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STATUTORY INSTRUMENTS

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**2016 No. 1024**

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

**PART 10**

**BANKRUPTCY**

**CHAPTER 6**

**THE TRUSTEE IN BANKRUPTCY**

*Sub-division A: appointment and associated formalities*

**Appointment by creditors of new trustee**

**10.67.**—(1) This rule applies where the bankrupt's creditors decide to remove a trustee in bankruptcy under section 298(1) but do not, as part of the decision procedure to remove the trustee, appoint a new trustee.

(2) The existing trustee must send the creditors a notice inviting proposals for a new trustee.

(3) The notice must contain a statement explaining the effect of section 298(4B) (decision of creditors to remove a trustee does not take effect until creditors appoint another trustee).

(4) The notice must also explain that the existing trustee is not obliged to seek the creditors' views on any proposals that do not meet the requirements of paragraphs (5) and (6).

(5) Any proposal must state the name and contact details of the proposed trustee, and contain a statement that the proposed trustee is qualified to act as an insolvency practitioner in relation to the bankrupt and has consented to act as trustee.

(6) Any proposal must be received by the existing trustee within five business days of the date of the notice.

(7) Following the end of the period for inviting proposals under paragraph (2) of this rule, where any proposals are received the existing trustee must seek a decision from the creditors on the appointment of a replacement trustee by—

- (a) a decision procedure; or
- (b) the deemed consent procedure.

(8) Where paragraph (7) applies, the existing trustee must send the creditors a notice which complies with rules 15.7 and 15.8 so far as are relevant.

(9) The notice must also identify any person proposed to be nominated as trustee in accordance with this rule.

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(1) Section 298(8A) is inserted and subsection (1) is amended by paragraph 77 of Schedule 9, subsection (4) is amended, (2) omitted and (4A) and (4B) are inserted by paragraph 9 of Schedule 10 to the Small Business, Enterprise and Employment Act 2015 (c.26) and subsections (7) and (8) are amended by paragraph 23 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013(c.24).

(10) The decision date in the notice must be no later than 14 days after the date for receiving proposals has passed.

(11) The creditors must be given at least seven days' notice of the decision date.

(12) A notice inviting proposals for a new trustee under paragraph (2) may be sent before or after the date of the decision to remove the trustee.

(13) Nothing in this rule affects the official receiver's ability under section 296(1)(2), at any time when trustee, to apply to the Secretary of State to appoint a trustee instead of the official receiver.

### **Certification of appointment**

**10.68.**—(1) This rule applies where a person has been appointed as trustee by a decision of the creditors.

(2) The convener or the chair (as the case may be) must certify the appointment, but not unless and until the appointee has delivered to the convener or chair a statement that the appointee is an insolvency practitioner qualified to act as trustee in relation to the bankrupt and consents to act.

(3) The trustee's appointment takes effect from the date on which the appointment is certified, that date to be endorsed on the certificate.

(4) The certificate must contain—

- (a) identification details for the proceedings;
- (b) identification details for the bankrupt;
- (c) identification and contact details for the person appointed as trustee;
- (d) the date on which the creditors made the appointment; and
- (e) the statement that the appointee—
  - (i) has provided a statement of being qualified to act as an insolvency practitioner in relation to the bankrupt,
  - (ii) has consented to act, and
  - (iii) was appointed trustee of the bankrupt's estate.

(5) The certificate must be authenticated and dated by the person who certifies the appointment.

(6) Where two or more trustees are appointed the certificate must also specify (as required by section 292(3)) the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others.

(7) The convener or chair (if that person is not the official receiver) must deliver the certificate to the official receiver.

(8) The official receiver must in any case deliver the certificate to the trustee.

### **Cost of the trustee's security (section 390(3))**

**10.69.** The cost of the trustee's security required by section 390(3) for the proper performance of the trustee's functions is an expense of the bankruptcy.

### **Creditors' decision to appoint a trustee**

**10.70.**—(1) In the case of a decision on the appointment of a trustee—

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(2) Section 296(5) is amended by paragraph 76 of Schedule 9 and (1) and (3) are amended by paragraph 7 of Schedule 10 to the Small Business, Enterprise and Employment Act 2015.

- (a) if on any vote there are two nominees for appointment, the person who obtains the most support is appointed;
  - (b) if there are three or more nominees, and one of them has a clear majority over both or all the others together, that one is appointed; and
  - (c) in any other case the convener or chair must continue to take votes (disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support last time) until a clear majority is obtained for any one nominee.
- (2) In the case of a decision being made at a meeting, the chair may at any time put to the meeting a resolution for the joint appointment of any two or more nominees.

### **Appointment by the court (section 291A(2))**

**10.71.**—(1) This rule applies where the court appoints the trustee under section 291A(2)(3).

(2) The court’s order must not be made unless and until the proposed appointee has filed with the court a statement that the proposed appointee is an insolvency practitioner, qualified to act as the trustee in relation to the bankrupt and consents to act.

(3) The order of the court must contain—

- (a) identification details the proceedings;
- (b) the name and title of the judge making the order;
- (c) the name and postal address of the applicant;
- (d) the capacity in which the applicant made the application;
- (e) identification and contact details for the person appointed as trustee;
- (f) a statement that that the appointee has filed a statement of qualification to act as an insolvency practitioner in relation to the bankrupt and of consent to act;
- (g) the order that the appointee is appointed trustee of the bankrupt’s estate; and
- (h) the date of the order.

(4) Where two or more trustees are appointed the order must also specify (as required by section 292(3)) the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others.

(5) The court must deliver two copies of the order, one of which must be sealed, to the official receiver.

(6) The official receiver must deliver the sealed copy of the order to the person appointed as trustee.

(7) The trustee’s appointment takes effect from the date of the order.

### **Appointment by the Secretary of State**

**10.72.**—(1) This rule applies where the official receiver—

- (a) refers the need for an appointment of a trustee to the Secretary of State under section 300(4)(4); or
- (b) applies to the Secretary of State under section 296 to make the appointment.

(2) If the Secretary of State makes an appointment the Secretary of State must deliver a copy of the certificate of appointment to the official receiver, who must deliver it to the person appointed.

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(3) Section 291A is inserted by section 133(1) of the Small Business, Enterprise and Employment Act 2015 (c.26).

(4) Section 300(4) and (8) is amended, (3) is substituted and (3A) is inserted by paragraph 79 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

- (3) The certificate must specify the date from which the trustee's appointment is to be effective.

### **Authentication of trustee's appointment**

**10.73.** Where a trustee is appointed under any of rules 10.70, 10.71 or 10.72, a sealed copy of the order of appointment or (as the case may be) a copy of the certificate of the trustee's appointment may in any proceedings be adduced as proof that the trustee is duly authorised to exercise the powers and perform the duties of trustee of the bankrupt's estate.

### **Appointment to be gazetted**

**10.74.**—(1) As soon as reasonably practicable after appointment a trustee appointed by a decision of the bankrupt's creditors—

- (a) must gazette a notice of the appointment; and
  - (b) may advertise the notice in other such manner as the trustee thinks fit.
- (2) The notice must state—
- (a) that a trustee has been appointed by a decision of creditors; and
  - (b) the date of the appointment.

### **Hand-over of bankrupt's estate by official receiver to trustee**

**10.75.**—(1) This rule applies where a trustee is appointed in succession to the official receiver acting as trustee.

(2) When the trustee's appointment takes effect, the official receiver must as soon as reasonably practicable do all that is required for putting the trustee into possession of the bankrupt's estate.

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

- (a) expenses properly incurred by the official receiver and payable under the Act or these Rules; and
- (b) any advances made by the official receiver in respect of the bankrupt's estate, together with interest on such advances at the rate specified in section 17 of the Judgments Act 1838(5) on the date of the bankruptcy order.

(4) Alternatively, the trustee may (before taking office) deliver to the official receiver a written undertaking to discharge any such balance out of the first realisation of assets.

(5) The official receiver has a charge on the bankrupt's estate in respect of any sums due under paragraph (3) until they have been discharged, subject only to the deduction from realisations by the trustee of the costs and expenses of such realisations.

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

(7) The official receiver must give to the trustee all the information relating to the affairs of the bankrupt and the course of the bankruptcy which the official receiver considers to be reasonably required for the effective discharge by the trustee of the trustee's duties in relation to the bankrupt's estate.

(8) The official receiver must also deliver to the trustee any report of the official receiver under rule 10.66.

(5) Section 17 is amended by the Statute Law Revision (No 2) Act 1888 (c.57), article 2 of S.I. 1993/564, article 3 of S.I. 1998/2940, Part 1 of the Schedule to the Civil Procedure Acts Repeal Act 1879 (c.59) and article 3(c) of S.I. 1998/3132.

### **Invitation to creditors to form a creditors' committee**

**10.76.**—(1) Where the trustee seeks any decision from the bankrupt's creditors, the trustee must at the same time deliver to the creditors a notice inviting them to decide whether a creditors' committee should be established if sufficient creditors are willing to be members of the committee.

(2) The notice must also invite nominations for membership of the committee, such nominations to be received by a date specified in the notice.

(3) The notice must state that nominations—

(a) must be delivered to the trustee by the specified date; and

(b) can only be accepted if the convener is satisfied as to the creditors' eligibility under rule 17.4.