
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 12

COURT PROCEDURE AND PRACTICE

CHAPTER 8

Costs

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

Application of Chapter and interpretation

- 12.41.**—(1) This Chapter applies to costs of and in connection with insolvency proceedings.
(2) In this Chapter “costs” includes charges and expenses.
(3) CPR Parts 44(1) and 47(2) (which relate to costs) apply to such costs.

Requirement to assess costs by the detailed procedure

12.42.—(1) Where the costs of any person are payable as an expense out of the insolvent estate, the amount payable must be decided by detailed assessment unless agreed between the office-holder and the person entitled to payment.

- (2) In the absence of agreement, the office-holder—
- (a) may serve notice requiring the person entitled to payment to commence detailed assessment proceedings in accordance with CPR Part 47; and
 - (b) must serve such notice (except in an administrative receivership) where a liquidation or creditors’ committee formed in relation to the insolvency proceedings resolves that the amount of the costs must be decided by detailed assessment.
- (3) Detailed assessment proceedings must be commenced in the court to which the insolvency proceedings are allocated or, where in relation to a company there is no such court, any court having jurisdiction to wind up the company.
- (4) Where the costs of any person employed by an office-holder in insolvency proceedings are required to be decided by detailed assessment or fixed by order of the court, the office-holder may make payments on account to such person in respect of those costs if that person undertakes in writing—
- (a) to repay as soon as reasonably practicable any money which may, when detailed assessment is made, prove to have been overpaid; and

(1) Part 44 is substituted for a new Part 44 by [S.I. 2013/262](#).
(2) Part 47 is substituted for a new Part 47 by [S.I. 2013/262](#).

(b) to pay interest on any such sum as is mentioned in sub-paragraph (a) at the rate specified in section 17 of the Judgments Act 1838(3) on the date payment was made and for the period beginning with the date of payment and ending with the date of repayment.

(5) In any proceedings before the court (including proceedings on a petition), the court may order costs to be decided by detailed assessment.

(6) Unless otherwise directed or authorised, the costs of a trustee in bankruptcy or a liquidator are to be allowed on the standard basis for which provision is made in—

(a) CPR rule 44.3 (basis of assessment); and

(b) CPR rule 44.4 (factors to be taken into account when deciding the amount of costs).

Procedure where detailed assessment is required

12.43.—(1) The costs officer must require a certificate of employment before making a detailed assessment of the costs of a person employed in insolvency proceedings by the office-holder.

(2) The certificate must be endorsed on the bill and signed by the office-holder and must include—

(a) the name and address of the person employed;

(b) details of the functions to be carried out under the employment; and

(c) a note of any special terms of remuneration which have been agreed.

(3) A person whose costs in insolvency proceedings are required to be decided by detailed assessment must, on being required in writing to do so by the office-holder, commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions).

(4) If that person does not commence such proceedings within 3 months of being required to do so under paragraph (3), or within such further time as the court, on application, may permit, the office-holder may deal with the insolvent estate without regard to any claim for costs by that person, whose claim is forfeited by such failure to commence proceedings.

(5) Where in any such case such a claim for costs lies additionally against an office-holder in the office-holder's personal capacity, that claim is also forfeited by such failure to commence proceedings.

(6) Where costs have been incurred in insolvency proceedings in the High Court and those proceedings are subsequently transferred to the County Court, all costs of those proceedings directed by the court or otherwise required to be assessed may nevertheless, on the application of the person who incurred the costs, be ordered to be decided by detailed assessment in the High Court.

Costs of officers charged with execution of writs or other process

12.44.—(1) This rule applies where an enforcement officer, or other officer charged with execution of the writ or other process—

(a) is required under section 184(2) or 346(2)(4) to deliver up goods or money; or

(b) has under section 184(3) or 346(3) deducted costs from the proceeds of an execution or money paid to that officer.

(2) The office-holder may require in writing that the amount of the enforcement officer's or other officer's bill of costs be decided by detailed assessment and where such a requirement is made rule 12.43 (procedure where detailed assessment is required) applies.

(3) 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 SI 1998/3132.

(4) Section 346 subsections (1), (2), (3)(b) and (c) and (4)(a) are amended by paragraph 39 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24).

(3) Where, in the case of a deduction of the kind mentioned in paragraph (1)(b), any amount deducted is disallowed at the conclusion of the detailed assessment proceedings, the enforcement officer must as soon as reasonably practicable pay a sum equal to that disallowed to the office-holder for the benefit of the insolvent estate.

Petitions presented by insolvent companies

12.45.—(1) This rule applies where a winding-up petition is presented by a company against itself.

(2) A solicitor acting for the company must in the solicitor's bill of costs give credit for any sum or security received by the solicitor as a deposit from the company on account of the costs and expenses to be incurred in respect of the filing and prosecution of the petition and the deposit must be noted by the costs officer on the final costs certificate.

(3) Where an order is made on a petition presented by the company and before the presentation of that petition a petition had been presented by a creditor, no costs are to be allowed to the company or that company's solicitor out of the insolvent estate unless the court considers that—

- (a) the insolvent estate has benefited by the company's conduct; or
- (b) there are otherwise special circumstances justifying the allowance of costs.

Costs paid otherwise than out of the insolvent estate

12.46. Where the amount of costs is decided by detailed assessment under an order of the court directing that those costs are to be paid otherwise than out of the insolvent estate, the costs officer must note on the final costs certificate by whom, or the manner in which, the costs are to be paid.

Awards of costs against an office-holder, the adjudicator or the official receiver

12.47. Without prejudice to any provision of the Act or Rules by virtue of which the official receiver or the adjudicator is not in any event to be liable for costs and expenses, where an office-holder, the adjudicator or the official receiver (where the official receiver is not acting as an office-holder) is made a party to any proceedings on the application of another party to the proceedings, the office-holder, the adjudicator or official receiver is not to be personally liable for the costs unless the court otherwise directs.

Applications for costs

12.48.—(1) This rule applies where a party to, or person affected by, any proceedings in an insolvency applies to the court for an order allowing their costs, or part of them, or of incidental to the proceedings, and that application is not made at the time of the proceedings.

(2) The applicant must serve a sealed copy of the application—

- (a) in proceedings other than proceedings relating to a debt relief order—
 - (i) on the office-holder, and
 - (ii) in a winding up by the court or a bankruptcy, on the official receiver; or
- (b) in proceedings relating to a debt relief order, on the official receiver.

(3) The office-holder and, where appropriate, the official receiver may appear on an application to which paragraph (2)(a) applies.

(4) The official receiver may appear on an application to which paragraph (2)(b) applies.

(5) No costs of or incidental to the application are to be allowed to the applicant unless the court is satisfied that the application could not have been made at the time of the proceedings.

Costs and expenses of petitioners and other specified persons

12.49.—(1) The petitioner is not to receive an allowance as a witness for attending the hearing of the petition.

(2) However the costs officer may allow that person’s expenses of travelling and subsistence in attending the hearing.

(3) The bankrupt, the debtor or an officer of the insolvent company to which the proceedings relate is not to receive an allowance as a witness in an examination or other proceedings before the court except as directed by the court.

Final costs certificate

12.50.—(1) A final costs certificate of the costs officer is final and conclusive as to all matters which have not been objected to in the manner provided for under the rules of the court.

(2) Where it is proved to the satisfaction of a costs officer that a final costs certificate has been lost or destroyed, the costs officer may issue a duplicate.