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STATUTORY INSTRUMENTS

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**1986 No. 1925**

**The Insolvency Rules 1986**

THE THIRD GROUP OF PARTS

PART 7

COURT PROCEDURE AND PRACTICE

CHAPTER 1

APPLICATIONS

**Preliminary**

**7.1.** This Chapter applies to any application made to the court under the Act or Rules except a petition for—

- (a) an administration order under Part II,
- (b) a winding-up order under Part IV, or
- (c) a bankruptcy order under Part IX

of the Act.

**Interpretation**

**7.2.—(1)** In this Chapter, except in so far as the context otherwise requires—

“originating application” means an application to the court which is not an application in pending proceedings before the court; and

“ordinary application” means any other application to the court.

(2) Every application shall be in the form appropriate to the application concerned.

**Form and contents of application**

**7.3.—(1)** Each application shall be in writing and shall state—

- (a) the names of the parties;
- (b) the nature of the relief or order applied for or the directions sought from the court;
- (c) the names and addresses of the persons (if any) on whom it is intended to serve the application or that no person is intended to be served;
- (d) where the Act or Rules require that notice of the application is to be given to specified persons, the names and addresses of all those persons (so far as known to the applicant); and
- (e) the applicant's address for service.

(2) An originating application shall set out the grounds on which the applicant claims to be entitled to the relief or order sought.

(3) The application must be signed by the applicant if he is acting in person or, when he is not so acting, by or on behalf of his solicitor.

### **Filing and service of application**

**7.4.**—(1) The application shall be filed in court, accompanied by one copy and a number of additional copies equal to the number of persons who are to be served with the application.

(2) Subject as follows in this Rule and the next, or unless the Rule under which the application is brought provides otherwise, or the court otherwise orders, upon the presentation of the documents mentioned in paragraph (1) above, the court shall fix a venue for the application to be heard.

(3) Unless the court otherwise directs, the applicant shall serve a sealed copy of the application, endorsed with the venue for the hearing, on the respondent named in the application (or on each respondent if more than one).

(4) The court may give any of the following directions—

- (a) that the application be served upon persons other than those specified by the relevant provision of the Act or Rules;
- (b) that the giving of notice to any person may be dispensed with;
- (c) that notice be given in some way other than that specified in paragraph (3).

(5) Unless the provision of the Act or Rules under which the application is made provides otherwise, and subject to the next paragraph, the application must be served at least 14 days before the date fixed for the hearing.

(6) Where the case is one of urgency, the court may (without prejudice to its general power to extend or abridge time limits)—

- (a) hear the application immediately, either with or without notice to, or the attendance of, other parties, or
- (b) authorise a shorter period of service than that provided for by paragraph (5);

and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the court thinks fit.

### **Other hearings ex parte**

**7.5.**—(1) Where the relevant provisions of the Act or Rules do not require service of the application on, or notice of it to be given to, any person, the court may hear the application ex parte.

(2) Where the application is properly made ex parte, the court may hear it forthwith, without fixing a venue as required by Rule 7.4(2).

(3) Alternatively, the court may fix a venue for the application to be heard, in which case Rule 7.4 applies (so far as relevant).

### **Hearing of application**

**7.6.**—(1) Unless allowed or authorised to be made otherwise, every application before the registrar shall, and every application before the judge may, be heard in chambers.

(2) Unless either—

- (a) the judge has given a general or special direction to the contrary, or
- (b) it is not within the registrar's power to make the order required,

the jurisdiction of the court to hear and determine the application may be exercised by the registrar, and the application shall be made to the registrar in the first instance.

(3) Where the application is made to the registrar he may refer to the judge any matter which he thinks should properly be decided by the judge, and the judge may either dispose of the matter or refer it back to the registrar with such directions as he thinks fit.

(4) Nothing in this Rule precludes an application being made directly to the judge in a proper case.

### **Use of affidavit evidence**

**7.7.**—(1) In any proceedings evidence may be given by affidavit unless by any provision of the Rules it is otherwise provided or the court otherwise directs; but the court may, on the application of any party, order the attendance for cross-examination of the person making the affidavit.

(2) Where, after such an order has been made, the person in question does not attend, his affidavit shall not be used in evidence without the leave of the court.

### **Filing and service of affidavits**

**7.8.**—(1) Unless the provision of the Act or Rules under which the application is made provides otherwise, or the court otherwise allows—

- (a) if the applicant intends to rely at the first hearing on affidavit evidence, he shall file the affidavit or affidavits (if more than one) in court and serve a copy or copies on the respondent, not less than 14 days before the date fixed for the hearing, and
- (b) where a respondent to an application intends to oppose it and to rely for that purpose on affidavit evidence, he shall file the affidavit or affidavits (if more than one) in court and serve a copy or copies on the applicant, not less than 7 days before the date fixed for the hearing.

(2) Any affidavit may be sworn by the applicant or by the respondent or by some other person possessing direct knowledge of the subject matter of the application.

### **Use of reports**

**7.9.**—(1) A report may be filed in court instead of an affidavit—

- (a) in any case, by the official receiver (whether or not he is acting in any capacity mentioned in sub-paragraph (b)), or a deputy official receiver, or
- (b) unless the application involves other parties or the court otherwise orders, by—
  - (i) an administrator, a liquidator or a trustee in bankruptcy,
  - (ii) a provisional liquidator or an interim receiver,
  - (iii) a special manager, or
  - (iv) an insolvency practitioner appointed under section 273(2).

(2) In any case where a report is filed instead of an affidavit, the report shall be treated for the purposes of Rule 7.8(1) and any hearing before the court as if it were an affidavit.

(3) Any report filed by the official receiver in accordance with the Act or the Rules is prima facie evidence of any matter contained in it.

### **Adjournment of hearing; directions**

**7.10.**—(1) The court may adjourn the hearing of an application on such terms (if any) as it thinks fit.

(2) The court may at any time give such directions as it thinks fit as to—

- (a) service or notice of the application on or to any person, whether in connection with the venue of a resumed hearing or for any other purpose;
- (b) whether particulars of claim and defence are to be delivered and generally as to the procedure on the application;
- (c) the manner in which any evidence is to be adduced at a resumed hearing and in particular (but without prejudice to the generality of this sub-paragraph) as to—
  - (i) the taking of evidence wholly or in part by affidavit or orally;
  - (ii) the cross-examination either before the judge or registrar on the hearing in court or in chambers, of any deponents to affidavits;
  - (iii) any report to be given by the official receiver or any person mentioned in Rule 7.9(1)(b);
- (d) the matters to be dealt with in evidence.

## CHAPTER 2

### TRANSFER OF PROCEEDINGS BETWEEN COURTS

#### **General power of transfer**

**7.11.**—(1) Where winding-up or bankruptcy proceedings are pending in the High Court, the court may order them to be transferred to a specified county court.

(2) Where winding-up or bankruptcy proceedings are pending in a county court, the court may order them to be transferred either to the High Court or to another county court.

(3) In any case where proceedings are transferred to a county court, the transfer must be to a court which has jurisdiction to wind up companies or, as the case may be, jurisdiction in bankruptcy.

(4) Where winding-up or bankruptcy proceedings are pending in a county court, a judge of the High Court may order them to be transferred to that Court.

(5) A transfer of proceedings under this Rule may be ordered—

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

(6) A transfer of proceedings under this Rule may be ordered notwithstanding that the proceedings commenced before the coming into force of the Rules.

#### **Proceedings commenced in wrong court**

**7.12.** Where winding-up or bankruptcy proceedings are commenced in a court which is, in relation to those proceedings, the wrong court, that court may—

- (a) order the transfer of the proceedings to the court in which they ought to have been commenced;
- (b) order that the proceedings be continued in the court in which they have been commenced; or
- (c) order the proceedings to be struck out.

#### **Applications for transfer**

**7.13.**—(1) An application by the official receiver for proceedings to be transferred shall be made with a report by him—

- (a) setting out the reasons for the transfer, and
  - (b) including a statement either that the petitioner consents to the transfer, or that he has been given at least 14 days' notice of the official receiver's application.
- (2) If the court is satisfied from the official receiver's report that the proceedings can be conducted more conveniently in another court, the proceedings shall be transferred to that court.
- (3) Where an application for the transfer of proceedings is made otherwise than by the official receiver, at least 14 days' notice of the application shall be given by the applicant—
- (a) to the official receiver attached to the court in which the proceedings are pending, and
  - (b) to the official receiver attached to the court to which it is proposed that they should be transferred.

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

**7.14.**—(1) Subject as follows, the court making an order under Rule 7.11 shall forthwith send to the transferee court a sealed copy of the order, and the file of the proceedings.

(2) On receipt of these, the transferee court shall forthwith send notice of the transfer to the official receivers attached to that court and the transferor court respectively.

(3) Paragraph (1) does not apply where the order is made by the High Court under Rule 7.11(4). In that case—

- (a) the High Court shall send sealed copies of the order to the county court from which the proceedings are to be transferred, and to the official receivers attached to that court and the High Court respectively, and
- (b) that county court shall send the file of the proceedings to the High Court.

(4) Following compliance with this Rule, if the official receiver attached to the court to which the proceedings are ordered to be transferred is not already, by virtue of directions given by the Secretary of State under section 399(6)(a), the official receiver in relation to those proceedings, he becomes, in relation to those proceedings, the official receiver in place of the official receiver attached to the other court concerned.

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

**7.15.**—(1) This Rule applies where—

- (a) an order for the winding up of a company, or a bankruptcy order in the case of an individual, has been made by the High Court, or
- (b) in either such case, a provisional liquidator or (as the case may be) an interim receiver has been appointed, or
- (c) winding-up or bankruptcy proceedings have been transferred to that Court from a county court.

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

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

(4) Where proceedings are transferred under this Rule, the registrar may (subject to general or special directions of the judge) dispose of any matter arising in the proceedings which would, but

for the transfer, have been disposed of in chambers or, in the case of proceedings transferred from a county court, by the registrar of that court.

## CHAPTER 3

### SHORTHAND WRITERS

#### **Nomination and appointment of shorthand writers**

**7.16.**—(1) In the High Court the judge and, in a county court, the registrar may in writing nominate one or more persons to be official shorthand writers to the court.

(2) The court may, at any time in the course of insolvency proceedings, appoint a shorthand writer to take down the evidence of a person examined under section 133, 236, 290 or 366.

(3) Where the official receiver applies to the court for an order appointing a shorthand writer, he shall name the person he proposes for appointment; and that appointment shall be made, unless the court otherwise orders.

#### **Remuneration**

**7.17.**—(1) The remuneration of a shorthand writer appointed in insolvency proceedings shall be paid by the party at whose instance the appointment was made, or out of the insolvent estate, or otherwise, as the court may direct.

(2) The remuneration payable shall be calculated in accordance with Schedule 3 to the Rules.

#### **Cost of shorthand note**

**7.18.** Where in insolvency proceedings the court appoints a shorthand writer on the application of the official receiver, in order that a written record may be taken of the evidence of a person to be examined, the cost of the written record is deemed an expense of the official receiver in the proceedings.

## CHAPTER 4

### ENFORCEMENT PROCEDURES

#### **Enforcement of court orders**

**7.19.**—(1) In any insolvency proceedings, orders of the court may be enforced in the same manner as a judgment to the same effect.

(2) Where an order in insolvency proceedings is made, or any process is issued, by a county court (“the primary court”), the order or process may be enforced, executed and dealt with by any other county court (“the secondary court”), as if it had been made or issued for the enforcement of a judgment or order to the same effect made by the secondary court.

This applies whether or not the secondary court has jurisdiction to take insolvency proceedings.

#### **Orders enforcing compliance with the Rules**

**7.20.**—(1) The court may, on application by the competent person, make such orders as it thinks necessary for the enforcement of obligations falling on any person in accordance with—

- (a) section 22, 47 or 131 (duty to submit statement of affairs in administration, administrative receivership or winding up),
- (b) section 143(2) (liquidator to furnish information, books, papers, etc.), or
- (c) section 235 (duty of various persons to co-operate with office-holder).

- (2) The competent person for this purpose is—
  - (a) under section 22, the administrator,
  - (b) under section 47, the administrative receiver,
  - (c) under section 131 or 143(2), the official receiver, and
  - (d) under section 235, the official receiver, the administrator, the administrative receiver, the liquidator or the provisional liquidator, as the case may be.
- (3) An order of the court under this Rule may provide that all costs of and incidental to the application for it shall be borne by the person against whom the order is made.

### **Warrants (general provisions)**

**7.21.**—(1) A warrant issued by the court under any provision of the Act shall be addressed to such officer of the High Court or of a county court (whether or not having jurisdiction in insolvency proceedings) as the warrant specifies, or to any constable.

(2) The persons referred to in sections 134(2), 236(5), 364(1), 365(3) and 366(3) (court's powers of enforcement) as the prescribed officer of the court are—

- (a) in the case of the High Court, the tipstaff and his assistants of the court, and
  - (b) in the case of a county court, the registrar and the bailiffs.
- (3) In this Chapter references to property include books, papers and records.

### **Warrants under ss.134, 364**

**7.22.** When a person is arrested under a warrant issued by the court under section 134 (officer of company failing to attend for public examination), or section 364 (arrest of debtor or bankrupt)—

- (a) the officer apprehending him shall give him into the custody of the governor of the prison named in the warrant, who shall keep him in custody until such time as the court otherwise orders and shall produce him before the court as it may from time to time direct; and
- (b) any property in the arrested person's possession which may be seized shall be—
  - (i) lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or
  - (ii) kept by the officer seizing it pending the receipt of written orders from the court as to its disposal,as may be directed by the court in the warrant.

### **Warrants under ss.236, 366**

**7.23.**—(1) When a person is arrested under a warrant issued under section 236 (inquiry into insolvent company's dealings) or 366 (the equivalent in bankruptcy), the officer arresting him shall forthwith bring him before the court issuing the warrant in order that he may be examined.

(2) If he cannot immediately be brought up for examination, the officer shall deliver him into the custody of the governor of the prison named in the warrant, who shall keep him in custody and produce him before the court as it may from time to time direct.

(3) After arresting the person named in the warrant, the officer shall forthwith report to the court the arrest or delivery into custody (as the case may be) and apply to the court to fix a venue for the person's examination.

(4) The court shall appoint the earliest practicable time for the examination, and shall—

- (a) direct the governor of the prison to produce the person for examination at the time and place appointed, and
  - (b) forthwith give notice of the venue to the person who applied for the warrant.
- (5) Any property in the arrested person's possession which may be seized shall be—
- (a) lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or
  - (b) kept by the officer seizing it pending the receipt of written orders from the court as to its disposal,
- as may be directed by the court.

### **Execution of warrants outside court's district**

**7.24.**—(1) This Rule applies where a warrant for a person's arrest has been issued in insolvency proceedings by a county court (“the primary court”) and is addressed to another county court (“the secondary court”) for execution in its district.

(2) The secondary court may send the warrant to the registrar of any other county court (whether or not having jurisdiction to take insolvency proceedings) in whose district the person to be arrested is or is believed to be, with a notice to the effect that the warrant is transmitted to that court under this Rule for execution in its district at the request of the primary court.

(3) The court receiving a warrant transmitted by the secondary court under this Rule shall apply its seal to the warrant, and secure that all such steps are taken for its execution as would be appropriate in the case of a warrant issued by itself.

### **Warrants under s.365**

**7.25.**—(1) A warrant issued under section 365(3) (search of premises not belonging to the bankrupt) shall authorise any person executing it to seize any property of the bankrupt found as a result of the execution of the warrant.

- (2) Any property seized under a warrant issued under section 365(2) or (3) shall be—
  - (a) lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or
  - (b) kept by the officer seizing it pending the receipt of written orders from the court as to its disposal,

as may be directed by the warrant.

## **CHAPTER 5**

### **COURT RECORDS AND RETURNS**

#### **Title of proceedings**

**7.26.**—(1) Every proceeding under Parts I to VII of the Act shall, with any necessary additions, be intitled “IN THE MATTER OF ... (naming the company to which the proceedings relate) AND IN THE MATTER OF THE INSOLVENCY ACT 1986”.

- (2) Every proceeding under Parts IX to XI of the Act shall be intitled “IN BANKRUPTCY”.

## **Court records**

**7.27.** The court shall keep records of all insolvency proceedings, and shall cause to be entered in the records the taking of any step in the proceedings, and such decisions of the court in relation thereto, as the court thinks fit.

## **Inspection of records**

**7.28.—(1)** Subject as follows, the court's records of insolvency proceedings shall be open to inspection by any person.

(2) If in the case of a person applying to inspect the records the registrar is not satisfied as to the propriety of the purpose for which inspection is required, he may refuse to allow it. The person may then apply forthwith and ex parte to the judge, who may refuse the inspection, or allow it on such terms as he thinks fit.

(3) The judge's decision under paragraph (2) is final.

## **Returns to Secretary of State**

**7.29.—(1)** The court shall from time to time send to the Secretary of State the following particulars relating to winding-up and bankruptcy proceedings—

- (a) the full title of the proceedings, including the number assigned to each case;
- (b) where a winding-up or bankruptcy order has been made, the date of the order.

(2) The Secretary of State may, on the request of any person, furnish him with particulars sent by the court under this Rule.

## **File of court proceedings**

**7.30.—(1)** In respect of all insolvency proceedings, the court shall open and maintain a file for each case; and (subject to directions of the registrar) all documents relating to such proceedings shall be placed on the relevant file.

(2) No proceedings shall be filed in the Central Office of the High Court.

## **Right to inspect the file**

**7.31.—(1)** In the case of any insolvency proceedings, the following have the right, at all reasonable times, to inspect the court's file of the proceedings—

- (a) the person who, in relation to those proceedings, is the responsible insolvency practitioner;
- (b) any duly authorised officer of the Department; and
- (c) any person stating himself in writing to be a creditor of the company to which, or the individual to whom, the proceedings relate.

(2) The same right of inspection is exercisable—

- (a) in proceedings under Parts I to VII of the Act, by every person who is, or at any time has been, a director or officer of the company to which the proceedings relate, or who is a member of the company or a contributory in its winding up;
- (b) in proceedings with respect to a voluntary arrangement proposed by a debtor under Part VIII of the Act, by the debtor;
- (c) in bankruptcy proceedings, by—
  - (i) the bankrupt,
  - (ii) any person against whom, or by whom, a bankruptcy petition has been presented, and

(iii) any person who has been served, in accordance with Chapter 1 of Part 6 of the Rules, with a statutory demand.

(3) The right of inspection conferred as above on any person may be exercised on his behalf by a person properly authorised by him.

(4) Any person may, by special leave of the court, inspect the file.

(5) The right of inspection conferred by this Rule is not exercisable in the case of documents, or parts of documents, as to which the court directs (either generally or specially) that they are not to be made open to inspection without the court's leave.

An application for a direction of the court under this paragraph may be made by the official receiver, by the person who in relation to any proceedings is the responsible insolvency practitioner, or by any party appearing to the court to have an interest.

(6) If, for the purpose of powers conferred by the Act or the Rules, the Secretary of State, the Department or the official receiver requires to inspect the file of any insolvency proceedings, and requests the transmission of the file, the court shall comply with the request (unless the file is for the time being in use for the court's own purposes).

(7) Paragraphs (2) and (3) of Rule 7.28 apply in respect of the court's file of any proceedings as they apply in respect of court records.

### **Filing of Gazette notices and advertisements**

**7.32.—**(1) In any court in which insolvency proceedings are pending, an officer of the court shall file a copy of every issue of the Gazette which contains an advertisement relating to those proceedings.

(2) Where there appears in a newspaper an advertisement relating to insolvency proceedings pending in any court, the person inserting the advertisement shall file a copy of it in that court.

The copy of the advertisement shall be accompanied by, or have endorsed on it, such particulars as are necessary to identify the proceedings and the date of the advertisement's appearance.

(3) An officer of any court in which insolvency proceedings are pending shall from time to time file a memorandum giving the dates of, and other particulars relating to, any notice published in the Gazette, and any newspaper advertisements, which relate to proceedings so pending.

The officer's memorandum is prima facie evidence that any notice or advertisement mentioned in it was duly inserted in the issue of the newspaper or the Gazette which is specified in the memorandum.

## **CHAPTER 6**

### **COSTS AND TAXATION**

#### **Application of Rules of Supreme Court and County Court Rules**

**7.33.** Subject to provision to inconsistent effect made as follows in this Chapter—

(a) Order 62 of the Rules of the Supreme Court applies to insolvency proceedings in the High Court, and

(b) Order 38 of the County Court Rules applies to such proceedings in a county court,

in either case, with any necessary modifications.

#### **Requirement to tax costs**

**7.34.—**(1) Subject as follows, where any costs, charges or expenses of any person are payable out of the insolvent estate, the responsible insolvency practitioner may agree them with the person

entitled to payment or may require them to be taxed by the court to which the insolvency proceedings are allocated or, where in relation to a company there is no such court, by a court having jurisdiction to wind up the company.

(2) If a liquidation or creditors' committee established in insolvency proceedings (except administrative receivership) resolves that any such costs, charges or expenses be taxed, the insolvency practitioner shall require taxation.

(3) Where the costs, charges or expenses of any person employed by an insolvency practitioner in insolvency proceedings are required to be taxed, this does not preclude the insolvency practitioner from making payments on account to such person on the basis of an undertaking by that person to repay immediately any money which may, on taxation, prove to have been overpaid, with interest at the rate specified in section 17 of the Judgments Act 1838 on the date payment was made and for the period from the date of payment to that of repayment.

(4) In any proceedings before the court, including proceedings on a petition, the court may order costs to be taxed.

(5) Unless otherwise directed or authorised, the costs of a trustee in bankruptcy or a liquidator are to be allowed on the standard basis.

(6) This Rule applies additionally (with any necessary modifications) to winding-up and bankruptcy proceedings commenced before the coming into force of the Rules.

### **Procedure where taxation required**

**7.35.**—(1) Before taxing the costs of any person employed in insolvency proceedings by a responsible insolvency practitioner, the taxing officer shall require a certificate of employment, which shall be endorsed on the bill and signed by the insolvency practitioner.

(2) The certificate shall include—

- (a) the name and address of the person employed,
- (b) details of the functions to be carried out under the employment, and
- (c) a note of any special terms of remuneration which have been agreed.

(3) Every person whose costs are required to be taxed in insolvency proceedings shall, on being required in writing to do so by the insolvency practitioner, deliver his bill of costs to the taxing officer for taxation.

(4) If that person does not so deliver his bill within 3 months of the requirement under paragraph (3), or within such further time as the court, on application, may grant, the insolvency practitioner may deal with the insolvent estate without regard to any claim by that person, whose claim is forfeited.

(5) Where in any such case such a claim lies additionally against an insolvency practitioner in his personal capacity, that claim is also forfeited.

### **Costs of sheriff**

**7.36.**—(1) Where a sheriff—

- (a) is required under section 184(2) or 346(2) to deliver up goods or money, or
- (b) has under section 184(3) or 346(3) deducted costs from the proceeds of an execution or money paid to him,

the responsible insolvency practitioner may require in writing that the sheriff's bill of costs be taxed.

(2) Where such a requirement is made, Rule 7.35(4) applies.

(3) Where, in the case of a deduction under paragraph (1)(b), any amount is disallowed on taxation, the sheriff shall forthwith pay a sum equal to that amount to the insolvency practitioner for the benefit of the insolvent estate.

### **Petitions presented by insolvents**

**7.37.**—(1) In any case where a petition is presented by a company or individual (“the insolvent”) against himself, any solicitor acting for the insolvent shall in his bill of costs give credit for any sum or security received from the insolvent as a deposit on account of the costs and expenses to be incurred in respect of the filing and prosecution of the petition; and the deposit shall be noted by the taxing officer on the taxing certificate.

(2) Paragraph (3) applies where a petition is presented by a person other than the insolvent to whom the petition relates and before it is heard the insolvent presents a petition for the same order, and that order is made.

(3) Unless the court considers that the insolvent estate has benefitted by the insolvent's conduct, or that there are otherwise special circumstances justifying the allowance of costs, no costs shall be allowed to the insolvent or his solicitor out of the insolvent estate.

### **Costs paid otherwise than out of the insolvent estate**

**7.38.** Where a bill of costs is taxed under an order of the court directing that the costs are to be paid otherwise than out of the insolvent estate, the taxing officer shall note on the certificate of taxation by whom, or the manner in which, the costs are to be paid.

### **Award of costs against official receiver or responsible insolvency practitioner**

**7.39.** Without prejudice to any provision of the Act or Rules by virtue of which the official receiver is not in any event to be liable for costs and expenses, where the official receiver or a responsible insolvency practitioner is made a party to any proceedings on the application of another party to the proceedings, he shall not be personally liable for costs unless the court otherwise directs.

### **Applications for costs**

**7.40.**—(1) This Rule applies where a party to, or person affected by, any proceedings in an insolvency—

(a) applies to the court for an order allowing his costs, or part of them, incidental to the proceedings, and

(b) that application is not made at the time of the proceedings.

(2) The person concerned shall serve a sealed copy of his application on the responsible insolvency practitioner, and, in a winding up by the court or bankruptcy, on the official receiver.

(3) The insolvency practitioner and, where appropriate, the official receiver may appear on the application.

(4) No costs of or incidental to the application shall be allowed to the applicant unless the court is satisfied that the application could not have been made at the time of the proceedings.

### **Costs and expenses of witnesses**

**7.41.**—(1) Except as directed by the court, no allowance as a witness in any examination or other proceedings before the court shall be made to the bankrupt or an officer of the insolvent company to which the proceedings relate.

(2) A person presenting any petition in insolvency proceedings shall not be regarded as a witness on the hearing of the petition, but the taxing officer may allow his expenses of travelling and subsistence.

### **Certificate of taxation**

**7.42.**—(1) A certificate of taxation of the taxing officer is final and conclusive as to all matters which have not been objected to in the manner provided for under the rules of the court.

(2) Where it is proved to the satisfaction of a taxing officer that a certificate of taxation has been lost or destroyed, he may issue a duplicate.

(3) “Certificate of taxation” includes, for the purposes of the Rules, an order of the registrar in a county court.

## **CHAPTER 7**

### **PERSONS INCAPABLE OF MANAGING THEIR AFFAIRS**

#### **Introductory**

**7.43.**—(1) The Rules in this Chapter apply where in insolvency proceedings it appears to the court that a person affected by the proceedings is one who is incapable of managing and administering his property and affairs either—

- (a) by reason of mental disorder within the meaning of the Mental Health Act 1983, or
- (b) due to physical affliction or disability.

(2) The person concerned is referred to as “the incapacitated person”.

#### **Appointment of another person to act**

**7.44.**—(1) The court may appoint such person as it thinks fit to appear for, represent or act for the incapacitated person.

(2) The appointment may be made either generally or for the purpose of any particular application or proceeding, or for the exercise of particular rights or powers which the incapacitated person might have exercised but for his incapacity.

(3) The court may make the appointment either of its own motion or on application by—

- (a) a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the incapacitated person, or
- (b) any relative or friend of the incapacitated person who appears to the court to be a proper person to make the application, or
- (c) the official receiver, or
- (d) the person who, in relation to the proceedings, is the responsible insolvency practitioner.

(4) Application under paragraph (3) may be made *ex parte*; but the court may require such notice of the application as it thinks necessary to be given to the person alleged to be incapacitated, or any other person, and may adjourn the hearing of the application to enable the notice to be given.

#### **Affidavit in support of application**

**7.45.**—(1) Except where made by the official receiver, an application under Rule 7.44(3) shall be supported by an affidavit of a registered medical practitioner as to the mental or physical condition of the incapacitated person.

(2) In the excepted case, a report made by the official receiver is sufficient.

### **Service of notices following appointment**

**7.46.** Any notice served on, or sent to, a person appointed under Rule 7.44 has the same effect as if it had been served on, or given to, the incapacitated person.

## **CHAPTER 8**

### **APPEALS IN INSOLVENCY PROCEEDINGS**

#### **Appeals and reviews of court orders (winding up)**

**7.47.—**(1) Every court having jurisdiction under the Act to wind up companies may review, rescind or vary any order made by it in the exercise of that jurisdiction.

(2) An appeal from a decision made in the exercise of that jurisdiction by a county court or by a registrar of the High Court lies to a single judge of the High Court; and an appeal from a decision of that judge on such an appeal lies, with the leave of that judge or the Court of Appeal, to the Court of Appeal.

(3) A county court is not, in the exercise of its jurisdiction to wind up companies, subject to be restrained by the order of any other court, and no appeal lies from its decision in the exercise of that jurisdiction except as provided by this Rule.

(4) Any application for the rescission of a winding-up order shall be made within 7 days after the date on which the order was made.

#### **Appeals in bankruptcy**

**7.48.—**(1) In bankruptcy proceedings, an appeal lies at the instance of the Secretary of State from any order of the court made on an application for the rescission or annulment of a bankruptcy order, or for a bankrupt's discharge.

(2) In the case of an order made by a county court or by a registrar of the High Court, the appeal lies to a single judge of the High Court; and an appeal from a decision of that judge on such an appeal lies, with the leave of that judge or the Court of Appeal, to the Court of Appeal.

#### **Procedure on appeal**

**7.49.—**(1) Subject as follows, the procedure and practice of the Supreme Court relating to appeals to the Court of Appeal apply to appeals in insolvency proceedings.

(2) In relation to any appeal to a single judge of the High Court under section 375(2) (individual insolvency) or Rule 7.47(2) above (company insolvency), any reference in the Rules of the Supreme Court to the Court of Appeal is replaced by a reference to that judge.

(3) In insolvency proceedings, the procedure under Order 59 of the Rules of the Supreme Court (appeal to the Court of Appeal) is by application, and not by summons.

#### **Appeal against decision of Secretary of State or official receiver**

**7.50.** An appeal under the Act or the Rules against a decision of the Secretary of State or the official receiver shall be brought within 28 days of the notification of the decision.

## CHAPTER 9

### GENERAL

#### **Principal court rules and practice to apply**

**7.51.** Except so far as inconsistent with the Insolvency Rules, the Rules of the Supreme Court and the practice of the High Court apply to insolvency proceedings in the High Court, and the County Court Rules and the practice of the county court apply to insolvency proceedings in a county court, in either case with any necessary modifications.

#### **Right of audience**

**7.52.**—(1) Official receivers and deputy official receivers have right of audience in insolvency proceedings, whether in the High Court or a county court.

(2) Subject as above, rights of audience in insolvency proceedings are the same as obtained before the coming into force of the Rules.

#### **Right of attendance (company insolvency)**

**7.53.**—(1) Subject as follows, in company insolvency proceedings any person stating himself in writing, in records kept by the court for that purpose, to be a creditor or member of the company or, where the company is being wound up, a contributory, is entitled, at his own cost, to attend in court or in chambers at any stage of the proceedings.

(2) Attendance may be by the person himself, or his solicitor.

(3) A person so entitled may request the court in writing to give him notice of any step in the proceedings; and, subject to his paying the costs involved and keeping the court informed as to his address, the court shall comply with the request.

(4) If the court is satisfied that the exercise by a person of his rights under this Rule has given rise to costs for the insolvent estate which would not otherwise have been incurred and ought not, in the circumstances, to fall on that estate, it may direct that the costs be paid by the person concerned, to an amount specified.

The person's rights under this Rule are in abeyance so long as those costs are not paid.

(5) The court may appoint one or more persons to represent the creditors, the members or the contributories of an insolvent company, or any class of them, to have the rights conferred by this Rule, instead of the rights being exercisable by any or all of them individually.

If two or more persons are appointed under this paragraph to represent the same interest they must (if at all) instruct the same solicitor.

#### **Insolvency practitioner's solicitor**

**7.54.** Where in any proceedings the attendance of the responsible insolvency practitioner's solicitor is required, whether in court or in chambers, the insolvency practitioner himself need not attend, unless directed by the court.

#### **Formal defects**

**7.55.** No insolvency proceedings shall be invalidated by any formal defect or by any irregularity, unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court.

### **Restriction on concurrent proceedings and remedies**

**7.56.** Where in insolvency proceedings the court makes an order staying any action, execution or other legal process against the property of a company, or against the property or person of an individual debtor or bankrupt, service of the order may be effected by sending a sealed copy of the order to whatever is the address for service of the plaintiff or other party having the carriage of the proceedings to be stayed.

### **Affidavits**

**7.57.—**(1) Subject as follows, the rules and practice obtaining in the High Court with regard to affidavits, their form and contents, and the procedure governing their use, are to be taken as applicable in all insolvency proceedings in any court.

(2) In applying RSC Order 41 (which relates to affidavits generally), there are to be disregarded provisions which are inconsistent with, or necessarily excluded by, the following paragraphs of this Rule.

(3) Where in insolvency proceedings an affidavit is made by the official receiver or the responsible insolvency practitioner, the deponent shall state the capacity in which he makes it, the position which he holds, and the address at which he works.

(4) Notwithstanding RSC Order 41 Rule 8 (affidavit not to be sworn before party's own solicitor), a creditor's affidavit of debt may be sworn before his own solicitor.

(5) The official receiver, any deputy official receiver, or any officer of the court duly authorised in that behalf, may take affidavits and declarations.

### **Security in court**

**7.58.—**(1) Where security has to be given to the court (otherwise than in relation to costs), it may be given by guarantee, bond or the payment of money into court.

(2) A person proposing to give a bond as security shall give notice to the party in whose favour the security is required, and to the court, naming those who are to be sureties to the bond.

(3) The court shall forthwith give notice to both the parties concerned of a venue for the execution of the bond and the making of any objection to the sureties.

(4) The sureties shall make an affidavit of their sufficiency (unless dispensed with by the party in whose favour the security is required) and shall, if required by the court, attend the court to be cross-examined.

### **Payment into court**

**7.59.** The Rules of the Supreme Court and the County Court Rules relating to payment into and out of court of money lodged in court as security for costs apply, in the High Court and a county court respectively, to money lodged in court under the Rules.

### **Discovery**

**7.60.—**(1) Any party to insolvency proceedings may, with the leave of the court, administer interrogatories to, or obtain discovery from, any other party to those proceedings.

(2) Application under this Rule may be made ex parte.

### **Office copies of documents**

**7.61.**—(1) Any person who has under the Rules the right to inspect the court file of insolvency proceedings may require the court to provide him with an office copy of any document from the file.

(2) A person's rights under this Rule may be exercised on his behalf by his solicitor.

(3) An office copy provided by the court under this Rule shall be in such form as the registrar thinks appropriate, and shall bear the court's seal.