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## STATUTORY INSTRUMENTS

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# 1986 No. 1925

## The Insolvency Rules 1986

### THE SECOND GROUP OF PARTS

#### PART 6

#### BANKRUPTCY

#### 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.