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STATUTORY INSTRUMENTS

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**2016 No. 1024**

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

**PART 10**

**BANKRUPTCY**

**CHAPTER 1**

**The statutory demand**

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

**The statutory demand (section 268)**

**10.1.**—(1) A statutory demand under section 268 must contain—

- (a) the heading either “Statutory demand under section 268(1) (debt payable immediately) of the Insolvency Act 1986” or “Statutory demand under section 268(2) (debt not immediately payable)”;
- (b) identification details for the debtor;
- (c) the name and address of the creditor;
- (d) a statement of the amount of the debt, and the consideration for it (or, if there is no consideration, the way in which it arises);
- (e) if the demand is made under section 268(1) and founded on a judgment or order of a court, the date of the judgment or order and the court in which it was obtained;
- (f) if the demand is made under section 268(2), a statement of the grounds on which it is alleged that the debtor appears to have no reasonable prospect of paying the debt;
- (g) if the creditor is entitled to the debt by way of assignment, details of the original creditor and any intermediary assignees;
- (h) a statement that if the debtor does not comply with the demand bankruptcy proceedings may be commenced;
- (i) the date by which the debtor must comply with the demand, if bankruptcy proceedings are to be avoided;
- (j) a statement of the methods of compliance which are open to the debtor;
- (k) a statement that the debtor has the right to apply to the court to have the demand set aside;
- (l) a statement that rule 10.4(4) of the Insolvency (England and Wales) Rules 2016 states to which court such an application must be made; and name the court or hearing centre of the County Court to which, according to the present information, the debtor must make the application (i.e. the High Court, the County Court at Central London or a named hearing centre of the County Court as the case may be);
- (m) a statement that any application to set aside the demand must be made within 18 days of service on the debtor; and

(n) a statement that if the debtor does not apply to set aside the demand within 18 days or otherwise deal with this demand within 21 days after its service the debtor could be made bankrupt and the debtor's property and goods taken away.

(2) Where the statutory demand is served by a Minister of the Crown or a Government Department the statutory demand must explain that the debtor may alternatively apply to set aside the demand to the High Court or the County Court at Central London (as the case may be) if the Minister or Department intends to present a bankruptcy petition to one of them.

(3) A demand must name one or more individuals with whom the debtor may communicate with a view to—

- (a) securing or compounding the debt to the satisfaction of the creditor; or
- (b) establishing to the creditor's satisfaction that there is a reasonable prospect that the debt will be paid when it falls due.

(4) The postal address, electronic address and telephone number (if any) of the named individual must be given.

(5) A demand must be dated and authenticated either by the creditor or by a person who is authorised to make the demand on the creditor's behalf

(6) A demand which is authenticated by a person other than the creditor must state that the person is authorised to make the demand on the creditor's behalf and state the person's relationship to the creditor.

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

- (a) any charge by way of interest of which notice had not previously been delivered to the debtor as a liability of the debtor's; 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.

(8) The amount claimed for such charges must be limited to that which has accrued at the date of the demand.

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

- (a) the demand must specify the nature of the security, and the value which the creditor puts upon it at the date of the demand; and
- (b) the demand must claim payment of the full amount of the debt, less the specified value of the security.

### **Service of statutory demand**

**10.2.** A creditor must do all that is reasonable to bring the statutory demand to the debtor's attention and, if practicable in the particular circumstances, serve the demand personally.

### **Proof of service of statutory demand**

**10.3.—**(1) Where section 268 requires a statutory demand to be served before the petition, a certificate of service of the demand must be filed with the court with the petition.

(2) The certificate must be verified by a statement of truth and be accompanied by a copy of the demand served.

(3) If the demand has been served personally on the debtor, the statement of truth must be made by the person who served the demand unless service has been acknowledged in writing by the debtor or a person authorised to accept service.

(4) If service has been acknowledged in writing either by—

- (a) the debtor; or
- (b) a person who is authorised to accept service on the debtor's behalf and who has stated that this is the case in the acknowledgement of service;

then the certificate of service must be authenticated either by the creditor or by a person acting on the creditor's behalf, and the acknowledgement of service must accompany the certificate.

(5) If the demand has been served other than personally and there is no acknowledgement of service, the certificate must be authenticated by a person or persons having direct personal knowledge of the means adopted for serving the statutory demand, and must contain the following information—

- (a) the steps taken to serve the demand; and
- (b) a date by which, to the best of the knowledge, information and belief of the person authenticating the certificate, the demand will have come to the debtor's attention.

(6) Where paragraph (5) applies the statutory demand is deemed to have been served on the debtor on the date referred to in paragraph (5)(b) unless the court determines otherwise.

#### **Application to set aside statutory demand**

**10.4.**—(1) The debtor may apply to the court for an order setting aside the statutory demand.

(2) The application must be made within 18 days from the date of the service of the statutory demand.

(3) The application must—

- (a) identify the debtor;
- (b) state that the application is for an order that the statutory demand be set aside;
- (c) state the date of the statutory demand; and
- (d) be dated and authenticated by the debtor, or by a person authorised to act on the debtor's behalf.

(4) The application must be made to the court or hearing centre—

- (a) determined in accordance with rule 10.48; or
- (b) to which rule 10.11(1) requires a petition to be presented if—
  - (i) the creditor serving the statutory demand is a Minister of the Crown or a government Department,
  - (ii) the debt in respect of which the statutory demand is made, or 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 a court, and
  - (iii) the statutory demand—
    - (aa) specifies the date of the judgment or order and the court in which it was obtained, and
    - (bb) indicates the creditor's intention to present a bankruptcy petition against the debtor in the High Court or the County Court at Central London as the case may be.

(5) The time within which the debtor must comply with the statutory demand ceases to run on the date the application is filed with the court, subject to any order of the court under rule 10.5.

(6) The debtor's application must be accompanied by a copy of the statutory demand, where it is in the debtor's possession, and supported by a witness statement containing the following—

- (a) the date on which the debtor became aware of the statutory demand;
- (b) the grounds on which the debtor claims that it should be set aside; and
- (c) any evidence in support of the application.

### **Hearing of application to set aside**

**10.5.**—(1) On receipt of an application to set aside a statutory demand, the court may, if satisfied that no sufficient cause is shown for it, dismiss it without giving notice of the application to the creditor.

(2) The time for complying with the statutory demand runs again from the date the application is dismissed under paragraph (1).

(3) Unless the application is dismissed under paragraph (1), the court must fix a venue for it to be heard, and must give at least five business days' notice to—

- (a) the debtor or, if the debtor's application was made by a solicitor acting for the debtor, to the solicitor;
- (b) the creditor; and
- (c) whoever is named in the statutory demand as the person with whom the debtor may communicate about the demand (or the first such if more than one).

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

(5) 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 specified in the statutory demand;
- (b) the debt is disputed on grounds which appear to the court to be substantial;
- (c) it appears that the creditor holds some security in relation to the debt claimed by the demand, and either rule 10.1(9) is not complied with in relation to 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.

(6) An order setting aside a statutory demand must contain—

- (a) identification details for the debtor;
- (b) the date of the hearing of the application;
- (c) the date of the statutory demand;
- (d) an order that the statutory demand be set aside;
- (e) details of any further order in the matter; and
- (f) the date of the order.

(7) Where the creditor holds some security in relation to the debt and has complied with rule 10.1(9) but the court is satisfied that the statutory demand undervalues the security, the court may order the creditor to amend the demand (but without prejudice to the creditor's right to present a bankruptcy petition by reference to the original demand as so amended).

(8) If the court dismisses the application, it must make an order authorising the creditor to present a bankruptcy petition either as soon as reasonably practicable, or on or after a date specified in the order.

(9) The court must deliver a copy of any order under paragraphs (6) to (8) to the creditor as soon as reasonably practicable.