
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 7

WINDING UP BY THE COURT

CHAPTER 8

The liquidator

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

Choosing a person to be liquidator

7.52.—(1) This rule applies where nominations are sought by the official receiver from the company's creditors and contributories under section 136 for the purpose of choosing a person to be liquidator of the company in place of the official receiver⁽¹⁾.

(2) The official receiver must deliver to the creditors and contributories a notice inviting proposals for a liquidator.

(3) The notice must explain that the official receiver is not obliged to seek the creditors' views on any proposals that do not meet the requirements of paragraphs (4) and (5).

(4) A proposal must state the name and contact details of the proposed liquidator, and contain a statement that the proposed liquidator is qualified to act as an insolvency practitioner in relation to the company and has consented to act as liquidator of the company.

(5) A proposal must be received by the official receiver within five business days of the date of the notice under paragraph (2).

(6) Following the end of the period for inviting proposals under paragraph (2), where any proposals are received the official receiver must seek a decision on the nomination of a liquidator from the creditors (on any proposals received from creditors) and from the contributories (on any proposals received from contributories) by—

- (a) a decision procedure; or
- (b) the deemed consent procedure.

(7) Where a decision is sought under paragraph (6) following the official receiver's decision under section 136(5)(a) to seek a nomination, the decision date must be not more than four months from the date of the winding-up order.

(8) Where the official receiver is required under section 136(5)(c) to seek such a decision, the official receiver must send a notice to the creditors and contributories which complies with rule 15.7 or 15.8 so far as relevant.

(9) The notice must also—

(1) Section 136(4) to (6) is amended by paragraph 31(1) to (4) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

- (a) identify any liquidator proposed to be nominated by a creditor (in the case of a notice to creditors) or by a contributory (in the case of a notice to contributories) in accordance with this rule; and
 - (b) contain a statement explaining the effect of section 137(2)(2) (duty of official receiver to consider referral of need for appointment of liquidator to the Secretary of State where no person is chosen to be liquidator).
- (10) The decision date in the notice must be no later than 21 days after the date for receiving proposals has passed.
- (11) The creditors and contributories must be given at least 14 days' notice of the decision date.
- (12) Where no proposal is received by the official receiver under paragraph (2), the official receiver has no obligation to seek a decision from creditors or contributories on a liquidator.
- (13) Nothing in this rule affects the official receiver's ability under section 137(1), at any time when liquidator of the company, to apply to the Secretary of State to appoint a liquidator in place of the official receiver.

Appointment of liquidator by creditors or contributories

7.53.—(1) This rule applies where a person is appointed as liquidator by the creditors or contributories.

(2) The convener of the decision procedure or deemed consent procedure, or the chair in the case of a meeting must certify the appointment, but not unless and until the appointee has provided to the convener or the chair a statement to the effect that the appointee is an insolvency practitioner qualified under the Act to be the liquidator and consents to act.

(3) The certificate must be authenticated and dated by the convener or chair and must—

- (a) identify the company;
- (b) identify and provide contact details for the person appointed as liquidator;
- (c) state the date on which the liquidator was appointed;
- (d) state that the appointee—
 - (i) has provided a statement of being qualified to act as an insolvency practitioner in relation to the company,
 - (ii) has consented to act, and
 - (iii) was appointed as liquidator of the company.

(4) Where two or more liquidators are appointed the certificate must also specify (as required by section 231) whether any act required or authorised under any enactment to be done by the liquidator is to be done by all or any one or more of them.

(5) The liquidator's appointment is effective from the date on which the appointment is certified, that date to be endorsed on the certificate.

(6) The convener or chair (if that person is not the official receiver) must deliver the certificate to the official receiver.

(7) The official receiver must in any case deliver the certificate to the liquidator.

Decision on nomination

7.54.—(1) In the case of a decision on the nomination of a liquidator—

(2) Section 137(2) is amended by paragraph 32(2) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

- (a) if on any vote there are two nominees, 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 nomination of any two or more nominees.

Invitation to creditors and contributories to form a liquidation committee

7.55.—(1) Where a decision is sought from the company’s creditors and contributories on the appointment of a liquidator, the convener of the decision must at the same time deliver to the creditors and contributories a notice inviting them to decide whether a liquidation 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—

- (a) state that nominations must be delivered to the convener by the specified date;
- (b) state, in the case of creditors, that nominations can only be accepted if the convener is satisfied as to the creditors’ eligibility under rule 17.4; and
- (c) explain the effect of section 141(2) and (3)(3) on whether a committee is to be established under Part 17.

Appointment by the court

7.56.—(1) This rule applies where the liquidator is appointed by the court under section 139(4) (different persons nominated by creditors and contributories) or section 140(4) (winding up following administration or CVA).

(2) The court must not make the order unless and until the person being appointed has filed with the court a statement to the effect that that person is an insolvency practitioner, duly qualified under the Act to be the liquidator, and consents to act.

(3) The order of the court 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) the capacity in which the applicant made the application;
- (e) identification and contact details for the proposed liquidator;
- (f) a statement that the proposed liquidator has filed—
 - (i) a statement of qualification to act as an insolvency practitioner in relation to the company, and
 - (ii) a consent to act;

(3) Section 141(2) and (3) are substituted by paragraph 36 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(4) Section 140(3) is amended by paragraph 35 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

- (g) the order that the proposed liquidator is appointed liquidator of the company; and
 - (h) the date on which the order is made.
- (4) Where two or more liquidators are appointed the order must also specify (as required by section 231) whether any act required or authorised under any enactment to be done by the liquidator is to be done by all or any one or more of them.
- (5) The court must deliver two copies of the order to the official receiver one of which must be sealed.
- (6) The official receiver must deliver the sealed copy of the order to the person appointed as liquidator.
- (7) The liquidator's appointment takes effect from the date of the order or such other date as the court orders.
- (8) Within 28 days from appointment, the liquidator must—
- (a) deliver notice of the appointment to the creditors and to the contributories of the company of whom the liquidator is aware; or
 - (b) advertise the appointment in accordance with any directions given by the court.
- (9) In the notice under this rule the liquidator must—
- (a) state whether the liquidator proposes to seek decisions from creditors and contributories for the purpose of establishing a liquidation committee, or proposes only to seek a decision from creditors for that purpose; and
 - (b) if the liquidator does not propose to seek any such decision, set out the powers of the creditors under the Act to require the liquidator to seek one.

Appointment by the Secretary of State

7.57.—(1) This rule applies where the official receiver applies to the Secretary of State to appoint a liquidator in place of the official receiver, or refers to the Secretary of State the need for an appointment.

(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 liquidator's appointment is to be effective.

Cost of liquidator's security (section 390(3))

7.58. The cost of the liquidator's security required by section 390(3) for the proper performance of the liquidator's functions is an expense of the winding up.

Appointment to be gazetted and notice given to registrar of companies

7.59.—(1) The liquidator—

(a) must gazette a notice of the appointment as soon as reasonably practicable after appointment; and

(b) may advertise the notice in such other manner as the liquidator thinks fit.

(2) The notice must state—

(a) that a liquidator has been appointed; and

(b) the date of the appointment.

(3) As soon as reasonably practicable the liquidator must deliver notice of the appointment to the registrar of companies.

Hand-over of assets by official receiver to liquidator

7.60.—(1) This rule only applies where the liquidator is appointed in succession to the official receiver acting as liquidator.

(2) When the liquidator's appointment takes effect, the official receiver must as soon as reasonably practicable do all that is required for putting the liquidator into possession of the assets.

(3) On taking possession of the assets, the liquidator 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 assets, together with interest on such advances at the rate specified in section 17 of the Judgments Act 1838(5) at the date of the winding-up order.

(4) Alternatively, the liquidator may (before taking office) give 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 assets in respect of any sums due to the official receiver under paragraph (3) until they have been discharged, subject only to the deduction from realisations by the liquidator of the proper costs and expenses of such realisations.

(6) The liquidator 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 insolvent estate, and must pay all the official receiver's expenses.

(7) The official receiver must give to the liquidator all such information relating to the affairs of the company and the course of the winding up as the official receiver considers to be reasonably required for the effective discharge by the liquidator of the liquidator's duties.

(8) The official receiver must also deliver to the liquidator a copy of any report made by the official receiver under Chapter 7 of Part 7.

Liquidator's resignation

7.61.—(1) A liquidator may resign 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 liquidator is prevented or made impracticable by—
 - (i) a conflict of interest, or
 - (ii) a change of personal circumstances;
- (d) where two or more persons are acting as liquidator 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 liquidators.

(2) Before resigning, the liquidator must deliver a notice to creditors, and invite the creditors by a decision procedure, or by deemed consent procedure, to consider whether a replacement should be appointed, except where the resignation is under sub-paragraph (1)(d).

(3) The notice must—

- (a) state the liquidator's intention to resign;

(5) [1838 c.110](#). 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](#).

- (b) state that under rule 7.61(7) of these Rules the liquidator will be released 21 days after the date of delivery of the notice of resignation to the court under section 172(6), 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 liquidator.
- (5) The notice must be accompanied by a summary of the liquidator's receipts and payments.
- (6) The decision date must be not more than five business days before the date on which the liquidator intends to give notice under section 172(6).
- (7) The resigning liquidator's release is effective 21 days after the date on which the notice of resignation under section 172(6) is filed with the court.

Notice to official receiver of intention to vacate office

7.62.—(1) This rule applies where the liquidator intends to vacate office, whether by resignation or otherwise, and as a result there will be a vacancy in the office of liquidator (so that by virtue of section 136(3) the official receiver is liquidator until the vacancy is filled).

(2) The liquidator must deliver notice of that intention to the official receiver at least 21 days before the liquidator intends to vacate office.

(3) The liquidator must include in the notice to the official receiver the following details of any property of the company which has not been realised, applied, distributed or otherwise fully dealt with in the winding up—

- (a) the nature of the property;
- (b) its value (or the fact that it has no value);
- (c) its location;
- (d) any action taken by the liquidator to deal with the property or any reason for the liquidator not dealing with it; and
- (e) the current position in relation to it.

Decision of creditors to remove liquidator

7.63.—(1) This rule applies where the convener of the decision procedure or chair of the meeting (as the case may be) is other than the official receiver, and a decision is made, using a decision procedure, to remove the liquidator

(2) The convener or chair must within three business days of the decision to remove the liquidator deliver a certificate to that effect to the official receiver.

(3) If the creditors decided to appoint a new liquidator, the certificate of the new liquidator's appointment must also be delivered to the official receiver within that time; and the certificate must comply with the requirements in rule 7.53.

(4) The certificate of the liquidator's removal must—

- (a) identify the company;
- (b) identify and provide contact details for the removed liquidator;
- (c) state that the creditors of the company decided on the date specified in the certificate that the liquidator specified in the certificate be removed from office as liquidator of the company;
- (d) state the decision procedure used, and the decision date;
- (e) state that the creditors either—

- (i) did not decide against the liquidator being released, or
 - (ii) decided that the liquidator should not be released; and
 - (f) be authenticated and dated by the convener or chair.
- (5) The liquidator's removal is effective from the date of the certificate of removal.

Procedure on removal by creditors

7.64.—(1) Where the creditors have decided that the liquidator be removed, the official receiver must file the certificate of removal with the court.

(2) The official receiver must deliver a copy of the certificate as soon as reasonably practicable to the removed liquidator and deliver a notice of the removal to the registrar of companies.

Removal of liquidator by the court (section 172(2))

7.65.—(1) This rule applies where an application is made to the court under section 172(2)(6) for the removal of the liquidator, or for an order directing the liquidator to initiate a decision procedure of creditors for the purpose of removing the liquidator.

(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 liquidator 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 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 liquidator and the official receiver may do either or both of the following—

- (a) file a report of any matters which the liquidator or the official receiver thinks ought to be drawn to the court's attention; or
- (b) appear and be heard on the application.

(7) On a successful application the court's order must contain—

- (a) the name of the court (and hearing centre if applicable) in which the order is made;
- (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 liquidator;
- (f) identification details for the company;
- (g) an order either—
 - (i) that that the liquidator is removed from office; or
 - (ii) that the liquidator must initiate a decision procedure of the company's creditors (specifying which procedure is to be used) on or before the date specified in the order for the purpose of considering the liquidator's removal from office; and
- (h) the date the order is made.

(6) Section 172(2) is amended by paragraph 43(2) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(8) The costs of the application are not payable as an expense of the winding up unless the court orders otherwise.

(9) Where the court removes the liquidator—

- (a) it must deliver the sealed order of removal to the former liquidator and a copy of the order to the official receiver; and
- (b) the former liquidator must deliver a copy of the order to the registrar of companies as soon as reasonably practicable.

(10) If the court appoints a new liquidator, rule 7.56 applies.

Removal of liquidator by the Secretary of State (section 172(4))

7.66.—(1) This rule applies where the Secretary of State decides to direct under section 172(4) the removal of a liquidator appointed by the Secretary of State.

(2) Before doing so the Secretary of State must deliver to the liquidator 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 liquidator may make representations against implementation of the decision.

(4) If the Secretary of State directs the removal of the liquidator, the Secretary of State must as soon as reasonably practicable—

- (a) deliver notice of the Secretary of State’s decision to the registrar of companies, the liquidator and the official receiver; and
- (b) file notice of the decision with the court.

(5) Where the Secretary of State directs the liquidator be removed the court may make any order that it could have made if the liquidator had been removed by the court.

Deceased liquidator

7.67.—(1) If the liquidator (not being the official receiver) dies a notice of the fact and date of death must be delivered to the official receiver by one of the following—

- (a) a surviving joint liquidator;
- (b) a member of the deceased liquidator’s firm (if the deceased was a member or employee of a firm);
- (c) an officer of the deceased liquidator’s company (if the deceased was an officer or employee of a company);
- (d) a personal representative of the deceased liquidator.

(2) If no such notice has been delivered within the 21 days following the liquidator’s death then any other person may deliver the notice.

(3) The official receiver must—

- (a) file notice of the death with the court, for the purpose of fixing the date of the deceased liquidator’s release under section 174(4)(a)(7); and
- (b) deliver a copy of the notice to the registrar of companies.

Loss of qualification as insolvency practitioner

7.68.—(1) This rule applies where the liquidator vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the company.

(2) A notice of the fact must be delivered as soon as reasonably practicable to the official receiver by one of the following—

- (a) the liquidator who has vacated office;
 - (b) a continuing joint liquidator;
 - (c) the recognised professional body which was the source of the vacating liquidator's authorisation to act in relation to the company.
- (3) The notice must be authenticated and dated by the person delivering the notice.
- (4) The official receiver must—
- (a) deliver a notice of receiving such a notice to the Secretary of State; and
 - (b) deliver a copy to the registrar of companies.

Application by liquidator for release (section 174(4)(b) or (d))

7.69.—(1) An application by a liquidator to the Secretary of State for release under section 174(4)(b) or (d) must contain—

- (a) identification details for the proceedings;
 - (b) identification and contact details for the liquidator;
 - (c) a statement that the liquidator of the company is applying to the Secretary of State to grant the liquidator with a certificate of the liquidator's release as liquidator as a result of the circumstances specified in the application;
 - (d) details of the circumstances referred to in sub-paragraph (c) under which the liquidator has ceased to act as liquidator.
- (2) The application must be authenticated and dated by the liquidator.
- (3) When the Secretary of State releases the former liquidator, the Secretary of State must certify the release and deliver the certificate to the former liquidator whose release is effective from the date of the certificate or such other date as the certificate specifies.
- (4) The Secretary of State must deliver notice of the release to the registrar of companies.

Release of official receiver

7.70.—(1) The official receiver must, before giving notice to the Secretary of State under section 174(3) (that the winding up is for practical purposes complete), deliver notice of intention to do so to the creditors.

(2) The notice must be accompanied by a summary of the official receiver's receipts and payments as liquidator.

(3) The summary of receipts and payments must also include a statement as to the amount paid to unsecured creditors under section 176A (prescribed part).

(4) When the Secretary of State has determined the date from which the official receiver's release is to be effective, the Secretary of State must—

- (a) notify the official receiver of the release; and
- (b) deliver a notice of the release to the registrar of companies accompanied by the summary of the official receiver's receipts and payments.

Final account prior to dissolution (section 146)

7.71.—(1) The final account which the liquidator is required to make up under section 146(2)(8) and deliver to creditors must comply with the requirements of rule 18.14.

(2) When the account is delivered to the creditors it must be accompanied by a notice which states—

- (a) that the company's affairs are fully wound up;
 - (b) that the creditor has the right to request information from the liquidator under rule 18.9;
 - (c) that a creditor has the right to challenge the liquidator's remuneration and expenses under rule 18.34;
 - (d) that a creditor may object to the release of the liquidator by giving notice in writing to the liquidator before the end of the prescribed period;
 - (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 court under that rule or rule 18.34 is made when that request or application is finally determined;
 - (f) that the liquidator will vacate office under section 172(8)(9) as soon as the liquidator has complied with section 146(4) by filing with the court and delivering to the registrar of companies the final account and notice containing the statement required by section 146(4) (b) of whether any creditors have objected to the liquidator's release; and
 - (g) that the liquidator will be released under section 174(4)(d)(ii)(10) at the same time as vacating office unless any of the creditors objected to the release.
- (3) The liquidator must deliver a copy of the notice under section 146(4) to the Secretary of State.
- (4) Rule 7.69 applies to an application by the liquidator to the Secretary of State for release.

Relief from, or variation of, duty to report

7.72.—(1) The court may, on the application of the liquidator or the official receiver, relieve the liquidator or official receiver of any duty imposed on the liquidator or official receiver by rule 7.70 or rule 7.71, or authorise the liquidator or official receiver to carry out the duty in a way other than required by either of those rules.

(2) In considering whether to act under this rule, the court must have regard to the cost of carrying out the duty, to the amount of the assets available, and to the extent of the interest of creditors or contributories, or any particular class of them.

Liquidator's duties on vacating office

7.73.—(1) A liquidator 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 company, must as soon as reasonably practicable deliver to the successor as liquidator—

- (a) the assets (after deduction of any expenses properly incurred, and distributions made, by the previous liquidator);
- (b) the records of the winding up, including correspondence, proofs and other documents relating to the winding up while it was within the former liquidator's responsibility; and

(8) Section 146 is substituted by paragraph 38 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(9) A new subsection (8) is substituted by paragraph 43(4) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015.

(10) A new subsection (4)(d)(ii) is substituted by paragraph 45(4) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015.

(c) the company's documents and other records.

(2) Where the liquidator vacates office under section 172(8) (final report to creditors), the liquidator must deliver to the official receiver the company's documents and other records which have not already been disposed of in accordance with general regulations in the course of the winding up.

Power of court to set aside certain transactions

7.74.—(1) If in dealing with the insolvent estate the liquidator enters into any transaction with a person who is an associate of the liquidator, the court may, on the application of any interested person, set the transaction aside and order the liquidator to compensate the company 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 liquidator 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 liquidator's dealings with trust property, or the fiduciary obligations of any person.

Rule against improper solicitation

7.75.—(1) Where the court is satisfied that any improper solicitation has been used by or on behalf of the liquidator in obtaining proxies or procuring the liquidator's appointment, it may order that no remuneration be allowed as an expense of the winding up to any person by whom, or on whose behalf, the solicitation was exercised.

(2) An order of the court under this rule overrides any resolution of the liquidation committee or the creditors, or any other provision of these Rules relating to the liquidator's remuneration.