
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 19

Disclaimer in 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 this Part

19.1. This Part applies to disclaimer by a liquidator under section 178 (winding up) and by a trustee under section 315 (bankruptcy).

Notice of disclaimer (sections 178 and 315)

19.2.—(1) An office-holder's notice of disclaimer of property under section 178 (winding up) or section 315 (bankruptcy) must (as appropriate)—

- (a) have the title—
 - (i) “Notice of disclaimer under section 178 of the Insolvency Act 1986” (in the case of a winding up), or
 - (ii) “Notice of disclaimer under section 315 of the Insolvency Act 1986” (in the case of a bankruptcy);
- (b) identify the company or the bankrupt;
- (c) identify and provide contact details for the office-holder;
- (d) contain such particulars of the property disclaimed as will enable it to be easily identified;
- (e) state—
 - (i) that the liquidator of the company disclaims all the company's interest in the property, or
 - (ii) that the trustee of the bankrupt's estate disclaims all the bankrupt's interest in the property.
- (2) The notice must be authenticated and dated by the office-holder.
- (3) If the property consists of registered land—
 - (a) the notice must state the registered title number; and
 - (b) the office-holder must deliver a copy of the notice to the Chief Land Registrar as soon as reasonably practicable after authenticating the notice.
- (4) The liquidator must, as soon as reasonably practicable after authenticating the notice, deliver a copy of the notice to the registrar of companies.
- (5) The trustee must, as soon as reasonably practicable after authenticating the notice, file a copy of the notice—

- (a) with the court; or
 - (b) where the bankruptcy is based on a bankruptcy application, on the bankruptcy file.
- (6) If the property consists of land or buildings the nature of the interest must be stated in the notice.
- (7) The date of disclaimer for the purposes of section 178(4)(a) (winding up) or section 315(3) (a) (bankruptcy) is the date on which the liquidator or trustee authenticated the notice.

Notice of disclaimer to interested persons (sections 178 and 315)

19.3.—(1) The office-holder must deliver a copy of the notice of disclaimer within seven business days after the date of the notice to every person who (to the office-holder’s knowledge)—

- (a) claims an interest in the disclaimed property;
- (b) is under any liability in relation to the property, not being a liability discharged by the disclaimer; and
- (c) if the disclaimer is of an unprofitable contract, is a party to the contract or has an interest under it.

(2) If it subsequently comes to the office-holder’s knowledge that a person has an interest in the disclaimed property which would have entitled that person to receive a copy of the notice under paragraph (1) then the office-holder must deliver a copy to that person as soon as reasonably practicable.

(3) If it subsequently comes to the office-holder’s knowledge that a person has an interest in the disclaimed property which would have entitled that person to receive a copy of the notice under rule 19.4 or 19.5 then the office-holder must serve a copy on that person as soon as reasonably practicable.

(4) The office-holder is not required to deliver or serve a copy of a notice under paragraph (2) or (3) if—

- (a) the office-holder is satisfied that the person has already been made aware of the disclaimer and its date, or
- (b) the court, on the office-holder’s application, orders that delivery or service of a copy is not required in the particular case.

Notice of disclaimer of leasehold property (sections 179 and 317)

19.4. Where a notice of disclaimer relates to leasehold property the office-holder must serve any copies of the notice of disclaimer which are required by either section 179 (winding up) or section 317 (bankruptcy) within seven business days after the date of the notice of disclaimer.

Notice of disclaimer in respect of a dwelling house (bankruptcy) (section 318)

19.5.—(1) This rule applies in a bankruptcy where the disclaimer is of property in a dwelling house.

(2) The trustee must serve any copies of the notice of disclaimer which are required by section 318 within seven business days after the date of the notice of disclaimer.

(3) A notice, or copy notice in relation to the disclaimer by a trustee of property in a dwelling house which is to be served on a person under the age of 18 may be served on the person’s parent or guardian.

Additional notices of disclaimer

19.6. An office-holder who is disclaiming property may at any time deliver a copy of the notice of the disclaimer to any other person whom the office-holder thinks ought, in the public interest or otherwise, to be informed of the disclaimer.

Records

19.7. The office-holder must include in the records of the insolvency a record of—

- (a) the name and address of each person to whom a copy of the notice of disclaimer has been delivered or served under rules 19.3 to 19.6, with the nature of the person's interest;
- (b) the date on which the copy of the notice was delivered to or served on that person;
- (c) the date on which the liquidator delivered a copy of the notice to the registrar of companies;
- (d) the date on which the trustee filed a copy of the notice with the court or on the bankruptcy file; and
- (e) if applicable, the date on which a copy of the notice was delivered to the Chief Land Registrar.

Application for permission to disclaim in bankruptcy (section 315(4))

19.8.—(1) This rule applies where section 315(4) requires the trustee to obtain the court's permission to disclaim property claimed for the bankrupt's estate under section 307(1) or 308.

(2) The trustee may apply for permission without notice to any other party.

(3) The application must be accompanied by a report—

- (a) containing such particulars of the property as will enable it to be easily identified;
- (b) setting out the reasons why, the property having been claimed for the bankrupt's estate, the trustee is now applying for the court's permission to disclaim it; and
- (c) stating the persons (if any) who have been informed of the trustee's intention to make the application.

(4) If the report says that any person has consented to the disclaimer, a copy of that consent must accompany the report.

(5) The court may grant the permission, and may, before doing so—

- (a) order that notice of the application be delivered to all such persons who, if the property is disclaimed, will be entitled to apply for a vesting or other order under section 320(2); and
- (b) fix a venue for the hearing of the application.

Application by interested party for decision on disclaimer (sections 178(5) and 316)

19.9.—(1) This rule applies where an interested party makes an application under section 178(5) (winding up) or section 316 (bankruptcy) to the office-holder in respect of any property.

(2) The applicant must deliver the application to the office-holder and must provide proof of delivery in accordance with rule 1.52 if requested.

(3) If in a bankruptcy the trustee cannot disclaim the property concerned without the court's permission and the trustee applies for permission within the period of 28 days mentioned in

(1) Paragraph 16 of Schedule 6 to the Deregulation Act 2015 (c.20) amends section 307 subsections (3) and (4)(a) and (c), omits subsection (4)(b) and inserts new subsection (4A).

(2) Section 320 subsections (2)(c) and (3)(c) are amended by paragraph 25 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24).

section 316(1)(b), then the court must extend the time allowed for giving notice of disclaimer to a date not earlier than the date fixed for hearing the application.

Disclaimer presumed valid and effective

19.10. Any disclaimer of property by the office-holder is presumed valid and effective, unless it is proved that the office-holder has been in breach of the office-holder's duties relating to the giving of notice of disclaimer or otherwise under sections 178 to 180 (winding up) or sections 315 to 319 (bankruptcy), or under this Part.

Application for exercise of court's powers under section 181 (winding up) or section 320 (bankruptcy)

19.11.—(1) This rule applies to an application under section 181 (winding up) or section 320 (bankruptcy) for a court order to vest or deliver disclaimed property.

(2) The application must be made within three months of the applicant becoming aware of the disclaimer, or of the applicant receiving a copy of the office-holder's notice of disclaimer delivered under rule 19.3 to 19.6, whichever is the earlier.

(3) The applicant must file with the application a witness statement stating—

(a) whether the application is made under—

- (i) section 181(2)(a) (claim of interest in the property),
- (ii) section 181(2)(b) (liability not discharged),
- (iii) section 320(2)(a) (claim of interest in the property),
- (iv) section 320(2)(b) (liability not discharged), or
- (v) section 320(2)(c) (occupation of a dwelling-house);

(b) the date on which the applicant received a copy of the office-holder's notice of disclaimer, or otherwise became aware of the disclaimer; and

(c) the grounds of the application and the order sought.

(4) The court must fix a venue for hearing the application.

(5) The applicant must, not later than five business days before the date fixed, deliver to the office-holder notice of the venue, accompanied by copies of the application and the filed witness statement.

(6) On hearing the application, the court may give directions as to any other persons to whom notice of the application and the grounds on which it is made should be delivered.

(7) The court must deliver sealed copies of any order made on the application to the applicant and the office-holder.

(8) If the property disclaimed is of a leasehold nature, or in a bankruptcy is property in a dwelling house, and section 179 (winding up), 317 or 318 (bankruptcy) applies to suspend the effect of the disclaimer, the court's order must include a direction giving effect to the disclaimer.

(9) However, paragraph (8) does not apply if, before the order is drawn up, other applications under section 181 (winding up) or section 320 (bankruptcy) are pending in relation to the same property.