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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 C: release on completion of administration of bankrupt's estate*

**Release of official receiver on completion of administration (section 299)**

**10.86.**—(1) Before giving a notice that the administration of the bankrupt's estate is for practical purposes complete to the Secretary of State under section 299(2), the official receiver must deliver a notice of intention to do so to the creditors and to the bankrupt.

(2) The notice must be accompanied by a summary of the official receiver's receipts and payments as trustee.

(3) When the Secretary of State has determined the date from which the official receiver's release is effective, the Secretary of State must—

- (a) where the bankruptcy was based on a bankruptcy application, deliver a notice of release to the official receiver; or
- (b) in all other cases, file a notice of the release with the court.

(4) The Secretary of State's notice to the court must be accompanied by the summary of the official receiver's receipts and payments.

**Vacation of office on completion of bankruptcy (sections 298(8) and 331)**

**10.87.**—(1) The report which the trustee is required to make under section 331(2A)(a)(1) must comply with the requirements of rule 18.14.

(2) A copy of the notice and report that is sent to creditors under section 331(2) and (2A) must be sent to the bankrupt as soon as is reasonably practicable after notice is given to creditors under that provision.

(3) The notice under section 331(2) must also state—

- (a) that the creditors have the right to request information from the trustee under rule 18.9;
- (b) that the creditors have the right to challenge the trustee's remuneration and expenses under rule 18.34;
- (c) that the bankrupt has a right to challenge the trustee's remuneration and expenses under rule 18.35;

- (d) that the creditors may object to the trustee's release by giving notice in writing to the trustee before the end of the prescribed period;
  - (e) that the prescribed period is the period ending at the later of—
    - (i) eight weeks after delivery of the notice; or
    - (ii) if any request for information under rule 18.9 or any application to the court under that rule, rule 18.34 or rule 18.35 is made when that request or application is finally determined;
  - (f) that the trustee will vacate office under section 298(8) when, after the end of the prescribed period, the trustee files with the court a notice that the trustee has given notice to the creditors under section 331; and
  - (g) that the trustee will be released under section 299(3)(d) at the same time as vacating office unless any of the creditors objected to the trustee's release.
- (4) The notice under section 298(8) must be authenticated and dated by the trustee.
  - (5) The notice must be accompanied by a copy of the final report.
  - (6) The trustee must deliver a copy of the notice under section 298(8) to—
    - (a) the Secretary of State; and
    - (b) the official receiver.
  - (7) Rule 10.83(2) to (4) applies to an application by the trustee to the Secretary of State for release.

#### **Rule as to reporting**

**10.88.**—(1) The court may, on the application of the trustee or official receiver, relieve the applicant of any duty imposed on the applicant by rule 10.86 and 10.87 and rule 18.14 (contents of final report), or authorise the applicant to carry out the duty in any other way.

(2) In considering whether to relieve the applicant, the court must have regard to the cost of carrying out the duty, to the amount of the funds available in the bankrupt's estate, and to the extent of the interest of creditors or any particular class of them.

#### **Notice to official receiver of intention to vacate office**

**10.89.**—(1) This rule applies where the trustee intends to vacate office, whether by resignation or otherwise, and as a result there will be a vacancy in the office of trustee (so that by virtue of section 300 the official receiver is trustee until the vacancy is filled).

(2) The trustee must deliver notice of that intention to the official receiver at least 21 days before the trustee intends to vacate office.

(3) The notice must include the following details of any property which has not been realised, applied, distributed or otherwise fully dealt with in the bankruptcy—

- (a) the nature of the property;
- (b) its value (or that it has no value);
- (c) its location;
- (d) any action taken by the trustee to deal with the property or any reason for the trustee not dealing with it; and
- (e) the current position in relation to it.

### **Trustee's duties on vacating office**

**10.90.** A trustee who ceases to be in office in consequence of removal, resignation or ceasing to be qualified to act as an insolvency practitioner in relation to the bankrupt, must as soon as reasonably practicable deliver to the successor as trustee—

- (a) the assets of the bankrupt's estate (after deduction of any expenses properly incurred, and distributions made, by the trustee);
- (b) the records of the bankruptcy, including correspondence, proofs and other documents relating to the bankruptcy while it was within the trustee's responsibility, and
- (c) the bankrupt's documents and other records.

### **Power of the court to set aside certain transactions**

**10.91.**—(1) If in dealing with the bankrupt's estate the trustee enters into any transaction with a person who is an associate of the trustee, the court may, on the application of any interested person, set the transaction aside and order the trustee to compensate the bankrupt's estate for any loss suffered in consequence of it.

(2) This does not apply if either—

- (a) the transaction was entered into with the prior consent of the court; or
- (b) it is shown to the court's satisfaction that the transaction was for value, and that it was entered into by the trustee without knowing, or having any reason to suppose, that the person concerned was an associate.

(3) Nothing in this rule is to be taken as prejudicing the operation of any rule of law or equity relating to a trustee's dealings with trust property, or the fiduciary obligations of any person.

### **Rule against improper solicitation**

**10.92.**—(1) Where the court is satisfied that any improper solicitation has been used by or on behalf of the trustee in obtaining proxies or procuring the trustee's appointment, it may order that no remuneration be allowed out of the bankrupt's estate to any person by whom, or on whose behalf, the solicitation was exercised.

(2) An order of the court under this rule overrides any decision of the creditors' committee or the creditors, or any other provision of these Rules relating to the trustee's remuneration.

### **Enforcement of trustee's obligations to official receiver (section 305(3))**

**10.93.**—(1) On the application of the official receiver, the court may make such orders as it thinks necessary to enforce the duties of the trustee under section 305(3).

(2) An order of the court under this rule may provide that all costs of and incidental to the official receiver's application must be borne by the trustee.