcy, and obtains the court's leave for the transaction, having applied for it without undue delay, or

(c) with the prior sanction of the creditors' committee, where it is satisfied (after full disclosure of the circumstances) that the person will be giving full value in the transaction.

(4) Where in the committee a resolution is proposed that sanction be accorded for a transaction to be entered into which, without that sanction or the leave of the court, would be in contravention of this Rule, no member of the committee, and no representative of a member, shall vote if he is to participate directly or indirectly in the transaction.

(5) The court may, on the application of any person interested—

(a) set aside a transaction on the ground that it has been entered into in contravention of this Rule, and

(b) make with respect to it such other order as it thinks fit, including (subject to the following paragraph) an order requiring a person to whom this Rule applies to account for any profit obtained from the transaction and compensate the estate for any resultant loss.

(6) In the case of a person to whom this Rule applies as an associate of a member of the committee or of a committee-member's representative, the court shall not make any order under paragraph (5), if satisfied that he entered into the relevant transaction without having any reason to suppose that in doing so he would contravene this Rule.

(7) The costs of an application to the court for leave under this Rule do not fall on the estate, unless the court so orders.

Committee's functions vested in Secretary of State

6.166.—(1) At any time when the functions of the creditors' committee are vested in the Secretary of State under section 302(1) or (2), requirements of the Act or the Rules about notices to be given, or reports to be made, to the committee by the trustee do not apply, otherwise than as enabling the committee to require a report as to any matter.

(2) Where the committee's functions are so vested under section 302(2), they may be exercised by the official receiver.

CHAPTER 12

SPECIAL MANAGER

Appointment and remuneration

6.167.—(1) An application made by the official receiver or trustee under section 370 for the appointment of a person to be special manager shall be supported by a report setting out the reasons for the application.

The report shall include the applicant's estimate of the value of the estate, property or business in respect of which the special manager is to be appointed.

(2) The court's order appointing the special manager shall specify the duration of his appointment, which may be for a period of time, or until the occurrence of a specified event. Alternatively, the order may specify that the duration of the appointment is to be subject to a further order of the court.

(3) The appointment of a special manager may be renewed by order of the court.

(4) The special manager's remuneration shall be fixed from time to time by the court.

Security

6.168.—(1) The appointment of the special manager does not take effect until the person appointed has given (or, being allowed by the court to do so, undertaken to give) security to the person who applies for him to be appointed.

(2) It is not necessary that security shall be given for each separate bankruptcy; but it may be given either specially for a particular bankruptcy, or generally for any bankruptcy in relation to which the special manager may be employed as such.

(3) The amount of the security shall be not less than the value of the estate, property or business in respect of which he is appointed, as estimated by the applicant in his report under Rule 6.167(1).

(4) When the special manager has given security to the person applying for his appointment, that person's certificate as to the adequacy of the security shall be filed in court.

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

(a) where a bankruptcy order is not made, he is entitled to be reimbursed out of the property of the debtor, and the court may make an order on the debtor accordingly, and

(b) where a bankruptcy order is made, he is entitled to be reimbursed out of the estate in the prescribed order of priority.

Failure to give or keep up security

6.169.—(1) If the special manager fails to give the required security within the time stated for that purpose by the order appointing him, or any extension of that time that may be allowed, the official receiver or trustee (as the case may be) shall report the failure to the court, which may thereupon discharge the order appointing the special manager.

(2) If the special manager fails to keep up his security, the official receiver or trustee shall report his failure to the court, which may thereupon remove the special manager, and make such order as it thinks fit as to costs.

(3) If an order is made under this Rule removing the special manager, or discharging the order appointing him, the court shall give directions as to whether any, and if so what, steps should be taken for the appointment of another special manager in his place.

Accounting

6.170.—(1) The special manager shall produce accounts, containing details of his receipts and payments, for the approval of the trustee.

(2) The accounts shall be in respect of 3-month periods for the duration of the special manager's appointment (or for a lesser period, if his appointment terminates less than 3 months from its date, or from the date to which the last accounts were made up).

(3) When the accounts have been approved, the special manager's receipts and payments shall be added to those of the trustee.

Termination of appointment

6.171.—(1) The special manager's appointment terminates if the bankruptcy petition is dismissed or if, an interim receiver having been appointed, the latter is discharged without a bankruptcy order having been made.

(2) If the official receiver or the trustee is of opinion that the employment of the special manager is no longer necessary or profitable for the estate, he shall apply to the court for directions, and the court may order the special manager's appointment to be terminated.

(3) The official receiver or the trustee shall make the same application if a resolution of the creditors is passed, requesting that the appointment be terminated.

CHAPTER 13

PUBLIC EXAMINATION OF BANKRUPT

Order for public examination

6.172.—(1) If the official receiver applies to the court, under section 290, for the public examination of the bankrupt, a copy of the court's order shall, forthwith after its making, be sent by the official receiver to the bankrupt.

(2) The order shall appoint a venue for the hearing, and direct the bankrupt's attendance thereat.

(3) The official receiver shall give at least 14 days' notice of the hearing—

(a) if a trustee has been nominated or appointed, to him;

(b) if a special manager has been appointed, to him; and

(c) subject to any contrary direction of the court, to every creditor of the bankrupt who is known to the official receiver or is identified in the bankrupt's statement of affairs.

(4) The official receiver may, if he thinks fit, cause notice of the order to be given, by public advertisement in one or more newspapers, at least 14 days before the day fixed for the hearing.

Order on request by creditors

6.173.—(1) A request by a creditor to the official receiver, under section 290(2), for the bankrupt to be publicly examined shall be made in writing and be accompanied by—

(a) a list of the creditors concurring with the request and the amount of their respective claims in the bankruptcy,

(b) from each creditor concurring, written confirmation of his concurrence, and

(c) a statement of the reasons why the examination is requested.

Sub-paragraphs (a) and (b) do not apply if the requisitioning creditor's debt is alone sufficient, without the concurrence of others.

(2) Before an application to the court is made on the request, the requisitionist shall deposit with the official receiver such sum as the latter may determine to be appropriate by way of security for the expenses of the hearing of a public examination, if ordered.

(3) Subject as follows, the official receiver shall, within 28 days of receiving the request, make the application to the court required by section 290(2).

(4) If the official receiver is of opinion that the request is an unreasonable one in the circumstances, he may apply to the court for an order relieving him from the obligation to make the application otherwise required by that subsection.

(5) If the court so orders, and the application for the order was made ex parte, notice of the order shall be given forthwith by the official receiver to the requisitionist. If the application for an order is dismissed, the official receiver's application under section 290(2) shall be made forthwith on conclusion of the hearing of the application first mentioned.

Bankrupt unfit for examination

6.174.—(1) Where the bankrupt is suffering from any mental disorder or physical affliction or disability rendering him unfit to undergo or attend for public examination, the court may, on application in that behalf, either stay the order for his public examination or direct that it shall be conducted in such manner and at such place as it thinks fit.

(2) Application under this Rule shall be made—

(a) by a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the bankrupt, or

(b) by a relative or friend of the bankrupt whom the court considers to be a proper person to make the application, or

(c) by the official receiver.

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

(a) it shall, unless the bankrupt is a patient within the meaning of the Mental Health Act 1983, be supported by the affidavit of a registered medical practitioner as to the bankrupt's mental and physical condition;

(b) at least 7 days' notice of the application shall be given to the official receiver and the trustee (if any); and

(c) before any order is made on the application, the applicant shall deposit with the official receiver such sum as the latter certifies to be necessary for the additional expenses of any examination that may be ordered on the application.

An order made on the application may provide that the expenses of the examination are to be payable, as to a specified proportion, out of the deposit under sub-paragraph (c), instead of out of the estate.

(4) Where the application is made by the official receiver, it may be made ex parte, and may be supported by evidence in the form of a report by the official receiver to the court.

Procedure at hearing

6.175.—(1) The bankrupt shall at the hearing be examined on oath; and he shall answer all such questions as the court may put, or allow to be put, to him.

(2) Any of the persons allowed by section 290(4) to question the bankrupt may, with the approval of the court (made known either at the hearing or in advance of it), appear by solicitor or counsel; or he may in writing authorise another person to question the bankrupt on his behalf.

(3) The bankrupt may at his own expense employ a solicitor with or without counsel, who may put to him such questions as the court may allow for the purpose of enabling him to explain or qualify any answers given by him, and may make representations on his behalf.

(4) There shall be made in writing such record of the examination as the court thinks proper. The record shall be read over either to or by the bankrupt, signed by him, and verified by affidavit at a venue fixed by the court.

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

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

Adjournment

6.176.—(1) The public examination may be adjourned by the court 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 bankrupt—

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

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

(3) Where application under paragraph (2) is made by the bankrupt, the court may grant it on terms that the expenses of giving the notices required by that paragraph shall be paid by him and that, before a venue for the resumed public examination is fixed, he shall deposit with the official receiver such sum as the latter considers necessary to cover those expenses.

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

Expenses of examination

6.177.—(1) Where a public examination of the bankrupt has been ordered by the court on a creditors' requisition under Rule 6.173, the court may order that the expenses of the examination are to be paid, as to a specified proportion, out of the deposit under Rule 6.173(2), instead of out of the estate.

(2) In no case do the costs and expenses of a public examination fall on the official receiver personally.

CHAPTER 14

DISCLAIMER

Trustee's notice of disclaimer

6.178.—(1) Where the trustee disclaims property under section 315, the notice of disclaimer shall contain such particulars of the property disclaimed as enable it to be easily identified.

(2) The notice shall be signed by the trustee and filed in court, with a copy. The court shall secure that both the notice and the copy are sealed and endorsed with the date of filing.

(3) The copy notice, so sealed and endorsed, shall be returned by the court to the trustee as follows—

(a) if the notice has been delivered at the offices of the court by the trustee in person, it shall be handed to him,

(b) if it has been delivered by some person acting on the trustee's behalf, it shall be handed to that person, for immediate transmission to the trustee, and

(c) otherwise, it shall be sent to the trustee by first class post.

The court shall cause to be endorsed on the original notice, or otherwise recorded on the file, the manner in which the copy notice was returned to the trustee.

(4) For the purposes of section 315, the date of the prescribed notice is that which is endorsed on it, and on the copy, in accordance with this Rule.

Communication of disclaimer to persons interested

6.179.—(1) Within 7 days after the day on which a copy of the notice of disclaimer is returned to him, the trustee shall send or give copies of the notice (showing the date endorsed as required by Rule 6.178) to the persons mentioned in paragraphs (2) to (5) below.

(2) Where the property disclaimed is of a leasehold nature, he shall send or give a copy to every person who (to his knowledge) claims under the bankrupt as underlessee or mortgagee.

(3) Where the disclaimer is of property in a dwelling-house, he shall send or give a copy to every person who (to his knowledge) is in occupation of, or claims a right to occupy, the house.

(4) He shall in any case send or give a copy of the notice to every person who (to his knowledge)—

(a) claims an interest in the disclaimed property, or

(b) is under any liability in respect of the property, not being a liability discharged by the disclaimer.

(5) If the disclaimer is of an unprofitable contract, he shall send or give copies of the notice to all such persons as, to his knowledge, are parties to the contract or have interests under it.

(6) If subsequently it comes to the trustee's knowledge, in the case of any person, that he has such an interest in the disclaimed property as would have entitled him to receive a copy of the notice of disclaimer in pursuance of paragraphs (2) to (5), the trustee shall then forthwith send or give to that person a copy of the notice.

But compliance with this paragraph is not required if—

(a) the trustee is satisfied that the person has already been made aware of the disclaimer and its date, or

(b) the court, on the trustee's application, orders that compliance is not required in that particular case.

Additional notices

6.180. The trustee disclaiming property may, without prejudice to his obligations under sections 315 to 319 and Rules 6.178 and 6.179, at any time give notice of the disclaimer to any persons who in his opinion ought, in the public interest or otherwise, to be informed of it.

Duty to keep court informed

6.181. The trustee shall notify the court from time to time as to the persons to whom he has sent or given copies of the notice of disclaimer under the two preceding Rules, giving their names and addresses, and the nature of their respective interests.

Application for leave to disclaim

6.182.—(1) Where under section 315(4) the trustee requires the leave of the court to disclaim property claimed for the bankrupt's estate under section 307 or 308, he may apply for that leave ex parte.

(2) The application must be accompanied by a report—

(a) giving such particulars of the property proposed to be disclaimed as enable it to be easily identified,

(b) setting out the reasons why, the property having been claimed for the estate, the court's leave to disclaim is now applied for, and

(c) specifying the persons (if any) who have been informed of the trustee's intention to make the application.

(3) If it is stated in the report that any person's consent to the disclaimer has been signified, a copy of that consent must be annexed to the report.

(4) The court may, on consideration of the application, grant the leave applied for; and it may, before granting leave—

(a) order that notice of the application be given to all such persons who, if the property is disclaimed, will be entitled to apply for a vesting or other order under section 320, and

(b) fix a venue for the hearing of the application under section 315(4).

Application by interested party under s. 316

6.183.—(1) The following applies where, in the case of any property, application is made to the trustee by an interested party under section 316 (request for decision whether the property is to be disclaimed or not).

(2) The application—

(a) shall be delivered to the trustee personally or by registered post, and

(b) shall be made in the form known as “notice to elect”, or a substantially similar form.

(3) This paragraph applies in a case where the property concerned cannot be disclaimed by the trustee without the leave of the court.

If within the period of 28 days mentioned in section 316(1) the trustee applies to the court for leave to disclaim, the court shall extend the time allowed by that section for giving notice of disclaimer to a date not earlier than the date fixed for the hearing of the application.

Interest in property to be declared on request

6.184.—(1) If, in the case of property which the trustee has the right to disclaim, it appears to him that there is some person who claims, or may claim, to have an interest in the property, he may give notice to that person calling on him to declare within 14 days whether he claims any such interest and, if so, the nature and extent of it.

(2) Failing compliance with the notice, the trustee is entitled to assume that the person concerned has no such interest in the property as will prevent or impede its disclaimer.

Disclaimer presumed valid and effective

6.185. Any disclaimer of property by the trustee is presumed valid and effective, unless it is proved that he has been in breach of his duty with respect to the giving of notice of disclaimer, or otherwise under sections 315 to 319, or under this Chapter of the Rules.

Application for exercise of court's powers under s.320

6.186.—(1) This Rule applies with respect to an application by any person under section 320 for an order of the court to vest or deliver disclaimed property.

(2) The application must be made within 3 months of the applicant becoming aware of the disclaimer, or of his receiving a copy of the trustee's notice of disclaimer sent under Rule 6.179, whichever is the earlier.

(3) The applicant shall with his application file an affidavit—

(a) stating whether he applies under paragraph (a) of section 320(2) (claim of interest in the property), under paragraph (b) (liability not discharged) or under paragraph (c) (occupation of dwelling-house);

(b) specifying the date on which he received a copy of the trustee's notice of disclaimer, or otherwise became aware of the disclaimer; and

(c) specifying the grounds of his application and the order which he desires the court to make under section 320.

(4) The court shall fix a venue for the hearing of the application; and the applicant shall, not later than 7 days before the date fixed, give to the trustee notice of the venue, accompanied by copies of the application and the affidavit under paragraph (3).

(5) On the hearing of the application, the court may give directions as to other persons (if any) who should be sent or given notice of the application and the grounds on which it is made.

(6) Sealed copies of any order made on the application shall be sent by the court to the applicant and the trustee.

(7) In a case where the property disclaimed is of a leasehold nature, or is property in a dwelling-house, and section 317 or (as the case may be) section 318 applies to suspend the effect of the disclaimer, there shall be included in the court's order a direction giving effect to the disclaimer.

This paragraph does not apply if, at the time when the order is issued, other applications under section 320 are pending in respect of the same property.

CHAPTER 15

REPLACEMENT OF EXEMPT PROPERTY

Purchase of replacement property

6.187.—(1) A purchase of replacement property under section 308(3) may be made either before or after the realisation by the trustee of the value of the property vesting in him under the section.

(2) The trustee is under no obligation, by virtue of the section, to apply funds to the purchase of a replacement for property vested in him, unless and until he has sufficient funds in the estate for that purpose.

Money provided in lieu of sale

6.188.—(1) The following applies where a third party proposes to the trustee that he (the former) should provide the estate with a sum of money enabling the bankrupt to be left in possession of property which would otherwise be made to vest in the trustee under section 308.

(2) The trustee may accept that proposal, if satisfied that it is a reasonable one, and that the estate will benefit to the extent of the value of the property in question less the cost of a reasonable replacement.

CHAPTER 16

INCOME PAYMENTS ORDERS

Application for order

6.189.—(1) Where the trustee applies for an income payments order under section 310, the court shall fix a venue for the hearing of the application.

(2) Notice of the application, and of the venue, shall be sent by the trustee to the bankrupt at least 28 days before the day fixed for the hearing, together with a copy of the trustee's application and a short statement of the grounds on which it is made.

(3) The notice shall inform the bankrupt that—

(a) unless at least 7 days before the date fixed for the hearing he sends to the court and to the trustee written consent to an order being made in the terms of the application, he is required to attend the hearing, and

(b) if he attends, he will be given an opportunity to show cause why the order should not be made, or an order should be made otherwise than as applied for by the trustee.

Action to follow making of order

6.190.—(1) Where the court makes an income payments order, a sealed copy of the order shall, forthwith after it is made, be sent by the trustee to the bankrupt.

(2) If the order is made under section 310(3)(b), a sealed copy of the order shall also be sent by the trustee to the person to whom the order is directed.

Variation of order

6.191.—(1) If an income payments order is made under section 310(3)(a), and the bankrupt does not comply with it, the trustee may apply to the court for the order to be varied, so as to take effect under section 310(3)(b) as an order to the payor of the relevant income.

(2) The trustee's application under this Rule may be made ex parte.

(3) Sealed copies of any order made on the application shall, forthwith after it is made, be sent by the court to the trustee and the bankrupt.

(4) In the case of an order varying or discharging an income payments order made under section 310(3)(b), an additional sealed copy shall be sent to the trustee, for transmission forthwith to the payor of the relevant income.

Order to payor of income: administration

6.192.—(1) Where a person receives notice of an income payments order under section 310(3)(b), with reference to income otherwise payable by him to the bankrupt, he shall make the arrangements requisite for immediate compliance with the order.

(2) When making any payment to the trustee, he may deduct the appropriate fee towards the clerical and administrative costs of compliance with the income payments order.

He shall give to the bankrupt a written statement of any amount deducted by him under this paragraph.

(3) Where a person receives notice of an income payments order imposing on him a requirement under section 310(3)(b), and either—

(a) he is then no longer liable to make to the bankrupt any payment of income, or

(b) having made payments in compliance with the order, he ceases to be so liable,

he shall forthwith give notice of that fact to the trustee.

Review of order

6.193.—(1) Where an income payments order is in force, either the trustee or the bankrupt may apply to the court for the order to be varied or discharged.

(2) If the application is made by the trustee, Rule 6.189 applies (with any necessary modification) as in the case of an application for an income payments order.

(3) If the application is made by the bankrupt, it shall be accompanied by a short statement of the grounds on which it is made.

(4) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for an ex parte hearing, of which he has been given at least 7 days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard.

(5) At least 28 days before the date fixed for the hearing, the applicant shall send to the trustee or the bankrupt (whichever of them is not himself the applicant) notice of the venue, accompanied by a copy of the application.

Where the applicant is the bankrupt, the notice shall be accompanied by a copy of the statement of grounds under paragraph (3).

(6) The trustee may, if he thinks fit, appear and be heard on the application; and, whether or not he intends to appear, he may, not less than 7 days before the date fixed for the hearing, file a written report of any matters which he considers ought to be drawn to the court's attention.

If such a report is filed, a copy of it shall be sent by the trustee to the bankrupt.

(7) Sealed copies of any order made on the application shall, forthwith after the order is made, be sent by the court to the trustee, the bankrupt and the payor (if other than the bankrupt).

CHAPTER 17

ACTION BY COURT UNDER SECTION 369 ORDER TO INLAND REVENUE OFFICIAL

Application for order

6.194.—(1) An application by the official receiver or the trustee for an order under section 369 (order to inland revenue official to produce documents) shall specify (with such particularity as will enable the order, if made, to be most easily complied with) the documents whose production to the court is desired, naming the official to whom the order is to be addressed.

(2) The court shall fix a venue for the hearing of the application.

(3) Notice of the venue, accompanied by a copy of the application, shall be sent by the applicant to the Commissioners of Inland Revenue ("the Commissioners") at least 28 days before the hearing.

(4) The notice shall require the Commissioners, not later than 7 days before the date fixed for the hearing of the application, to inform the court whether they consent or object to the making of an order under the section.

(5) If the Commissioners consent to the making of an order, they shall inform the court of the name of the official to whom it should be addressed, if other than the one named in the application.

(6) If the Commissioners object to the making of an order, they shall secure that an officer of theirs attends the hearing of the application and, not less than 7 days before it, deliver to the court a statement in writing of their grounds of objection.

A copy of the statement shall be sent forthwith to the applicant.

Making and service of the order

6.195.—(1) If on the hearing of the application it appears to the court to be a proper case, the court may make the order applied for, with such modifications (if any) as appear appropriate having regard to any representations made on behalf of the Commissioners.

(2) The order—

(a) may be addressed to an inland revenue official other than the one named in the application,

(b) shall specify a time, not less than 28 days after service on the official to whom the order is addressed, within which compliance is required, and

(c) may include requirements as to the manner in which documents to which the order relates are to be produced.

(3) A sealed copy of the order shall be served by the applicant on the official to whom it is addressed.

(4) If the official is unable to comply with the order because he has not the relevant documents in his possession, and has been unable to obtain possession of them, he shall deliver to the court a statement in writing as to the reasons for his non-compliance.

A copy of the statement shall be sent forthwith by the official to the applicant.

Custody of documents

6.196. Where in compliance with an order under section 369 original documents are produced, and not copies, any person who, by order of the court under section 369(2) (authorised disclosure to persons with right of inspection), has them in his possession or custody is responsible to the court for their safe keeping and return as and when directed.

CHAPTER 18

MORTGAGED PROPERTY

Claim by mortgagee of land

6.197.—(1) Any person claiming to be the legal or equitable mortgagee of land belonging to the bankrupt may apply to the court for an order directing that the land be sold.

"Land" includes any interest in, or right over, land.

(2) The court, if satisfied as to the applicant's title, may direct accounts to be taken and enquiries made to ascertain—

(a) the principal, interest and costs due under the mortgage, and

(b) where the mortgagee has been in possession of the land or any part of it, the rents and profits, dividends, interest, or other proceeds received by him or on his behalf.

Directions may be given by the court under this paragraph with respect to any mortgage (whether prior or subsequent) on the same property, other than that of the applicant.

(3) For the purpose of those accounts and enquiries, and of making title to the purchaser, any of the parties may be examined by the court, and shall produce on oath before the court all such documents in their custody or under their control relating to the estate of the bankrupt as the court may direct.

The court may under this paragraph authorise the service of interrogatories on any party.

(4) In any proceedings between a mortgagor and mortgagee, or the trustee of either of them, the court may order accounts to be taken and enquiries made in like manner as in the Chancery Division of the High Court.

Power of court to order sale

6.198.—(1) The court may order that the land, or any specified part of it, be sold; and any party bound by the order and in possession of the land or part, or in receipt of the rents and profits from it, may be ordered to deliver up possession or receipt to the purchaser or to such other person as the court may direct.

(2) The court may permit the person having the conduct of the sale to sell the land in such manner as he thinks fit. Alternatively, the court may direct that the land be sold as directed by the order.

(3) The court's order may contain directions—

(a) appointing the persons to have the conduct of the sale;

(b) fixing the manner of sale (whether by contract conditional on the court's approval, private treaty, public auction, or otherwise);

(c) settling the particulars and conditions of sale;

(d) obtaining evidence of the value of the property, and fixing a reserve or minimum price;

(e) requiring particular persons to join in the sale and conveyance;

(f) requiring the payment of the purchase money into court, or to trustees or others;

(g) if the sale is to be by public auction, fixing the security (if any) to be given by the auctioneer, and his remuneration.

(4) The court may direct that, if the sale is to be by public auction, the mortgagee may appear and bid on his own behalf.

Proceeds of sale

6.199.—(1) The proceeds of sale shall be applied—

(a) first, in payment of the expenses of the trustee, of and occasioned by the application to the court, of the sale and attendance threat, and of any costs arising from the taking of accounts, and making of enquiries, as directed by the court under Rule 6.197; and

(b) secondly, in payment of the amount found due to any mortgagee, for principal, interest and costs;

and the balance (if any) shall be retained by or paid to the trustee.

(2) Where the proceeds of the sale are insufficient to pay in full the amount found due to any mortgagee, he is entitled to prove as a creditor for any deficiency, and to receive dividends rateably with other creditors, but not so as to disturb any dividend already declared.

CHAPTER 19

AFTER-ACQUIRED PROPERTY

Duties of bankrupt in respect of after-acquired property

6.200.—(1) The notice to be given by the bankrupt to the trustee, under section 333(2), of property acquired by, or devolving upon, him, or of any increase of his income, shall be given within 21 days of his becoming aware of the relevant facts.

(2) Having served notice in respect of property acquired by or devolving upon him, the bankrupt shall not, without the trustee's consent in writing, dispose of it within the period of 42 days beginning with the date of the notice.

(3) If the bankrupt disposes of property before giving the notice required by this Rule or in contravention of paragraph (2), it is his duty forthwith to disclose to the trustee the name and address

of the disponee, and to provide any other information which may be necessary to enable the trustee to trace the property and recover it for the estate.

(4) Subject as follows, paragraphs (1) to (3) do not apply to property acquired by the bankrupt in the ordinary course of a business carried on by him.

(5) If the bankrupt carries on a business, he shall, not less often than 6-monthly, furnish to the trustee information with respect to it, showing the total of goods bought and sold (or, as the case may be, services supplied) and the profit or loss arising from the business.

The trustee may require the bankrupt to furnish fuller details (including accounts) of the business carried on by him.

Trustee's recourse to disponee of property

6.201.—(1) Where property has been disposed of by the bankrupt, before giving the notice required by Rule 6.200 or otherwise in contravention of that Rule, the trustee may serve notice on the disponee, claiming the property as part of the estate by virtue of section 307(3).

(2) The trustee's notice under this Rule must be served within 28 days of his becoming aware of the disponee's identity and an address at which he can be served.

Expenses of getting in property for the estate

6.202. Any expenses incurred by the trustee in acquiring title to after-acquired property shall be paid out of the estate, in the prescribed order of priority.

CHAPTER 20

LEAVE TO ACT AS DIRECTOR, ETC

Application for leave

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

(2) The affidavit must identify the company and specify—

(a) the nature of its business or intended business, and the place or places where that business is, or is to be, carried on,

(b) whether it is, or is to be, a private or a public company,

(c) the persons who are, or are to be, principally responsible for the conduct of its affairs (whether as directors, shadow directors, managers or otherwise),

(d) the manner and capacity in which the applicant proposes to take part or be concerned in the promotion or formation of the company or, as the case may be, its management, and

(e) the emoluments and other benefits to be obtained from the directorship.

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

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

(5) The court shall fix a venue for the hearing of the bankrupt's application, and give notice to him accordingly.

Report of official receiver

6.204.—(1) The bankrupt shall, not less than 28 days before the date fixed for the hearing, give to the official receiver and the trustee notice of the venue, accompanied by copies of the application and the affidavit under Rule 6.203.

(2) The official receiver may, not less than 14 days before the date fixed for the hearing, file in court a report of any matters which he considers ought to be drawn to the court's attention. A copy of the report shall be sent by him, forthwith after it is filed, to the bankrupt and to the trustee.

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

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

(4) The official receiver and the trustee may appear on the hearing of the application, and may make representations and put to the bankrupt such questions as the court may allow.

Court's order on application

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

(2) The court may at the same time, having regard to any representations made by the trustee on the hearing of the application—

(a) include in the order provision varying an income payments order already in force in respect of the bankrupt, or

(b) if no income payments order is in force, make one.

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

CHAPTER 21

ANNULMENT OF BANKRUPTCY ORDER

Application for annulment

6.206.—(1) An application to the court under section 282(1) for the annulment of a bankruptcy order shall specify whether it is made—

(a) under subsection (1)(a) of the section (claim that the order ought not to have been made), or

(b) under subsection (1)(b) (debts and expenses of the bankruptcy all paid or secured).

(2) The application shall, in either case, be supported by an affidavit stating the grounds on which it is made; and, where it is made under section 282(1)(b), there shall be set out in the affidavit all the facts by reference to which the court is, under the Act and the Rules, required to be satisfied before annulling the bankruptcy order.

(3) A copy of the application and supporting affidavit shall be filed in court; and the court shall give to the applicant notice of the venue fixed for the hearing.

(4) The applicant shall, not less than 28 days before the hearing, give to the official receiver and (if other) the trustee notice of the venue, accompanied by copies of the application and the affidavit under paragraph (2).

Report by trustee

6.207.—(1) The following applies where the application is made under section 282(1)(b) (debts and expenses of the bankruptcy all paid or secured).

(2) Not less than 21 days before the date fixed for the hearing, the trustee or, if no trustee has been appointed, the official receiver shall file in court a report with respect to the following matters—

(a) the circumstances leading to the bankruptcy;

(b) (in summarised form) the extent of the bankrupt's assets and liabilities at the date of the bankruptcy order and at the date of the present application;

(c) details of creditors (if any) who are known to him to have claims, but have not proved; and

(d) such other matters as the person making the report considers to be, in the circumstances, necessary for the information of the court.

(3) The report shall include particulars of the extent (if any) to which, and the manner in which, the debts and expenses of the bankruptcy have been paid or secured.

In so far as debts and expenses are unpaid but secured, the person making the report shall state in it whether and to what extent he considers the security to be satisfactory.

(4) A copy of the report shall be sent to the applicant at least 14 days before the date fixed for the hearing; and he may, if he wishes, file further affidavits in answer to statements made in the report.

Copies of any such affidavits shall be sent by the applicant to the official receiver and (if other) the trustee.

(5) If the trustee is other than the official receiver, a copy of his report shall be sent to the official receiver at least 21 days before the hearing. The official receiver may then file an additional report, a copy of which shall be sent to the applicant at least 7 days before the hearing.

Power of court to stay proceedings

6.208.—(1) The court may, in advance of the hearing, make an interim order staying any proceedings which it thinks ought, in the circumstances of the application, to be stayed.

(2) Application for an interim order under this Rule may be made ex parte.

Notice to creditors who have not proved

6.209. Where the application for annulment is made under section 282(1)(b) and it has been reported to the court under Rule 6.207 that there are known creditors of the bankrupt who have not proved, the court may—

(a) direct the trustee to send notice of the application to such of those creditors as the court thinks ought to be informed of it, with a view to their proving their debts (if they so wish) within 21 days, and

(b) direct the trustee to advertise the fact that the application has been made, so that creditors who have not proved may do so within a specified time, and

(c) adjourn the application meanwhile, for any period not less than 35 days.

The hearing

6.210.—(1) The trustee shall attend the hearing of the application.

(2) The official receiver, if he is not the trustee, may attend, but is not required to do so unless he has filed a report under Rule 6.207.

(3) If the court makes an order on the application, it shall send copies of the order to the applicant, the official receiver and (if other) the trustee.

Matters to be proved under s.282(1)(b)

6.211.—(1) This rule applies with regard to the matters which must, in an application under section 282(1)(b), be proved to the satisfaction of the court.

(2) Subject to the following paragraph, all bankruptcy debts which have been proved must have been paid in full.

(3) If a debt is disputed, or a creditor who has proved can no longer be traced, the bankrupt must have given such security (in the form of money paid into court, or a bond entered into with approved sureties) as the court considers adequate to satisfy any sum that may subsequently be proved to be due to the creditor concerned and (if the court thinks fit) costs.

(4) Where under paragraph (3) security has been given in the case of an untraced creditor, the court may direct that particulars of the alleged debt, and the security, be advertised in such manner as it thinks fit.

If advertisement is ordered under this paragraph, and no claim on the security is made within 12 months from the date of the advertisement (or the first advertisement, if more than one), the court shall, on application in that behalf, order the security to be released.

Notice to creditors

6.212.—(1) Where the official receiver has notified creditors of the debtor's bankruptcy, and the bankruptcy order is annulled, he shall forthwith notify them of the annulment.

(2) Expenses incurred by the official receiver in giving notice under this Rule are a charge in his favour on the property of the former bankrupt, whether or not actually in his hands.

(3) Where any property is in the hands of a trustee or any person other than the former bankrupt himself, the official receiver's charge is valid subject only to any costs that may be incurred by the trustee or that other person in effecting realisation of the property for the purpose of satisfying the charge.

Other matters arising on annulment

6.213.—(1) In an order under section 282 the court shall include provision permitting vacation of the registration of the bankruptcy petition as a pending action, and of the bankruptcy order, in the register of writs and orders affecting land.

(2) The court shall forthwith give notice of the making of the order to the Secretary of State.

(3) The former bankrupt may require the Secretary of State to give notice of the making of the order—

(a) in the Gazette, or

(b) in any newspaper in which the bankruptcy order was advertised, or

(c) in both.

(4) Any requirement by the former bankrupt under paragraph (3) shall be addressed to the Secretary of State in writing. The Secretary of State shall notify him forthwith as to the cost of the advertisement, and is under no obligation to advertise until that sum has been paid.

(5) Where the former bankrupt has died, or is a person incapable of managing his affairs (within the meaning of Chapter 7 in Part 7 of the Rules), the references to him in paragraphs (3) and (4) are to be read as referring to his personal representative or, as the case may be, a person appointed by the court to represent or act for him.

Trustee's final account

6.214.—(1) Where a bankruptcy order is annulled under section 282, this does not of itself release the trustee from any duty or obligation, imposed on him by or under the Act or the Rules, to account for all his transactions in connection with the former bankrupt's estate.

(2) The trustee shall submit a copy of his final account to the Secretary of State, as soon as practicable after the court's order annulling the bankruptcy order; and he shall file a copy of the final account in court.

(3) The final account must include a summary of the trustee's receipts and payments in the administration, and contain a statement to the effect that he has reconciled his account with that which is held by the Secretary of State in respect of the bankruptcy.

(4) The trustee is released from such time as the court may determine, having regard to whether—

(a) paragraph (2) of this Rule has been complied with, and

(b) any security given under Rule 6.211(3) has been, or will be, released.

CHAPTER 22

DISCHARGE

Application for suspension of discharge

6.215.—(1) The following applies where the official receiver applies to the court for an order under section 279(3) (suspension of automatic discharge), but not where he makes that application, pursuant to Rule 6.176(4), on the adjournment of the bankrupt's public examination.

(2) The official receiver shall with his application file a report setting out the reasons why it appears to him that such an order should be made.

(3) The court shall fix a venue for the hearing of the application, and give notice of it to the official receiver, the trustee and the bankrupt.

(4) Copies of the official receiver's report under this Rule shall be sent by him to the trustee and the bankrupt, so as to reach them at least 21 days before the date fixed for the hearing.

(5) The bankrupt may, not later than 7 days before the date of the hearing, file in court a notice specifying any statements in the official receiver's report which he intends to deny or dispute.

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

(6) If on the hearing the court makes an order suspending the bankrupt's discharge, copies of the order shall be sent by the court to the official receiver, the trustee and the bankrupt.

Lifting of suspension of discharge

6.216.—(1) Where the court has made an order under section 279(3) that the relevant period (that is to say, the period after which the bankrupt may under that section have his discharge) shall cease to run, the bankrupt may apply to it for the order to be discharged.

(2) The court shall fix a venue for the hearing of the application; and the bankrupt shall, not less than 28 days before the date fixed for hearing, give notice of the venue to the official receiver and the trustee, accompanied in each case by a copy of the application.

(3) The official receiver and the trustee may appear and be heard on the bankrupt's application; and, whether or not he appears, the official receiver may file in court a report of any matters which he considers ought to be drawn to the court's attention.

(4) If the court's order under section 279(3) was for the relevant period to cease to run until the fulfilment of specified conditions, the court may request a report from the official receiver as to whether those conditions have or have not been fulfilled.

(5) If a report is filed under paragraph (3) or (4), copies of it shall be sent by the official receiver to the bankrupt and the trustee, not later than 14 days before the hearing.

(6) The bankrupt may, not later than 7 days before the date of the hearing, file in court a notice specifying any statements in the official receiver's report which he intends to deny or dispute.

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

(7) If on the bankrupt's application the court discharges the order under section 279(3) (being satisfied that the relevant period should begin to run again), it shall issue to the bankrupt a certificate that it has done so, with effect from a specified date.

Application by bankrupt for discharge

6.217.—(1) If the bankrupt applies under section 280 for an order discharging him from bankruptcy, he shall give to the official receiver notice of the application, and deposit with him such sum as the latter may require to cover his costs of the application.

(2) The court, if satisfied that paragraph (1) has been complied with, shall fix a venue for the hearing of the application, and give at least 42 days' notice of it to the official receiver and the bankrupt.

(3) The official receiver shall give notice accordingly—

(a) to the trustee, and

(b) to every creditor who, to the official receiver's knowledge, has a claim outstanding against the estate which has not been satisfied.

(4) Notices under paragraph (3) shall be given not later than 14 days before the date fixed for the hearing of the bankrupt's application.

Report of official receiver

6.218.—(1) Where the bankrupt makes an application under section 280, the official receiver shall, at least 21 days before the date fixed for the hearing of the application, file in court a report containing the following information with respect to the bankrupt—

(a) any failure by him to comply with his obligations under Parts VIII to XI of the Act;

(b) the circumstances surrounding the present bankruptcy, and those surrounding any previous bankruptcy of his;

(c) the extent to which, in the present and in any previous bankruptcy, his liabilities have exceeded his assets; and

(d) particulars of any distribution which has been, or is expected to be, made to creditors in the present bankruptcy or, if such is the case, that there has been and is to be no distribution;

and the official receiver shall include in his report any other matters which in his opinion ought to be brought to the court's attention.

(2) The official receiver shall send a copy of the report to the bankrupt and the trustee, so as to reach them at least 14 days before the date of the hearing of the application under section 280.

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

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

(4) The official receiver, the trustee and any creditor may appear on the hearing of the bankrupt's application, and may make representations and put to the bankrupt such questions as the court may allow.

Order of discharge on application

6.219.—(1) An order of the court under section 280(2)(b)(discharge absolutely) or (c) (discharge subject to conditions with respect to income or property) shall bear the date on which it is made, but does not take effect until such time as it is drawn up by the court.

(2) The order then has effect retrospectively to the date on which it was made.

(3) Copies of any order made by the court on an application by the bankrupt for discharge under section 280 shall be sent by the court to the bankrupt, the trustee and the official receiver.

Certificate of discharge

6.220.—(1) Where it appears to the court that a bankrupt is discharged, whether by expiration of time or otherwise, the court shall, on his application, issue to him a certificate of his discharge, and the date from which it is effective.

(2) The discharged bankrupt may require the Secretary of State to give notice of the discharge—

(a) in the Gazette, or

(b) in any newspaper in which the bankruptcy was advertised, or

(c) in both.

(3) Any requirement by the former bankrupt under paragraph (2) shall be addressed to the Secretary of State in writing. The Secretary of State shall notify him forthwith as to the cost of the advertisement, and is under no obligation to advertise until that sum has been paid.

(4) Where the former bankrupt has died, or is a person incapable of managing his affairs (within the meaning of Chapter 7 in Part 7 of the Rules), the references to him in paragraphs (2) and (3) are to be read as referring to his personal representative or, as the case may be, a person appointed by the court to represent or act for him.

Deferment of issue of order pending appeal

6.221. An order made by the court on an application by the bankrupt for discharge under section 280 shall not be issued or gazetted until the time allowed for appealing has expired or, if an appeal is entered, until the appeal has been determined.

Costs under this Chapter

6.222. In no case do any costs or expenses arising under this Chapter fall on the official receiver personally.

Bankrupt's debts surviving discharge

6.223. Discharge does not release the bankrupt from any obligation arising under a confiscation order made under section 1 of the Drug Trafficking Offences Act 1986

CHAPTER 23

ORDER OF PAYMENT OF COSTS, ETC., OUT OF ESTATE

General rule as to priority

6.224.—(1) The expenses of the bankruptcy are payable out of the estate in the following order of priority—

(a) expenses properly chargeable or incurred by the official receiver or the trustee in preserving, realising or getting in any of the assets of the bankrupt, including those incurred in acquiring title to after-acquired property;

(b) any other expenses incurred or disbursements made by the official receiver or under his authority, including those incurred or made in carrying on the business of a debtor or bankrupt;

(c) (i) the fee payable under any order made under section 415 for the performance by the official receiver of his general duties as official receiver;

(ii) any repayable deposit lodged by the petitioner under any such order as security for the fee mentioned in sub-paragraph (i) (except where the deposit is applied to the payment of the remuneration of an insolvency practitioner appointed under section 273 (debtor's petition));

(d) any other fees payable under any order made under section 415, including those payable to the official receiver, and any remuneration payable to him under general regulations;

(e) the cost of any security provided by an interim receiver, trustee or special manager in accordance with the Act or the Rules;

(f) the remuneration of the interim receiver (if any);

(g) any deposit lodged on an application for the appointment of an interim receiver;

(h) the costs of the petitioner, and of any person appearing on the petition whose costs are allowed by the court;

(j) the remuneration of the special manager (if any);

(k) any amount payable to a person employed or authorised, under Chapter 5 of this Part of the Rules, to assist in the preparation of a statement of affairs or of accounts;

(l) any allowance made, by order of the court, towards 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;

(m) any necessary disbursements by the trustee in the course of his administration (including any expenses incurred by members of the creditors' committee or their representatives and allowed by the trustee under Rule 6.164, but not including any payment of capital gains tax in circumstances referred to in sub-paragraph (p) below);

(n) the remuneration or emoluments of any person (including the bankrupt) who has been employed by the trustee to perform any services for the estate, as required or authorised by or under the Act or the Rules;

(o) the remuneration of the trustee, up to any amount not exceeding that which is payable to the official receiver under general regulations;

(p) the amount of any capital gains tax on chargeable gains accruing on the realisation of any asset of the bankrupt (without regard to whether the realisation is effected by the trustee, a secured creditor, or a receiver or manager appointed to deal with a security);

(q) the balance, after payment of any sums due under sub-paragraph (o) above, of any remuneration due to the trustee.

(2) The costs of employing a shorthand writer, if appointed by an order of the court made at the instance of the official receiver in connection with an examination, rank in priority with those specified in paragraph (1)(a). The costs of employing a shorthand writer so appointed in any other case rank after the allowance mentioned in paragraph (1)(l) and before the disbursements mentioned in paragraph (1)(m).

(3) Any expenses incurred in holding an examination under Rule 6.174 (examinee unfit), where the application for it is made by the official receiver, rank in priority with those specified in paragraph (1)(a).

CHAPTER 24

SECOND BANKRUPTCY

Scope of this Chapter

6.225.—(1) The Rules in this Chapter relate to the manner in which, in the case of a second bankruptcy, the trustee in the earlier bankruptcy is to deal with property and money to which section 334(3) applies, until there is a trustee of the estate in the later bankruptcy.

(2) "The earlier bankruptcy", "the later bankruptcy" and "the existing trustee" have the meanings given by section 334(1).

General duty of existing trustee

6.226.—(1) Subject as follows, the existing trustee shall take into his custody or under his control all such property and money, in so far as he has not already done so as part of his duties as trustee in the earlier bankruptcy.

(2) Where any of that property consists of perishable goods, or goods the value of which is likely to diminish if they are not disposed of, the existing trustee has power to sell or otherwise dispose of those goods.

(3) The proceeds of any such sale or disposal shall be held, under the existing trustee's control, with the other property and money comprised in the bankrupt's estate.

Delivery up to later trustee

6.227. The existing trustee shall, as and when requested by the trustee for the purposes of the later bankruptcy, deliver up to the latter all such property and money as is in his custody or under his control in pursuance of Rule 6.226.

Existing trustee's expenses

6.228. Any expenses incurred by the existing trustee in compliance with section 335(1) and this Chapter of the Rules shall be defrayed out of, and are a charge on, all such property and money as is referred to in section 334(3), whether in the hands of the existing trustee or of the trustee for the purposes of the later bankruptcy.

CHAPTER 25

CRIMINAL BANKRUPTCY

Presentation of petition

6.229.—(1) In criminal bankruptcy, the petition under section 264(1)(d) shall be presented to the High Court, and accordingly Rule 6.9 in Chapter 2 (court in which other petitions to be presented) does not apply.

(2) This does not affect the High Court's power to order that the proceedings be transferred.

Status and functions of Official Petitioner

6.230.—(1) Subject as follows, the Official Petitioner is to be regarded for all purposes of the Act and the Rules as a creditor of the bankrupt.

(2) He may attend or be represented at any meeting of creditors, and is to be given any notice under the Act or the Rules which is required or authorised to be given to creditors; and the requirements of the Rules as to the lodging or use of proxies do not apply.

Interim receivership

6.231. Chapter 4 of this Part of the Rules applies in criminal bankruptcy only in so far as it provides for the appointment of the official receiver as interim receiver.

Proof of bankruptcy debts and notice of order

6.232.—(1) The making of a bankruptcy order on a criminal bankruptcy petition does not affect the right of creditors to prove for their debts arising otherwise than in consequence of the criminal proceedings.

(2) A person specified in a criminal bankruptcy order as having suffered loss or damage shall be treated as a creditor of the bankrupt; and a copy of the order is sufficient evidence of his claim, subject to its being shown by any party to the bankruptcy proceedings that the loss or damage actually suffered was more or (as the case may be) less than the amount specified in the order.

(3) The requirements of the Rules with respect to the proof of debts do not apply to the Official Petitioner.

(4) In criminal bankruptcy, the forms to be used by any person for the purpose of proving bankruptcy debts shall be sent out by the official receiver, not less than 12 weeks from the making of the bankruptcy order, to every creditor who is known to him, or is identified in the bankrupt's statement of affairs.

(5) The official receiver shall, within those 12 weeks, send to every such creditor notice of the making of the bankruptcy order.

Meetings under the Rules

6.233.—(1) The following Rules in Chapter 6 of this Part do not apply in criminal bankruptcy—

Rules 6.79 and 6.80 (first meeting of creditors, and business thereat);

Rule 6.82(2) (the chairman, if other than the official receiver);

Rule 6.88(2) and (3) (resolution for appointment of trustee).

(2) Rule 6.97 (supply of forms for proof of debts) does not apply.

Trustee in bankruptcy; creditors' committee; annulment of bankruptcy order

6.234.—(1) Chapter 11 of this Part of the Rules does not apply in criminal bankruptcy, except Rules 6.136 (release of official receiver) and 6.147 (power of court to set aside transactions).

(2) Chapter 12 (creditors' committee) does not apply.

(3) Chapter 21 (annulment of bankruptcy order) applies to an application to the court under section 282(2) as it applies to an application under section 282(1), with any necessary modifications.

CHAPTER 26

MISCELLANEOUS RULES IN BANKRUPTCY

Bankruptcy of solicitors

6.235. Where a bankruptcy order is made against a solicitor, or such an order made against a solicitor is rescinded or annulled, the court shall forthwith give notice to the Secretary of the Law Society of the order that it has made.

Consolidation of petitions

6.236. Where two or more bankruptcy petitions are presented against the same debtor, the court may order the consolidation of the proceedings, on such terms as it thinks fit.

Bankrupt's dwelling-house and home

6.237.—(1) This Rule applies where the trustee applies to the court under section 313 for an order imposing a charge on property consisting of an interest in a dwelling-house.

(2) The bankrupt's spouse or former spouse shall be made respondent to the application; and the court may, if it thinks fit, direct other persons to be made respondents also, in respect of any interest which they may have in the property.

(3) The trustee shall make a report to the court, containing the following particulars—

(a) the extent of the bankrupt's interest in the property which is the subject of the application; and

(b) the amount which, at the date of the application, remains owing to unsecured creditors of the bankrupt.

(4) The terms of the charge to be imposed shall be agreed between the trustee and the bankrupt or, failing agreement, shall be settled by the court.

(5) The rate of interest applicable under section 313(2) is the rate specified in section 17 of the Judgments Act 1838 on the day on which the charge is imposed, and the rate so applicable shall be stated in the court's order imposing the charge.

(6) The court's order shall also—

(a) describe the property to be charged;

(b) state whether the title to the property is registered and, if it is, specify the title number;

(c) set out the extent of the bankrupt's interest in the property which has vested in the trustee;

(d) indicate, by reference to the amount which remains owing to unsecured creditors of the bankrupt, the amount of the charge to be imposed;

(e) set out the conditions (if any) imposed by the court under section 3(1) of the Charging Orders Act 1979;

(f) provide for any property comprised in the charge to vest again in the bankrupt as from a specified date.

(7) Unless the court is of the opinion that a different date is appropriate, the date under paragraph (6)(f) shall be that of the registration of the charge in accordance with section 3(2) of the Charging Orders Act 1979.

(8) The trustee shall, forthwith after the making of the court's order, send notice of it and its effect to the Chief Land Registrar.