
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 12

COURT PROCEDURE AND PRACTICE

CHAPTER 4

Making applications to court: specific applications

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

Sub-division A: Applications in connection with section 176A (prescribed part)

Applications under section 176A(5) to disapply section 176A

12.14.—(1) An application under section 176A(5) must be accompanied by a witness statement of the liquidator, administrator or receiver.

(2) The witness statement must state—

- (a) the type of insolvency proceedings in which the application arises;
- (b) a summary of the financial position of the company;
- (c) the information substantiating the applicant's view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits; and
- (d) whether any other office-holder is acting in relation to the company and, if so, that office-holder's address.

Notice of application under section 176A(5)

12.15.—(1) An application under section 176A(5) may be made without the application being served upon, or notification to any other party.

(2) However the office-holder making the application must notify any other office-holder who is acting in relation to the company including any member State liquidator.

Notice of an order under section 176A(5)

12.16.—(1) Where the court makes an order under section 176A(5), the court must, as soon as reasonably practicable, deliver the sealed order to the applicant and a sealed copy to any other office-holder.

(2) The liquidator, administrator or receiver must, as soon as reasonably practicable, deliver notice of the order to each creditor unless the court directs otherwise.

(3) The court may direct that the requirement in paragraph (2) is complied with if a notice is published by the liquidator, administrator or receiver which states that the court has made an order disapplying the requirement to set aside the prescribed part.

(4) As soon as reasonably practicable the notice—

(a) must be gazetted; and

(b) may be advertised in such other manner as the liquidator, administrator, or receiver thinks fit.

(5) The liquidator, administrator or receiver must deliver a copy of the order to the registrar of companies as soon as reasonably practicable after the making of the order.

Sub-division B: Applications for private examination (sections 236, 251N and 366)

[Note: for rules about public examinations see Chapter 13 of Part 7 and Chapter 8 of Part 10.]

Application of this sub-division and interpretation

12.17.—(1) The rules in this sub-division apply to applications to the court for an order under—

(a) section 236 (inquiry into company’s dealings);

(b) section 251N (debt relief orders – inquiry into dealings and property of debtor); and

(c) section 366 (inquiry into bankrupt’s dealings and property) including section 366 as it applies by virtue of section 368.

(2) In this sub-division—

“applicable section” means section 236, 251N or 366; and

“the insolvent” means the company, the debtor or the bankrupt as the case may be.

Contents of application

12.18.—(1) An application to the court under section 236, 251N or 366 must state—

(a) the grounds on which it is made; and

(b) which one or more of the following orders is sought—

(i) for the respondent to appear before the court,

(ii) for the respondent to clarify any matter which is in dispute in the proceedings or to give additional information in relation to any such matter (if so Part 18 CPR (further information) applies to any such order),

(iii) for the respondent to submit witness statements (if so, particulars must be given of the matters to be included), or

(iv) for the respondent to produce books, papers or other records (if so, the items in question to be specified).

(2) An application under an applicable section may be made without notice to any other party.

(3) The court may, whatever the order sought in the application, make any order which it has power to make under the applicable section.

Order for examination etc.

12.19.—(1) Where the court orders the respondent to appear before it, it must specify the venue for the appearance.

(2) The date must not be less than 14 days from the date of the order.

(3) If the respondent is ordered to file with the court a witness statement or a written account, the order must specify—

- (a) the matters which are to be dealt with in it; and
- (b) the time within which it is to be delivered.

(4) If the order is to produce documents or other records, the time and manner of compliance must be specified.

(5) The applicant must serve a copy of the order on the respondent as soon as reasonably practicable.

Procedure for examination

12.20.—(1) The applicant may attend an examination of the respondent, in person, or be represented by an appropriately qualified legal representative, and may put such questions to the respondent as the court may allow.

(2) Unless the applicant objects, the following persons may attend the examination with the permission of the court and may put questions to the respondent (but only through the applicant)—

- (a) any person who could have applied for an order under the applicable section; and
- (b) any creditor who has provided information on which the application was made under section 236 or 366.

(3) If the respondent is ordered to clarify any matter or to give additional information, the court must direct the respondent as to the questions which the respondent is required to answer, and as to whether the respondent's answers (if any) are to be made in a witness statement.

(4) The respondent may employ an appropriately qualified legal representative at the respondent's own expense, who may—

- (a) put to the respondent such questions as the court may allow for the purpose of enabling the respondent to explain or qualify any answers given by the respondent; and
- (b) make representations on the respondent's behalf.

(5) Such written record of the examination must be made as the court thinks proper and such record must be read either to or by the respondent and authenticated by the respondent at a venue fixed by the court.

(6) The record may, in any proceedings (whether under the Act or otherwise), be used as evidence against the respondent of any statement made by the respondent in the course of the respondent's examination.

Record of examination

12.21.—(1) Unless the court otherwise directs, the record of questions put to the respondent, the respondent's answers and any witness statement or written account delivered to the court by the respondent in compliance with an order of the court under the applicable section are not to be filed with the court.

(2) The documents listed in paragraph (3) may not be inspected without the permission of the court, except by—

- (a) the applicant for an order under the applicable section; or
- (b) any person who could have applied for such an order in relation to the affairs of the same insolvent.

(3) The documents are—

- (a) the record of the respondent's examination;

- (b) copies of questions put to the respondent or proposed to be put to the respondent and answers to questions given by the respondent;
- (c) any witness statement by the respondent; and
- (d) any document on the court file that shows the grounds for the application for the order.

(4) The court may from time to time give directions as to the custody and inspection of any documents to which this rule applies, and as to the provision of copies of, or extracts from, such documents.

Costs of proceedings under sections 236, 251N and 366

12.22.—(1) Where the court has ordered an examination of a person under an applicable section, and it appears to it that the examination was made necessary because information had been unjustifiably refused by the respondent, it may order that the respondent pay the costs of the examination.

(2) Where the court makes an order against a person under—

- (a) section 237(1) or 367(1) (to deliver up property in any person’s possession which belongs to the insolvent estate); or
- (b) section 237(2) or 367(2) (to pay any amount in discharge of a debt due to the insolvent);

the costs of the application for the order may be ordered by the court to be paid by the respondent.

(3) Subject to paragraphs (1) and (2), the applicant’s costs must, unless the court orders otherwise, be paid—

- (a) in relation to a company insolvency, as an expense of the insolvency proceedings; and
- (b) in relation to an individual insolvency, but not in proceedings relating to debt relief orders or applications for debt relief orders, out of the bankrupt’s estate or (as the case may be) the debtor’s property.

(4) A person summoned to attend for examination must be tendered a reasonable sum for travelling expenses incurred in connection with that person’s attendance but any other costs falling on that person are at the court’s discretion.

(5) Where the examination is on the application of the official receiver otherwise than in the capacity of liquidator or trustee, no order may be made for the payment of costs by the official receiver.

Sub-division C – persons unable to manage own property or affairs

Application and interpretation

12.23.—(1) This sub-division applies where it appears to the court in insolvency proceedings that a person affected by the proceedings is unable to manage and administer that person’s own property and affairs by reason of—

- (a) lacking capacity within the meaning of the Mental Capacity Act 2005(1);
- (b) suffering from a physical affliction; or
- (c) disability.

(2) Such a person is referred to in this sub-division as “the incapacitated person”.

Appointment of another person to act

12.24.—(1) The court may appoint such person as it thinks just to appear for, represent or act for the incapacitated person.

(2) The appointment may be made either generally or for the purpose of a particular application or proceeding, or for the exercise of particular rights or powers which the incapacitated person might have exercised but for that person's incapacity.

(3) The court may make the appointment either of its own motion or on application by—

- (a) a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the incapacitated person;
- (b) any person who appears to the court to be a suitable person to make the application;
- (c) the official receiver; or
- (d) the office-holder.

(4) An application may be made without notice to any other party.

(5) However the court may require such notice of the application as it thinks necessary to be delivered to the incapacitated person, or any other person, and may adjourn the hearing of the application to enable the notice to be delivered.

Witness statement in support of application

12.25. An application under rule 12.24(3) must be supported by a witness statement made by a registered medical practitioner as to the mental or physical condition of the incapacitated person.

Service of notices following appointment

12.26. Any notice served on, or sent to, a person appointed under rule 12.24 has the same effect as if it had been served on, or delivered to, the incapacitated person.