
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 10

BANKRUPTCY

CHAPTER 6

THE TRUSTEE IN BANKRUPTCY

Sub-division B: resignation and removal

Trustee's resignation and appointment of replacement (section 298(7))

10.77.—(1) A trustee may resign under section 298(7)(1) only—

- (a) on grounds of ill health;
- (b) because of the intention to cease to practise as an insolvency practitioner;
- (c) because the further discharge of the duties of trustee is prevented or made impracticable by —
 - (i) a conflict of interest, or
 - (ii) a change of personal circumstances; or
- (d) where two or more persons are acting as trustee jointly, and it is the opinion of both or all of them that it is no longer expedient that there should continue to be that number of joint trustees.

(2) Before resigning, the trustee must invite the creditors to consider, either by a decision procedure or by the deemed consent procedure, whether a replacement should be appointed except where the resignation is under sub-paragraph (1)(d).

(3) The notice to the creditors must—

- (a) state the trustee's intention to resign;
- (b) state that under rule 10.77(8) of the Insolvency (England and Wales) Rules 2016, the trustee will be released 21 days after the date of delivery of the notice of resignation to the prescribed person under section 298(7), unless the court orders otherwise; and
- (c) comply with rule 15.7 or 15.8 so far as applicable.

(4) The notice may suggest the name of a replacement trustee.

(5) The notice must be accompanied by a summary of the trustee's receipts and payments.

(6) The decision date must be not more than five business days before the date on which the trustee intends to give notice under section 298(7).

(7) The trustee must deliver a copy of the notice to the official receiver and the bankrupt.

(1) Section 298(7) is amended by paragraph 23 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24).

(8) The resigning trustee's release is effective 21 days after the date on which the notice of resignation under section 298(7) is filed with the court in a bankruptcy based on a petition or, delivered to the official receiver in a bankruptcy based on a debtor's application.

Decision of creditors to remove trustee (section 298(1))

10.78.—(1) Where the convener of the decision procedure or chair of a meeting of creditors is other than the official receiver, and a decision is taken to remove the trustee, the convener or chair must, within three business days, deliver a certificate to that effect to the official receiver.

(2) If the creditors have decided to appoint a new trustee, the certificate of the new trustee's appointment must also be delivered to the official receiver within three business days from the date of that decision and rule 10.68 must be complied with in relation to it.

(3) The certificate of the trustee's removal must be authenticated and dated by the convener or chair and—

- (a) identify the bankrupt;
- (b) identify and provide contact details for the removed trustee;
- (c) state that the creditors decided that the trustee specified in the certificate be removed from office as trustee of the bankrupt's estate;
- (d) state the decision date and the decision procedure used; and
- (e) state that the creditors either—
 - (i) did not decide against the trustee being released, or
 - (ii) decided that the trustee should not be released.

(4) The trustee's removal is effective from the date of the certificate of removal.

Procedure on removal by creditors

10.79.—(1) Where the creditors have decided that the trustee be removed, the official receiver must in a bankruptcy based on a petition file the certificate of removal with the court.

(2) The official receiver must deliver a copy of the certificate to the removed trustee.

Removal of trustee by the court (section 298(1))

10.80.—(1) This rule applies where an application is made to the court under section 298(1) for the removal of the trustee, or for an order directing the trustee to initiate a creditors' decision procedure for the purpose of removing the trustee.

(2) On receipt of an application, the court may, if it is satisfied that no sufficient cause is shown for it, dismiss it without giving notice to any party other than the applicant.

(3) Unless the application is dismissed, the court must fix a venue for it to be heard.

(4) The applicant must, at least 14 days before any hearing, deliver to the trustee and the official receiver a notice stating the venue with a copy of the application and of any evidence on which the applicant intends to rely.

(5) A respondent may apply for security for the costs of the application and the court may make such an order if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order.

(6) The trustee and the official receiver may do either or both of the following—

- (a) file a report of any matters which the trustee or the official receiver thinks ought to be drawn to the court's attention; or

- (b) appear and be heard on the application.
- (7) The costs of the application are not payable as an expense of the bankruptcy unless the court orders otherwise.
- (8) On a successful application the court's order must contain—
 - (a) identification details for the proceedings;
 - (b) the name and title of the judge making the order;
 - (c) the name and postal address of the applicant;
 - (d) a statement as to the capacity in which the applicant made the application;
 - (e) identification and contact details for the trustee;
 - (f) an order that either—
 - (i) the trustee is removed from office, or
 - (ii) the trustee must instigate a creditors' decision procedure on or before the date specified in the order for the purpose of considering the trustee's removal from office;
 - (g) details of any further order in the matter; and
 - (h) the date of the order.
- (9) Where the court removes the trustee it must deliver a sealed copy of the order of removal to the trustee and a copy to the official receiver.
- (10) If the court appoints a new trustee, rule 10.71 applies.

Removal of trustee by the Secretary of State (section 298(5))

10.81.—(1) This rule applies where the Secretary of State decides to remove a trustee appointed by the Secretary of State.

(2) Before doing so the Secretary of State must deliver to the trustee and the official receiver a notice of the Secretary of State's decision and the grounds for the decision.

(3) The notice must specify a period within which the trustee may make representations against implementation of the decision.

(4) If the Secretary of State directs the removal of the trustee, the Secretary of State must as soon as reasonably practicable—

- (a) deliver the notice to the trustee and the official receiver; and
- (b) where the bankruptcy was based upon a petition, file a notice of the decision with the court.

(5) Where the Secretary of State directs the trustee be removed, the court may make any order that it could have made if the trustee had been removed by the court.

Notice of resignation or removal

10.82. Where a new trustee is appointed in place of one who has resigned or been removed, the new trustee must, in the notice of appointment, state that the predecessor trustee has resigned or, as the case may be, been removed and (if it be the case) has been given release.

Release of removed trustee (section 299)

10.83.—(1) Where the trustee is removed by a creditors' decision procedure the certificate of removal must state whether or not the creditors decided against the trustee's release.

(2) Where the creditors decided against release, the trustee's application to the Secretary of State for release under subsection 299(3)(b) (2) must—

- (a) identify the proceedings;
- (b) identify the bankrupt;
- (c) identify and provide contact details for the trustee;
- (d) provide details of the circumstances under which the trustee has ceased to act as trustee;
- (e) state that the trustee is applying to the Secretary of State for a certificate of the trustee's release as a trustee as a result of the circumstances specified in the application; and
- (f) be authenticated and dated by the trustee.

(3) When the Secretary of State gives the release, the Secretary of State must certify it accordingly and file the certificate with the court in a bankruptcy based on a creditor's petition.

(4) The Secretary of State must deliver a copy of the certificate to the official receiver and former trustee whose release is effective from the date of the certificate or such other date as the certificate specifies.

Deceased trustee

10.84.—(1) If the trustee (not being the official receiver) dies, notice of the fact and date of death must be delivered to the official receiver by one of the following—

- (a) a surviving joint trustee;
- (b) a member or partner in the deceased trustee's firm (if the deceased was a member, partner or employee of a firm);
- (c) an officer of the deceased trustee's company (if the deceased was an officer or employee of a company); or
- (d) a personal representative of the deceased trustee.

(2) If no such notice has been delivered within 21 days following the trustee's death then any other person may deliver the notice.

(3) In a bankruptcy based on a creditor's petition the official receiver must file notice of the death with the court.

(4) The date of the deceased trustee's release under section 299(3)(a) is—

- (a) the date of the filing of the notice with the court where the bankruptcy is based on a creditor's petition; or
- (b) the date of delivery of the notice under paragraph (1) to the official receiver where the bankruptcy is based on a debtor's application.

Loss of qualification as insolvency practitioner (section 298(6))

10.85.—(1) This rule applies where the trustee vacates office under section 298(6)(3), on ceasing to be qualified to act as an insolvency practitioner in relation to the bankrupt.

(2) A notice of the fact must be delivered as soon as reasonably practicable to the official receiver by one of the following—

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- (2) Section 299(3)(a) is amended by paragraph 24 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24) and paragraph 78(3) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).
 - (3) Section 298(8A) is inserted and (1) is amended by paragraph 77 of Schedule 9; subsection (4) is amended, (2) is 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).

- (a) the trustee who has vacated office;
 - (b) a continuing joint trustee;
 - (c) the recognised professional body which was the source of the vacating trustee's authorisation to act in relation to the bankrupt.
- (3) The notice must be authenticated and dated by the person delivering the notice.
- (4) On receiving such a notice the official receiver must—
- (a) deliver a copy of the notice to the Secretary of State; and
 - (b) file a copy of the notice with the court where the bankruptcy was based on a creditor's petition.
- (5) Rule 10.83(2) to (4) applies in relation to the trustee's application for release under section 299(3)(b).