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STATUTORY INSTRUMENTS

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**2016 No. 1024**

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

**PART 8**

**INDIVIDUAL VOLUNTARY ARRANGEMENTS (IVA)**

**CHAPTER 3**

Cases in which an application for an interim order is made

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

**Application for interim order**

**8.8.**—(1) An application to the court for an interim order under Part 8 of the Act must be accompanied by a witness statement containing—

- (a) the reasons for making the application;
- (b) information about any action, execution, other legal process or the levying of any distress which, to the debtor's knowledge, has been commenced against the debtor or the debtor's property;
- (c) a statement that the debtor is an undischarged bankrupt or is able to make a bankruptcy application;
- (d) a statement that no previous application for an interim order has been made by or in relation to the debtor in the period of 12 months ending with the date of the witness statement; and
- (e) a statement that a person named in the witness statement is willing to act as nominee in relation to the proposal and is qualified to act as an insolvency practitioner (or is an authorised person) in relation to the debtor.

(2) The witness statement must be accompanied by a copy of—

- (a) the proposal; and
- (b) the notice of the nominee's consent to act.

(3) When the application and the witness statement have been filed, the court must fix a venue for the hearing of the application.

(4) The applicant must deliver a notice of the hearing and the venue at least two business days before the hearing to—

- (a) the nominee;
- (b) the debtor, the official receiver or the trustee (whichever is not the applicant) where the debtor is an undischarged bankrupt; and
- (c) any creditor who (to the debtor's knowledge) has presented a bankruptcy petition against the debtor where the debtor is not an undischarged bankrupt.

(5) A notice under section 253(4) must contain the name and address of the nominee.

### **Court in which application is to be made**

**8.9.**—(1) An application must be made—

- (a) to the court (and hearing centre if applicable), if any, which has the conduct of the bankruptcy, where the debtor is an undischarged bankrupt; or
- (b) to the court (and hearing centre if applicable) determined in accordance with rule 10.48.

(2) The application must contain sufficient information to establish that it is made to the appropriate court or hearing centre.

### **Order granting a stay**

**8.10.** A court order under section 254(1)(b) granting a stay pending hearing of an application must identify the proceedings and contain—

- (a) the section number of the Act under which it is made;
- (b) details of the action, execution or other legal process which is stayed;
- (c) the date on which the application for an interim order will be heard; and
- (d) the date that the order granting the stay is made.

### **Hearing of the application**

**8.11.**—(1) A person to whom a notice of the hearing of the application for an interim order was (or should have been) delivered under rule 8.8(4) may appear or be represented at the hearing.

(2) The court must take into account any representations made by or on behalf of such a person (in particular, as to whether an order should contain such provision as is referred to in section 255(3) (provisions as to the conduct of the bankruptcy etc.) and (4) (provisions staying proceedings in bankruptcy etc.).

(3) If the court makes an interim order, it must fix a venue for consideration of the nominee's report for a date no later than the date on which the order ceases to have effect.

### **The interim order**

**8.12.** An interim order must contain—

- (a) identification details for the proceedings;
- (b) the section number of the Act under which it is made;
- (c) a statement that the order has effect from its making until the end of the period of 14 days beginning on the day after the date on which it is made;
- (d) particulars of the effect of the order (as set out in section 252(2));
- (e) an order that the report of the nominee be delivered to the court no later than two business days before the date fixed for the court's consideration of the report;
- (f) particulars of any orders made under section 255(3) and (4);
- (g) where the debtor is an undischarged bankrupt and the applicant is not the official receiver, an order that the applicant delivers, as soon as reasonably practicable, a copy of the interim order to the official receiver;
- (h) the venue for the court's consideration of the nominee's report; and
- (i) the date of the order.

### **Action to follow making of an interim order**

- 8.13.**—(1) The court must deliver at least two sealed copies of the interim order to the applicant.
- (2) As soon as reasonably practicable, the applicant must deliver—
- (a) one copy to the nominee and, where the debtor is an undischarged bankrupt, another copy to the official receiver (unless the official receiver was the applicant); and
  - (b) a notice that the order has been made to any other person to whom a notice of the hearing of the application for an interim order was (or should have been) delivered under rule 8.8(4) and who was not in attendance or represented at the hearing.

### **Order extending period of an interim order (section 256(4))**

**8.14.** An order under section 256(4) extending the period for which an interim order has effect must contain—

- (a) identification details for the proceedings;
- (b) a statement that the application is that of the nominee for an extension of the period under section 256(4) for which an interim order is to have effect;
- (c) an order that the period for which the interim order has effect is extended to a specified date;
- (d) particulars of the effect (as set out in section 252(2)) of the interim order;
- (e) an order that the report of the nominee be delivered to the court no later two business days before the date fixed for the court's consideration of the nominee's report;
- (f) particulars of any orders made under section 255(3) or (4);
- (g) where the debtor is an undischarged bankrupt and the applicant is not the official receiver, an order that the applicant deliver, as soon as reasonably practicable, a copy of the order to the official receiver;
- (h) the venue for the court's consideration of the report; and
- (i) the date of the order.

### **Nominee's report on the proposal**

**8.15.**—(1) The nominee's report under section 256 must be filed with the court not less than two business days before the interim order ceases to have effect, accompanied by—

- (a) a copy of the report;
- (b) a copy of the proposal (as amended, if applicable, under rule 8.2(2)); and
- (c) a copy of any statement of affairs or a summary of such a statement.

(2) The nominee must also deliver a copy of the report to the debtor.

(3) The nominee's report must explain whether or not the nominee considers that the proposal has a reasonable prospect of being approved and implemented and whether or not creditors should be invited to consider the proposal.

(4) The court must endorse the nominee's report and the copy of it with the date on which they were filed and return the copy to the nominee.

(5) Where the debtor is an undischarged bankrupt, the nominee must deliver to the official receiver and any trustee, a copy of—

- (a) the proposal;
- (b) the nominee's report; and

(c) any statement of affairs or summary of such a statement.

(6) Where the debtor is not an undischarged bankrupt, the nominee must deliver a copy of each of those documents to any person who has presented a bankruptcy petition against the debtor.

**Order extending period of interim order to enable the creditors to consider the proposal (section 256(5))**

**8.16.** An order under section 256(5)(1) extending the period for which an interim order has effect to enable creditors to consider the proposal must contain—

- (a) identification details for the proceedings;
- (b) the section number of the Act under which it is made;
- (c) the date that the nominee's report was filed;
- (d) a statement that for the purpose of enabling the creditors to consider the proposal, the period for which the interim order has effect is extended to a specified date;
- (e) a statement that the nominee will be inviting the creditors to consider the proposal and details of the decision procedure the nominee intends to use;
- (f) where the debtor is an undischarged bankrupt and the nominee is not the official receiver, an order that the nominee deliver, as soon as reasonably practicable, a copy of the order to the official receiver; and
- (g) the date of the order.

**Replacement of the nominee (section 256(3))**

**8.17.—(1)** A debtor who intends to apply under section 256(3)(a) or (b) for the nominee to be replaced must deliver a notice to the nominee that such an application is intended to be made at least five business days before filing the application with the court.

(2) A nominee who intends to apply under section 256(3)(b) to be replaced must deliver a notice to the debtor that such an application is intended to be made at least five business days before filing the application with the court.

(3) The court must not appoint a replacement nominee unless the replacement nominee has filed with the court a statement confirming—

- (a) that person is qualified to act as an insolvency practitioner (or is an authorised person) in relation to the debtor; and
- (b) that person's consent to act.

**Consideration of the nominee's report**

**8.18.—(1)** A person to whom a notice was (or should have been) delivered under rule 8.8(4) may appear or be represented at the court's hearing to consider the nominee's report.

(2) Rule 8.13 applies to any order made by the court at the hearing.