
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 10

BANKRUPTCY

CHAPTER 17

Discharge

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

Application for suspension of discharge

10.142.—(1) The following applies where the official receiver or trustee (if different) applies to the court for an order under section 279(3) (suspension of automatic discharge), but not where the official receiver makes that application under rule 10.104 on the adjournment of the bankrupt’s public examination.

(2) The official receiver or trustee must file, with the application, evidence in support setting out the reasons why it appears that such an order should be made.

(3) The court must fix a venue for the hearing of the application, and deliver notice of it to the official receiver, the trustee, and the bankrupt.

(4) Copies of the official receiver’s report under this rule must be delivered by the official receiver to the bankrupt and any trustee who is not the official receiver, so as to reach them at least 21 days before the date fixed for the hearing.

(5) Copies of the trustee’s evidence in support of the application must be delivered by the trustee to the official receiver and the bankrupt at least 21 days before the date fixed for the hearing.

(6) If the bankrupt intends to deny or dispute any statements in the official receiver’s or trustee’s evidence in support then the bankrupt must not later than five business days before the date of the hearing, file with the court a notice specifying the statements which the bankrupt intends to deny or dispute.

(7) If the bankrupt files such a notice under paragraph (6), the bankrupt must deliver copies of it, not less than three business days before the date of the hearing, to the official receiver and any trustee.

(8) If the court makes an order suspending the bankrupt’s discharge, copies of the order must be delivered by the court to the official receiver, any trustee and the bankrupt.

(9) An order of suspension of discharge under section 279(3) must be headed “Suspension of Discharge” and must contain—

- (a) identification details for the proceedings;
- (b) the name and title of the judge making the order;
- (c) identification and contact details for the applicant who will be the official receiver or the trustee;

- (d) the date of the bankruptcy order;
- (e) a statement that it appears to the court that the bankrupt has failed or is failing to comply with the bankrupt's obligations under the Act for the reasons specified in the order;
- (f) a statement in what respect the bankrupt has failed to comply with the bankrupt's obligations under the Act;
- (g) an order that the relevant period for the purpose of section 279(1) will cease to run for either—
 - (i) a specified period, or
 - (ii) until specified conditions have been fulfilled;
- (h) the period or conditions referred to in paragraph (g); and
- (i) the date of the order.

Lifting of suspension of discharge

10.143.—(1) Where the court has made an order under section 279(3) that the period specified in section 279(1) will cease to run, the bankrupt may apply to it for the order to be discharged.

(2) The court must fix a venue for the hearing of the application and deliver notice of it to the bankrupt.

(3) The bankrupt must, not less than 28 days before the date fixed for the hearing, deliver notice of the venue with a copy of the application to the official receiver and any trustee.

(4) The official receiver and the trustee may appear and be heard on the bankrupt's application.

(5) Whether or not they appear, the official receiver and trustee may file with the court a report containing evidence in support of any matters which either of them considers ought to be drawn to the court's attention.

(6) If the court made an order under section 279(3)(b), the court may request a report from the official receiver or the trustee as to whether or not the condition specified in the order has been fulfilled.

(7) Copies of a report filed under paragraph (5) or requested by the court under paragraph (6) must be delivered by the official receiver or trustee to the bankrupt and to either the official receiver or trustee (depending on which has filed the report), not later than 14 days before the hearing.

(8) The bankrupt may, not later than five business days before the date of the hearing, file with the court a notice specifying any statements in the official receiver's or trustee's report which the bankrupt intends to deny or dispute.

(9) If the bankrupt files such a notice, the bankrupt must deliver copies of it to the official receiver and the trustee not less than three business days before the date of the hearing.

(10) If on the bankrupt's application the court discharges the order under section 279(3) (being satisfied that the period specified in section 279(1) should begin to run again), it must deliver to the bankrupt a certificate that it has done so, and must deliver copies of the certificate to the official receiver and the trustee (if different).

(11) The court's order lifting the suspension of discharge must contain—

- (a) identification details for the proceedings;
- (b) the name and title of the judge making the order;
- (c) the date and terms of the order made under section 279;
- (d) a statement that the bankrupt specified in the order has made the application;

- (e) a statement whether or not the court has taken into consideration the report of the official receiver or of the trustee or both in this matter;
 - (f) an order discharging the order suspending discharge; and
 - (g) state the date of the order.
- (12) The certificate that the order suspending discharge has been lifted must contain—
- (a) identification details for the proceedings;
 - (b) the date of the bankruptcy order;
 - (c) the date of the order suspending discharge;
 - (d) a statement that the court has made—
 - (i) the bankruptcy order specified in this order against the bankrupt specified in this order, and
 - (ii) the order suspending the bankrupt's discharge specified in this order;
 - (e) a statement that it is certified that the order of suspension of discharge was lifted on the date specified in this order; and
 - (f) the date of the certificate.

Certificate of discharge from bankruptcy order made otherwise than on a bankruptcy application

10.144.—(1) A bankrupt may apply to the court for a certificate of discharge where the bankruptcy order was made otherwise than on a bankruptcy application.

(2) Where it appears to the court that the bankrupt is discharged, whether by expiration of time or otherwise, the court must deliver a certificate of discharge to the former bankrupt.

(3) The certificate of discharge must be headed “Certificate of Discharge” and must contain—

- (a) identification details for the proceedings;
- (b) the date of the bankruptcy order;
- (c) the statement that the former bankrupt was discharged from bankruptcy;
- (d) the date of discharge from bankruptcy; and
- (e) the date of the certificate.

(4) The certificate must also state—

- (a) that the former bankrupt may request in writing notice of the discharge to be gazetted and advertised in the same manner as the bankruptcy order; and
- (b) that such a request must be delivered to the official receiver within 28 days of the making of the certificate of discharge.

(5) As soon as reasonably practicable after delivery of such a request to the official receiver the notice of discharge must be gazetted, and advertised in the same manner as the bankruptcy order.

(6) The notice must contain—

- (a) the name of the former bankrupt;
- (b) the date of the bankruptcy order;
- (c) the statement that a certificate of discharge has been delivered to the former bankrupt;
- (d) the date of the certificate; and
- (e) the date from which the discharge is effective.

(7) An application for a notice of discharge and a request in writing that the notice be gazetted and advertised may be made by the former bankrupt's personal representative or, as the case may be, a person appointed by the court to represent or act for the former bankrupt where the former bankrupt—

- (a) has died; or
- (b) is a person lacking capacity to manage the person's own affairs (within the meaning of the Mental Capacity Act 2005).

Certificate of discharge from bankruptcy order made on a bankruptcy application

10.145.—(1) A bankrupt may apply to the official receiver for a certificate of discharge where the bankruptcy order was made on a bankruptcy application.

(2) The bankrupt must send the application to the official receiver with the prescribed fee.

(3) Where it appears to the official receiver that the bankrupt is discharged, the official receiver must deliver a certificate of discharge to the former bankrupt by electronic means.

(4) The certificate of discharge must be headed "Certificate of Discharge" and must contain—

- (a) identification details for the former bankrupt;
- (b) the date of the bankruptcy order;
- (c) a statement that the former bankrupt was discharged from bankruptcy;
- (d) the date of discharge from the bankruptcy; and
- (e) the date of the certificate.

(5) The certificate must also state—

- (a) that the former bankrupt may request in writing notice of the discharge to be gazetted and advertised in the same manner as the bankruptcy order; and
- (b) that such a request must be delivered to the official receiver within 28 days of the making of the certificate of discharge.

(6) As soon as reasonably practicable after delivery of such a request to the official receiver the notice of discharge must be gazetted, and advertised in the same manner as the bankruptcy order.

(7) The notice must contain—

- (a) the name of the former bankrupt;
- (b) the date of the bankruptcy order;
- (c) the statement that a certificate of discharge has been delivered to the former bankrupt;
- (d) the date of the certificate; and
- (e) the date from which the discharge is effective.

(8) An application for a notice of discharge and a request in writing that the notice be gazetted and advertised may be made by the former bankrupt's personal representative or, as the case may be, a person appointed by the court to represent or act for the former bankrupt where the former bankrupt—

- (a) has died; or
- (b) is a person lacking capacity to manage the person's own affairs (within the meaning of the Mental Capacity Act 2005).

Bankrupt's debts surviving discharge

[Note: see also section 281 (effect of discharge).]

10.146. Discharge does not release the bankrupt from any obligation arising—

- (a) under a confiscation order made under section 1 of the Drug Trafficking Offences Act 1986⁽²⁾;
- (b) under a confiscation order made under section 1 of the Criminal Justice (Scotland) Act 1987⁽³⁾;
- (c) under a confiscation order made under section 71 of the Criminal Justice Act 1988⁽⁴⁾;
- (d) under a confiscation order made under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002⁽⁵⁾;
or
- (e) from a payment out of the social fund under section 138(1)(b) of the Social Security Contributions and Benefits Act 1992⁽⁶⁾ by way of crisis loan or budgeting loan.

Costs under this Chapter

10.147. In no case do any costs or expenses arising under this Chapter fall on the official receiver personally.

(2) 1986 c.32. Repealed by Schedule 3 to the Drug Trafficking Act 1994 (c.37).

(3) 1987 c.41. Repealed by Schedule 5 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40).

(4) Repealed by Schedule 12 to the Proceeds of Crime Act 2002 (c.29) with savings in articles 10 and 13 of S.I. 2003/333.

(5) 2002 (c.29); relevant amendments are made by paragraph 75(1) and (2) of Part 2 of Schedule 3 to the Criminal Justice Act 2003 (c.44); Part 1 of Schedule 8 and paragraphs 1 and 2 of Schedule 14 to the Serious Crime Act 2007 (c.27); and paragraphs 11 and 12 of the Schedule to the Prevention of Social Housing Fraud Act 2013 (c.3).

(6) 1992 c.4. Section 138(1)(b) is repealed by section 71 of the Welfare Reform Act 2012 (c.5).