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STATUTORY INSTRUMENTS

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**2016 No. 1024**

**The Insolvency (England and Wales) Rules 2016**

**PART 18**

**REPORTING AND REMUNERATION OF OFFICE-HOLDERS**

[Note: this Part does not apply to the official receiver acting as an office-holder.]

**CHAPTER 1**

**Introductory**

**Scope of Part 18 and interpretation**

**18.1.**—(1) This Part applies to administration, winding up and bankruptcy.

(2) However this Part does not apply to the official receiver as office-holder or in respect of any period for which the official receiver is the office-holder.

(3) In particular an office-holder other than the official receiver is not required to make any report in respect of a period during which the official receiver was office-holder.

(4) In this Part “committee” means either or both of a creditors’ committee and a liquidation committee as the context requires.

**CHAPTER 2**

**Progress reports**

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

**Reporting by the office-holder**

**18.2.** The office-holder in an administration, winding up or bankruptcy must prepare and deliver reports in accordance with this Chapter.

**Contents of progress reports in administration, winding up and bankruptcy**

[Note: see rule 3.53 for provisions about the contents of a final progress report in an administration.]

**18.3.**—(1) The office-holder’s progress report in an administration, winding up and bankruptcy must contain the following—

- (a) identification details for the proceedings;
- (b) identification details for the bankrupt;
- (c) identification and contact details for the office-holder;
- (d) the date of appointment of the office-holder and any changes in the office-holder in accordance with paragraphs (3) and (4);

- (e) details of progress during the period of the report, including a summary account of receipts and payments during the period of the report;
  - (f) the information relating to remuneration and expenses required by rule 18.4;
  - (g) the information relating to distributions required by rules 18.10 to 18.13 as applicable;
  - (h) details of what remains to be done; and
  - (i) any other information of relevance to the creditors.
- (2) The receipts and payments account in a final progress report must state the amount paid to unsecured creditors by virtue of the application of section 176A.
- (3) A change in the office-holder is only required to be shown in the next report after the change.
- (4) However if the current office-holder is seeking the repayment of pre-administration expenses from a former office-holder the change in office-holder must continue to be shown until the next report after the claim is settled.
- (5) Where the period of an administrator's appointment is extended the next progress report after the date the extension is granted must contain details of the extension.
- (6) Where an administration has converted to a voluntary winding up the first progress report by the liquidator must include a note of any information received by the liquidator from the former administrator under rule 3.60(5) (matters occurring after the date of the administrator's final progress report).

#### **Information about remuneration**

- 18.4.**—(1) The information relating to remuneration and expenses referred to in rule 18.3(1)(f) is as follows—
- (a) the basis fixed for the remuneration of the office-holder under rules 18.16 and 18.18 to 18.21 as applicable, (or, if not fixed at the date of the report, the steps taken during the period of the report to fix it);
  - (b) if the basis of remuneration has been fixed, a statement of—
    - (i) the remuneration charged by the office-holder during the period of the report, and
    - (ii) where the report is the first to be made after the basis has been fixed, the remuneration charged by the office-holder during the periods covered by the previous reports, together with a description of the things done by the office-holder during those periods in respect of which the remuneration was charged;
  - (c) where the basis of the remuneration is fixed as a set amount under rule 18.16(2)(c), it may be shown as that amount without any apportionment to the period of the report;
  - (d) a statement of the expenses incurred by the office-holder during the period of the report;
  - (e) a statement setting out whether at the date of the report—
    - (i) in a case other than a members' voluntary winding up, the remuneration expected to be charged by the office-holder is likely to exceed the fees estimate or any approval given under rule 18.16(4),
    - (ii) the expenses incurred or expected to be incurred are likely to exceed, or have exceeded, the details given to the creditors prior to the determination of the basis of remuneration, and
    - (iii) the reasons for that excess; and
  - (f) a statement of the rights of creditors and, in a members' voluntary winding up, of members—
    - (i) to request information about remuneration or expenses under rule 18.9, and

(ii) to challenge the office-holder's remuneration and expenses under rule 18.34.

(2) The information about remuneration and expenses is required irrespective of whether payment was made in respect of them during the period of the report.

#### **Information about pre-administration costs**

**18.5.**—(1) Where the administrator has made a statement of pre-administration costs under rule 3.35(10)(a)—

- (a) if they are approved under rule 3.52, the first progress report after the approval must include a statement setting out the date of the approval and the amounts approved;
- (b) while any of the costs remain unapproved each successive report must include a statement of any steps taken to get approval.

(2) However if either the administrator has decided not to seek approval, or another insolvency practitioner entitled to seek approval has told the administrator of that practitioner's decision not to seek approval then—

- (a) the next report after that must include a statement of whichever is the case; and
- (b) no statement under paragraph (1)(b) is required in subsequent reports.

#### **Progress reports in administration: timing**

**18.6.**—(1) The administrator's progress report in an administration must cover the periods of—

- (a) six months starting on the date the company entered administration; and
- (b) each subsequent period of six months.

(2) The periods for which progress reports are required under paragraph (1) are unaffected by any change in the administrator.

(3) However where an administrator ceases to act the succeeding administrator must, as soon as reasonably practicable after being appointed, deliver a notice to the creditors of any matters about which the succeeding administrator thinks the creditors should be informed.

(4) The administrator must deliver a copy of a report to the registrar of companies and the creditors within one month of the end of the period covered by the report unless the report is a final progress report under rule 3.55.

(5) An administrator who makes default in delivering a progress report within the time limit in paragraph (4) is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

#### **Progress reports in voluntary winding up: timing**

**18.7.**—(1) This rule applies for the purposes of sections 92A and 104A(1) and prescribes the periods for which reports must be made.

(2) The liquidator's progress reports in a voluntary winding up must cover the periods of—

- (a) 12 months starting on the date the liquidator is appointed; and
- (b) each subsequent period of 12 months.

(3) The periods for which progress reports are required under paragraph (2) are unaffected by any change in the liquidator.

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(1) Section 92A is amended by section 136(2) and paragraph 16 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26) and section 104A is amended by section 136(3) and paragraph 27 of that Schedule.

(4) However where a liquidator ceases to act the succeeding liquidator must, as soon as reasonably practicable after being appointed, deliver a notice to the members (in a members' voluntary winding up) or to members and creditors (in a creditors' voluntary winding up) of any matters about which the succeeding liquidator thinks the members or creditors should be informed.

(5) A progress report is not required for any period which ends after the date to which a final account is made up under section 94 or 106(2) and is delivered by the liquidator to members (members' voluntary winding up) or to members and creditors (creditors' voluntary winding up).

(6) The liquidator must send a copy of each progress report within two months after the end of the period covered by the report to—

- (a) the registrar of companies (who is a prescribed person for the purposes of sections 92A and 104A);
- (b) the members; and
- (c) in a creditors' voluntary liquidation, the creditors.

### **Progress reports in winding up by the court and bankruptcy: timing**

**18.8.**—(1) The liquidator or trustee's progress report in a winding up by the court or bankruptcy must cover the periods of—

- (a) 12 months starting on the date a person other than the official receiver is appointed liquidator or trustee; and
- (b) each subsequent period of 12 months.

(2) The periods for which progress reports are required under paragraph (1) are unaffected by any change in the liquidator or trustee unless at any time the official receiver becomes liquidator or trustee in succession to another person in which case—

- (a) the current reporting period under paragraph (1) ends; and
- (b) if a person other than the official receiver is subsequently appointed as liquidator or trustee a new period begins under paragraph (1)(a).

(3) Where a liquidator or trustee ceases to act the succeeding liquidator or trustee must as soon as reasonably practicable after being appointed, deliver a notice to the creditors of any matters about which the succeeding liquidator or trustee thinks the creditors should be informed.

(4) A progress report is not required for any period which ends after the date to which a final account or report is made up under section 146 (winding up by the court) or section 331 (bankruptcy)(3) and is delivered by the liquidator or the trustee to the creditors.

(5) In a winding up by the court, the liquidator must deliver a copy of the progress report to the registrar of companies, the members of the company and the creditors within two months of the end of the period covered by the report.

(6) In a bankruptcy, the trustee must deliver a copy of the progress report to the creditors within two months of the end of the period covered by the report.

(2) A new section 94 is substituted by paragraph 18 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 and a new section 106 is substituted by paragraph 29 of that Schedule.

(3) A new section 146 is substituted by paragraph 38 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26) and section 331 is amended by paragraph 83 of that Schedule.

### **Creditors' and members' requests for further information in administration, winding up and bankruptcy**

**18.9.**—(1) The following may make a written request to the office-holder for further information about remuneration or expenses (other than pre-administration costs in an administration) set out in a progress report under rule 18.4(1)(b), (c) or (d) or a final report under rule 18.14—

- (a) a secured creditor;
- (b) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question);
- (c) members of the company in a members' voluntary winding up with at least 5% of the total voting rights of all the members having the right to vote at general meetings of the company;
- (d) any unsecured creditor with the permission of the court; or
- (e) any member of the company in a members' voluntary winding up with the permission of the court.

(2) A request, or an application to the court for permission, by such a person or persons must be made or filed with the court (as applicable) within 21 days of receipt of the report by the person, or by the last of them in the case of an application by more than one member or creditor.

(3) The office-holder must, within 14 days of receipt of such a request respond to the person or persons who requested the information by—

- (a) providing all of the information requested;
- (b) providing some of the information requested; or
- (c) declining to provide the information requested.

(4) The office-holder may respond by providing only some of the information requested or decline to provide the information if—

- (a) the time or cost of preparation of the information would be excessive; or
- (b) disclosure of the information would be prejudicial to the conduct of the proceedings;
- (c) disclosure of the information might reasonably be expected to lead to violence against any person; or
- (d) the office-holder is subject to an obligation of confidentiality in relation to the information.

(5) An office-holder who does not provide all the information or declines to provide the information must inform the person or persons who requested the information of the reasons for so doing.

(6) A creditor, and a member of the company in a members' voluntary winding up, who need not be the same as the creditor or members who requested the information, may apply to the court within 21 days of—

- (a) the office-holder giving reasons for not providing all of the information requested; or
- (b) the expiry of the 14 days within which an office-holder must respond to a request.

(7) The court may make such order as it thinks just on an application under paragraph (6).

### **Administration, creditors' voluntary liquidation and compulsory winding up: reporting distribution of property to creditors under rule 14.13**

**18.10.**—(1) This rule applies where in an administration, creditors' voluntary liquidation or compulsory winding up there has been a distribution of property to creditors under rule 14.13.

- (2) In any account or summary of receipts and payments which is required to be included in an account or report prepared under a rule listed in paragraph (3) the office-holder must—
- (a) state the estimated value of the property divided among the creditors of the company during the period to which the account or summary relates; and
  - (b) provide details of the basis of the valuation as a note to the account or summary of receipts and payments.
- (3) Paragraph (2) applies to the following—
- (a) rule 3.63 (administrator’s intention to resign);
  - (b) rule 6.25 (liquidator’s resignation and replacement);
  - (c) rule 7.61 (liquidator’s resignation);
  - (d) rule 18.3 (contents of progress report); and
  - (e) rule 18.14 (contents of final account (winding up) and final report (bankruptcy)).

**Voluntary winding up: reporting arrangement under section 110**

**18.11.**—(1) This rule applies where in a voluntary winding up there has been an arrangement under section 110 and a distribution to members has taken place under section 110(2) or (4).

- (2) In any account or summary of receipts and payments which is required to be included in an account or report prepared under a section or rule listed in paragraph (3) the liquidator must—
- (a) state the estimated value during the period to which the account or report relates of—
    - (i) the property transferred to the transferee,
    - (ii) the property received from the transferee, and
    - (iii) the property distributed to members under section 110(2) or (4); and
  - (b) provide details of the basis of the valuation as a note to the account or summary of receipts and payments.
- (3) Paragraph (2) applies to the following—
- (a) section 92A and rule 18.7 (members’ voluntary winding up: progress report to company at year’s end);
  - (b) section 94 and rule 18.14 (members’ voluntary winding up: final account prior to dissolution);
  - (c) section 104A (creditors’ voluntary winding up: progress report to company and creditors at year’s end);
  - (d) section 106 and rules 6.28 and 18.14 (creditors’ voluntary winding up: final account prior to dissolution).

**Members’ voluntary winding up: reporting distribution to members other than under section 110**

**18.12.**—(1) This rule applies where in a members’ voluntary winding up there has been a distribution of property to members in its existing form other than under an arrangement under section 110.

- (2) In any account or summary of receipts and payments which is required to be included in an account or report prepared under a section or rule listed in paragraph (3) the liquidator must—
- (a) state the estimated value of the property distributed to the members of the company during the period to which the account or report relates; and

- (b) provide details of the basis of the valuation as a note to the account or summary of receipts and payments.
- (3) Paragraph (2) applies to the following—
  - (a) section 92A (progress report);
  - (b) section 94 (final account prior to dissolution);
  - (c) rule 5.6 (liquidator’s resignation).

### **Bankruptcy proceedings: reporting distribution of property to creditors under section 326**

**18.13.**—(1) This rule applies in bankruptcy where there has been a distribution of property to creditors under section 326.

(2) In an account or report which the trustee is required to prepare under a section or rule listed in paragraph (3) the trustee must—

- (a) state the estimated value of the property distributed among the creditors during the period to which the account or report relates; and
- (b) provide details of the basis of the valuation in a note to the account or report.
- (3) Paragraph (2) applies to the following—
  - (a) section 331 (final report to creditors in bankruptcy);
  - (b) rule 10.77 (consideration of appointment of replacement trustee); and
  - (c) Chapters 2 and 3 of this Part.

## CHAPTER 3

### Final accounts in winding up and final reports in bankruptcy

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

### **Contents of final account (winding up) and final report (bankruptcy)**

**18.14.**—(1) The liquidator’s final account under section 94, 106 or 146 or the trustee’s final report under section 331 must contain an account of the liquidator’s administration of the winding up or of the trustee’s administration of the bankruptcy including—

- (a) a summary of the office-holder’s receipts and payments, including details of the office-holder’s remuneration and expenses; and
- (b) details of the basis fixed for the office-holder’s remuneration.
- (2) The liquidator’s final account under section 106 or 146(1)(a) must also include a statement as to the amount paid to unsecured creditors by virtue of section 176A.
- (3) The final account or report to creditors or members must also contain—
  - (a) details of the remuneration charged and expenses incurred by the office-holder during the period since the last progress report (if any);
  - (b) a description of the things done by the office-holder in that period in respect of which the remuneration was charged and the expenses incurred; and
  - (c) a summary of the receipts and payments during that period.
- (4) If the basis of the office-holder’s remuneration had not been fixed by the date to which the last progress report was made up, the final account or report must also include details of the remuneration charged in the period of any preceding progress report in which details of remuneration were not included.

(5) Where the basis of remuneration has been fixed as a set amount, it is sufficient for the office-holder to state that amount and to give details of the expenses charged within the period in question.

## CHAPTER 4

### Remuneration and expenses in administration, winding up and bankruptcy

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

#### **Application of Chapter**

**18.15.**—(1) This Chapter applies to the remuneration of—

- (a) an administrator;
- (a) a liquidator; and
- (b) a trustee in bankruptcy.

(2) This Chapter does not apply to the remuneration of a provisional liquidator or an interim receiver.

#### **Remuneration: principles**

**18.16.**—(1) An administrator, liquidator or trustee in bankruptcy is entitled to receive remuneration for services as office-holder.

(2) The basis of remuneration must be fixed—

- (a) as a percentage of the value of—
  - (i) the property with which the administrator has to deal, or
  - (ii) the assets which are realised, distributed or both realised and distributed by the liquidator or trustee;
- (b) by reference to the time properly given by the office-holder and the office-holder's staff in attending to matters arising in the administration, winding up or bankruptcy; or
- (c) as a set amount.

(3) The basis of remuneration may be one or a combination of the bases set out in paragraph (2) and different bases or percentages may be fixed in respect of different things done by the office-holder.

(4) Where an office-holder, other than in a members' voluntary winding up, proposes to take all or any part of the remuneration on the basis set out in paragraph (2)(b), the office-holder must, prior to the determination of which of the bases set out in paragraph (2) are to be fixed, deliver to the creditors—

- (a) a fees estimate; and
- (b) details of the expenses the office-holder considers will be, or are likely to be, incurred.

(5) The fees estimate and details of expenses given under paragraph (4) may include remuneration expected to be charged and expenses expected to be incurred if the administrator becomes the liquidator where the administration moves into winding up.

(6) An office-holder, other than in a members' voluntary winding up, must deliver to the creditors the information required under paragraph (7) before the determination of which of the bases set out in paragraph (2) is or are to be fixed, unless the information has already been delivered under paragraph (4).

(7) The information the office-holder is required to give under this paragraph is—

- (a) the work the office-holder proposes to undertake; and



- (b) details of the expenses the office-holder considers will be, or are likely to be, incurred.
- (8) The matters to be determined in fixing the basis of remuneration are—
  - (a) which of the bases set out in paragraph (2) is or are to be fixed and (where appropriate) in what combination;
  - (b) the percentage or percentages (if any) to be fixed under paragraphs (2)(a) and (3);
  - (c) the amount (if any) to be set under paragraph (2)(c).
- (9) In arriving at that determination, regard must be had to the following—
  - (a) the complexity (or otherwise) of the case;
  - (b) any respects in which, in connection with the company's or bankrupt's affairs, there falls on the office-holder, any responsibility of an exceptional kind or degree;
  - (c) the effectiveness with which the office-holder appears to be carrying out, or to have carried out, the office-holder's duties; and
  - (d) the value and nature of the property with which the office-holder has to deal.
- (10) A proposed liquidator in respect of a creditors' voluntary winding up may deliver to the creditors the information required by paragraphs (4) or (6) before becoming liquidator in which case that person is not required to deliver that information again if that person is appointed as liquidator.

#### **Remuneration of joint office-holders**

**18.17.** Where there are joint office-holders it is for them to agree between themselves how the remuneration payable should be apportioned; and any dispute arising between them may be referred—

- (a) to the committee, to the creditors (by a decision procedure) or (in a members' voluntary winding up) the company in general meeting, for settlement by resolution; or
- (b) to the court, for settlement by order.

#### **Remuneration: procedure for initial determination in an administration**

**18.18.—**(1) This rule applies to the determination of the officer-holder's remuneration in an administration.

- (2) It is for the committee to determine the basis of remuneration.
- (3) If the committee fails to determine the basis of the remuneration or there is no committee then the basis of remuneration must be fixed by a decision of the creditors by a decision procedure.
- (4) Where the administrator has made a statement under paragraph 52(1)(b) of Schedule B1 that there are insufficient funds for distribution to unsecured creditors other than out of the prescribed part and either there is no committee, or the committee fails to determine the basis of remuneration, the basis of the administrator's remuneration may be fixed by—
  - (a) the consent of each of the secured creditors; or
  - (b) if the administrator has made or intends to make a distribution to preferential creditors—
    - (i) the consent of each of the secured creditors, and
    - (ii) a decision of the preferential creditors in a decision procedure.

#### **Remuneration: procedure for initial determination in a members' voluntary winding up**

**18.19.** In a members' voluntary winding up, it is for the company in general meeting to determine the basis of remuneration.

**Remuneration: procedure for initial determination in a creditors' voluntary winding up or a winding up by the court**

**18.20.**—(1) This rule applies to the determination of the office-holder's remuneration in a creditors' voluntary winding up or a winding up by the court.

(2) It is for the committee to determine the basis of remuneration.

(3) If the committee fails to determine the basis of remuneration or there is no committee then the basis of remuneration may be fixed by a decision of the creditors by a decision procedure.

(4) However where an administrator becomes liquidator in either of the following two cases the basis of remuneration fixed under rule 18.18 for the administrator is treated as having been fixed for the liquidator, and paragraphs (2) and (3) do not apply.

(5) The two cases are where—

- (a) a company which is in administration moves into winding up under paragraph 83(4) of Schedule B1 and the administrator becomes the liquidator; and
- (b) a winding-up order is made immediately upon the appointment of an administrator ceasing to have effect and the court under section 140(1) appoints as liquidator the person whose appointment as administrator has ceased to have effect.

**Remuneration: procedure for initial determination in a bankruptcy**

**18.21.**—(1) This rule applies to the determination of the office-holder's remuneration in a bankruptcy.

(2) It is for the committee to determine the basis of remuneration.

(3) If the committee fails to determine the basis of the remuneration or there is no committee then the basis of the remuneration may be fixed by a decision of the creditors by a decision procedure.

**Application of scale fees where creditors fail to fix the basis of the office-holder's remuneration**

**18.22.**—(1) This rule applies where in a winding up by the court or bankruptcy, the liquidator or trustee—

- (a) has requested the creditors to fix the basis of remuneration under rule 18.20(3) or 18.21(3) as applicable and the creditors have not done so; or
- (b) in any event if the basis of remuneration is not fixed by the creditors within 18 months after the date of the liquidator's or trustee's appointment.

(2) The liquidator or trustee is entitled to such sum as is arrived at (subject to paragraph (3)) by—

- (a) applying the realisation scale set out in Schedule 11 to the moneys received by the liquidator or trustee from the realisation of the assets of the company or bankrupt (including any Value Added Tax on the realisation but after deducting any sums paid to secured creditors in respect of their securities and any sums spent out of money received in carrying on the business of the company or bankrupt); and
- (b) adding to the sum arrived at under sub-paragraph (a) such sum as is arrived at by applying the distribution scale set out in Schedule 11 to the value of assets distributed to creditors of the company or bankrupt (including payments made in respect of preferential debts) and to contributories.

(4) Paragraph 83 subparagraph (1)(b) and (2)(b) are amended by section 128(3) of the Small Business, Enterprise and Employment Act 2015 (c.26) and subparagraphs (5)(b) and (8)(d) are amended by paragraph 10(3) and (32) of Schedule 9 to that Act.

(3) In a bankruptcy that part of the trustee's remuneration calculated under paragraph (2) by reference to the realisation scale must not exceed such sum as is arrived at by applying the realisation scale to such part of the bankrupt's assets as are required to pay—

- (a) the bankruptcy debts (including any interest payable by virtue of section 328(4)) to the extent required to be paid by these Rules (ignoring those debts paid otherwise than out of the proceeds of the realisation of the bankrupt's assets or which have been secured to the satisfaction of the court);
- (b) the expenses of the bankruptcy other than—
  - (i) fees or the remuneration of the official receiver, and
  - (ii) any sums spent out of money received in carrying on the business of the bankrupt;
- (c) fees payable by virtue of any order made under section 415(5); and
- (d) the remuneration of the official receiver.

**Remuneration: application to the court to fix the basis**

**18.23.**—(1) If the basis of the administrator's remuneration or the liquidator's remuneration in a voluntary winding up is not fixed under rules 18.18 to 18.20 (as applicable) then the administrator or liquidator must apply to the court for it to be fixed.

(2) Before making such an application the liquidator or administrator must attempt to fix the basis in accordance with rules 18.18 to 18.20.

(3) An application under this rule may not be made more than 18 months after the date of the administrator's or liquidator's appointment.

- (4) In a members' voluntary winding up—
  - (a) the liquidator must deliver at least 14 days' notice of such an application to the company's contributories, or such one or more of them as the court may direct; and
  - (b) the contributories may nominate one or more of their number to appear, or be represented, and to be heard on the application.

**Remuneration: administrator, liquidator or trustee seeking increase etc.**

**18.24.** An office-holder who considers the rate or amount of remuneration fixed to be insufficient or the basis fixed to be inappropriate may—

- (a) request the creditors to increase the rate or amount or change the basis in accordance with rules 18.25 to 18.27;
- (b) apply to the court for an order increasing the rate or amount or changing the basis in accordance with rule 18.28.

**Application for an increase etc. in remuneration: the general rule**

**18.25.**—(1) This rule applies to a request by an office-holder in accordance with rule 18.24 for an increase in the rate or amount of remuneration or a change in the basis.

(2) Subject to the exceptions set out in rules 18.26 and 18.27, where the basis of the office-holder's remuneration has been fixed by the committee an administrator, liquidator or trustee may make such a request to the creditors for approval by a decision procedure.

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(5) Section 415 subsection (1) is amended and a new subsection (1A) is inserted by paragraph 59(1) to (3) of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24).

**First exception: administrator has made a statement under paragraph 52(1)(b) of Schedule B1**

**18.26.**—(1) This exception applies in an administration where—

- (a) the basis of the administrator’s remuneration has been fixed by the committee; and
- (b) the administrator has made a statement under paragraph 52(1)(b) of Schedule B1.

(2) A request by the administrator for an increase in the rate or amount of remuneration or a change in the basis must be approved by—

- (a) the consent of each of the secured creditors; or
- (b) if the administrator has made or intends to make a distribution to preferential creditors—
  - (i) the consent of each of the secured creditors, and
  - (ii) a decision of the preferential creditors in a decision procedure.

**Second exception: administrator who had applied for increase etc. under rule 18.24 becomes liquidator**

**18.27.**—(1) This exception applies in a liquidation where—

- (a) an administrator has become the liquidator;
- (b) the remuneration had been determined by the committee in the preceding administration;
- (c) the basis of the liquidator’s remuneration is treated under rule 18.20(4) and (5) as being that which was fixed in the administration; and
- (d) the administrator had subsequently requested an increase under rule 18.24.

(2) A request by the liquidator for an increase in the rate or amount of remuneration or a change in the basis may only be made by application to the court.

(3) Rule 18.28(6) to (8) apply to such an application.

**Remuneration: recourse by administrator, liquidator or trustee to the court**

**18.28.**—(1) This rule applies to an application by an office-holder to the court in accordance with rule 18.24 for an increase in the rate or amount of remuneration or change in the basis.

(2) An administrator may make such an application where the basis of the administrator’s remuneration has been fixed—

- (a) by the committee and the administrator has requested that the rate or amount be increased or the basis changed by decision of the creditors (by a decision procedure), but the creditors have not changed it;
- (b) by decision of the creditors (by decision procedure); or
- (c) by the approval of either the secured creditors or the preferential creditors or both in a case where the administrator has made a statement under paragraph 52(1)(b) of Schedule B1.

(3) A liquidator may make such an application where the basis of the liquidator’s remuneration has been fixed—

- (a) by the committee, and the liquidator has requested that the rate or amount be increased or the basis changed by decision of the creditors (by a decision procedure), but the creditors have not changed it;
- (b) by decision of the creditors (by a decision procedure);
- (c) under rule 18.20(4) and (5) or 18.22; or
- (d) in a members’ voluntary winding up, by the company in general meeting.

- (4) A trustee may make such an application where the trustee's remuneration has been fixed—
  - (a) by the committee and the trustee has requested that the amount be increased or the basis changed by decision of the creditors (by a decision procedure), but the creditors have not changed it;
  - (b) by decision of the creditors (by a decision procedure); or
  - (c) under rule 18.22.
- (5) Where an application is made under paragraph (2)(c), the administrator must deliver notice to each of the creditors whose approval was sought under rule 18.18(4).
- (6) The office-holder must deliver a notice of the application at least 14 days before the hearing as follows—
  - (a) in an administration, a creditors' voluntary winding up, a winding up by the court or a bankruptcy—
    - (i) to the members of the committee, or
    - (ii) if there is no committee to such one or more of the creditors as the court may direct;
  - (b) in a members' voluntary winding up, to the company's contributories, or such one or more of them as the court may direct.
- (7) The committee, the creditors or the contributories (as the case may be) may nominate one or more of their number to appear or be represented and to be heard on the application.
- (8) The court may, if it appears to be a proper case (including in a members' voluntary winding up), order the costs of the office-holder's application, including the costs of any member of the committee appearing or being represented on it, or of any creditor or contributory so appearing or being represented on it, to be paid as an expense of the estate.

**Remuneration: review at request of administrator, liquidator or trustee**

- 18.29.**—(1) Where, after the basis of the office-holder's remuneration has been fixed, there is a material and substantial change in the circumstances which were taken into account in fixing it, the office-holder may request that the basis be changed.
- (2) The request must be made—
    - (a) to the company, where in a members' voluntary liquidation the company fixed the basis in general meeting;
    - (b) to the committee, where the committee fixed the basis;
    - (c) to the creditors or a particular class of creditors where the creditors or that class of creditors fixed the basis;
    - (d) by application to the court, where the court fixed the basis;
    - (e) to the committee if there is one and otherwise to the creditors where, in a winding up or bankruptcy, the remuneration was determined under rule 18.22.
  - (3) The preceding provisions of this Chapter which apply to the fixing of the office-holder's remuneration apply to a request for a change as appropriate.
  - (4) However the exception in rule 18.27 which would require such an application to be made to the court in the circumstances there set out does not apply.
  - (5) Any change in the basis of remuneration applies from the date of the request under paragraph (2) and not for any earlier period.

**Remuneration: exceeding the fee estimate**

**18.30.**—(1) The office-holder must not draw remuneration in excess of the total amount set out in the fees estimate without approval.

(2) The request for approval must be made—

- (a) where the committee fixed the basis, to that committee;
- (b) where the creditors or a class of creditors fixed the basis, to the creditors or that class of creditors;
- (c) where the court fixed the basis, to the court;

and rules 18.16 to 18.23 apply as appropriate.

(3) The request for approval must specify—

- (a) the reasons why the office-holder has exceeded, or is likely to exceed, the fees estimate;
- (b) the additional work the office-holder has undertaken or proposes to undertake;
- (c) the hourly rate or rates the office-holder proposes to charge for each part of that additional work;
- (d) the time that additional work has taken or the office-holder expects that work will take;
- (e) whether the office-holder anticipates that it will be necessary to seek further approval; and
- (f) the reasons it will be necessary to seek further approval.

**Remuneration: new administrator, liquidator or trustee**

**18.31.**—(1) This rule applies where a new administrator, liquidator or trustee is appointed in place of another.

(2) Any decision, determination, resolution or court order in effect under the preceding provisions of this Chapter immediately before the former office-holder ceased to hold office (including any application of scale fees under rule 18.22) continues to apply in relation to the remuneration of the new office-holder until a further decision, determination, resolution or court order is made in accordance with those provisions.

**Remuneration: apportionment of set fees**

**18.32.**—(1) This rule applies where the basis of the office-holder's remuneration is a set amount under rule 18.16(2)(c) and the office-holder ceases (for whatever reason) to hold office before the time has elapsed or the work has been completed in respect of which the amount was set.

(2) A request or application may be made to determine what portion of the amount should be paid to the former office-holder or the former office-holder's personal representative in respect of the time which has actually elapsed or the work which has actually been done.

(3) The request or application may be made by—

- (a) the former office-holder or the former office-holder's personal representative within the period of 28 days beginning with the date upon which the former office-holder ceased to hold office; or
- (b) the office-holder for the time being in office, if the former office-holder or the former office-holder's personal representative has not applied by the end of that period.

(4) The request or application to determine the portion must be made to the relevant person being—

- (a) the company, where the company is in members' voluntary liquidation and it fixed the basis in general meeting;

- (b) the committee, where the committee fixed the basis;
  - (c) the creditors or a class of creditors where the creditors or that class fixed the basis;
  - (d) the court where the court fixed the basis.
- (5) In an administration where the circumstances set out in rule 18.18(4) apply the relevant person is to be determined under that paragraph.
- (6) The person making the request or application must deliver a copy of it to the office-holder for the time being or to the former office-holder or the former office-holder's personal representative, as the case may be ("the recipient").
- (7) The recipient may, within 21 days of receipt of the copy of the request or application, deliver notice of intent to make representations to the relevant person or to appear or be represented before the court on an application to the court.
- (8) No determination may be made upon the request or application until either—
- (a) the expiry of the 21 days, or
  - (b) if the recipient delivers a notice of intent, the recipient has been given the opportunity to make representations or to appear or be represented.
- (9) Where the former office-holder or the former office-holder's personal representative (whether or not the original person making the request or application) considers that the portion so determined is insufficient that person may apply—
- (a) to the creditors for a decision increasing the portion, in the case of a determination by the committee;
  - (b) to the court, in the case of a decision or resolution (as the case may be) of—
    - (i) the creditors (whether under paragraph (4)(c) or under sub-paragraph (a)), or
    - (ii) the company in general meeting.
- (10) Paragraphs (6) to (8) apply to an application under paragraph (9) as appropriate.

**Remuneration: variation of the application of rules 18.29, 18.30 and 18.32**

- 18.33.**—(1) This rule applies where the basis of remuneration has been fixed in accordance with rule 18.18(4) and all of the following apply—
- (a) there is now, or is likely to be, sufficient property to enable a distribution to be made to unsecured creditors other than by virtue of section 176A(2)(a); and
  - (b) the administrator or liquidator in a winding up which immediately follows an administration makes a request under rule 18.29, 18.30 or 18.32.
- (2) A request under 18.29, 18.30 or 18.32, must be made—
- (a) where there is a committee, to the committee; or
  - (b) where there is no committee, to the creditors for a decision by decision procedure.

**Remuneration and expenses: application to court by a creditor or member on grounds that remuneration or expenses are excessive**

- 18.34.**—(1) This rule applies to an application in an administration, a winding-up or a bankruptcy made by a person mentioned in paragraph (2) on the grounds that—
- (a) the remuneration charged by the office-holder is in all the circumstances excessive;
  - (b) the basis fixed for the office-holder's remuneration under rules 18.16, 18.18, 18.19, 18.20 and 18.21 (as applicable) is inappropriate; or
  - (c) the expenses incurred by the office-holder are in all the circumstances excessive.

(2) The following may make such an application for one or more of the orders set out in rule 18.36 or 18.37 as applicable—

- (a) a secured creditor,
- (b) an unsecured creditor with either—
  - (i) the concurrence of at least 10% in value of the unsecured creditors (including that creditor), or
  - (ii) the permission of the court, or
- (c) in a members' voluntary winding up—
  - (i) members of the company with at least 10% of the total voting rights of all the members having the right to vote at general meetings of the company, or
  - (ii) a member of the company with the permission of the court.

(3) The application by a creditor or member must be made no later than eight weeks after receipt by the applicant of the progress report under rule 18.3, or final report or account under rule 18.14 which first reports the charging of the remuneration or the incurring of the expenses in question (“the relevant report”).

**Remuneration and expenses: application to court by a bankrupt on grounds that remuneration or expenses are excessive**

[Note: where a bankrupt is applying for an annulment under section 282(1)(b) the bankrupt may also make an application in respect of the trustee’s remuneration or expenses. See rule 10.134.]

**18.35.**—(1) A bankrupt may, with the permission of the court, make an application on the grounds that—

- (a) the remuneration charged by the office-holder is in all the circumstances excessive;
- (b) the expenses incurred by the office-holder are in all the circumstances excessive.

(2) The bankrupt may make such an application for one or more of the orders set out in rule 18.36(4).

(3) The application must be made no later than eight weeks after receipt by the bankrupt of the report under rule 10.87.

(4) The court must not give the bankrupt permission to make an application unless the bankrupt shows that—

- (a) there is (or would be but for the remuneration or expenses in question); or
- (b) it is likely that there will be (or would be but for the remuneration or expenses in question),

a surplus of assets to which the bankrupt would be entitled.

(5) Paragraph (4) is without prejudice to the generality of the matters which the court may take into account in determining whether to give the bankrupt permission.

**Applications under rules 18.34 and 18.35 where the court has given permission for the application**

**18.36.**—(1) This rule applies to applications made with permission under rules 18.34 and 18.35.

(2) Where the court has given permission, it must fix a venue for the application to be heard.

(3) The applicant must, at least 14 days before the hearing, deliver to the office-holder a notice stating the venue and accompanied by a copy of the application and of any evidence on which the applicant intends to rely.



(4) If the court considers the application to be well-founded, it must make one or more of the following orders—

- (a) an order reducing the amount of remuneration which the office-holder is entitled to charge;
- (b) an order reducing any fixed rate or amount;
- (c) an order changing the basis of remuneration;
- (d) an order that some or all of the remuneration or expenses in question is not to be treated as expenses of the administration, winding up or bankruptcy;
- (e) an order for the payment of the amount of the excess of remuneration or expenses or such part of the excess as the court may specify by —
  - (i) the administrator or liquidator or the administrator's or liquidator's personal representative to the company, or
  - (ii) the trustee or the trustee's personal representative to such person as the court may specify as property comprised in the bankrupt's estate;
- (f) any other order that it thinks just.

(5) An order under paragraph (4)(b) or (c) may only be made in respect of periods after the period covered by the relevant report.

(6) Unless the court orders otherwise the costs of the application must be paid by the applicant, and are not payable as an expense of the administration, winding up or bankruptcy.

#### **Applications under rule 18.34 where the court's permission is not required for the application**

**18.37.**—(1) On receipt of an application under rule 18.34 for which the court's permission is not required, the court may, if it is satisfied that no sufficient cause is shown for the application, dismiss it without giving notice to any party other than the applicant.

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

(3) The applicant must, at least 14 days before any hearing, deliver to the office-holder a notice stating the venue with a copy of the application and of any evidence on which the applicant intends to rely.

(4) If the court considers the application to be well-founded, it must make one or more of the following orders—

- (a) an order reducing the amount of remuneration which the office-holder is entitled to charge;
- (b) an order reducing any fixed rate or amount;
- (c) an order changing the basis of remuneration;
- (d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the administration or winding up or bankruptcy;
- (e) an order for the payment of the amount of the excess of remuneration or expenses or such part of the excess as the court may specify by —
  - (i) the administrator or liquidator or the administrator's or liquidator's personal representative to the company, or
  - (ii) the trustee or the trustee's personal representative to such person as the court may specify as property comprised in the bankrupt's estate;
- (f) any other order that it thinks just.

(5) An order under paragraph (4)(b) or (c) may only be made in respect of periods after the period covered by the relevant report.

(6) Unless the court orders otherwise the costs of the application must be paid by the applicant, and are not payable as an expense of the administration or as winding up or bankruptcy.

**Remuneration of a liquidator or trustee who realises assets on behalf of a secured creditor**

**18.38.**—(1) A liquidator or trustee who realises assets on behalf of a secured creditor is entitled to such sum by way of remuneration as is arrived at as follows, unless the liquidator or trustee has agreed otherwise with the secured creditor—

- (a) in a winding up—
  - (i) where the assets are subject to a charge which when created was a mortgage or a fixed charge, such sum as is arrived at by applying the realisation scale in Schedule 11 to the monies received in respect of the assets realised (including any sums received in respect of Value Added Tax on them but after deducting any sums spent out of money received in carrying on the business of the company),
  - (ii) where the assets are subject to a charge which when created was a floating charge such sum as is arrived at by—
    - (aa) first applying the realisation scale in Schedule 11 to monies received by the liquidator from the realisation of the assets (including any Value Added Tax on the realisation but ignoring any sums received which are spent in carrying on the business of the company),
    - (bb) then by adding to the sum arrived at under sub-paragraph (a)(ii)(aa) such sum as is arrived at by applying the distribution scale in Schedule 11 to the value of the assets distributed to the holder of the charge and payments made in respect of preferential debts; or
- (b) in a bankruptcy such sum as is arrived at by applying the realisation scale in Schedule 11 to the monies received in respect of the assets realised (including any Value Added Tax on them).

(2) The sum to which the liquidator or trustee is entitled must be taken out of the proceeds of the realisation.