
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 10

BANKRUPTCY

CHAPTER 6

THE TRUSTEE IN BANKRUPTCY

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

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.

(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).

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

(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.

(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.

Creditors' decision to appoint a trustee

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

(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).

(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.

(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.

(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.

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

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.

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)(6) 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.

(6) 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) (7) 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)(8), 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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- (7) 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).
 - (8) 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).

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)(9) 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;

(9) Section 331 is amended by paragraph 83 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015.

- (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.