
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 8

INDIVIDUAL VOLUNTARY ARRANGEMENTS (IVA)

CHAPTER 7

Applications to annul bankruptcy orders under sections 261(2)(a) and (b)

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

Application by the bankrupt to annul the bankruptcy order (section 261(2)(a))

8.32.—(1) An application by bankrupt to the court under section 261(2)(a) must be supported by a witness statement stating—

- (a) that the IVA has been approved by the creditors;
- (b) the date of the approval; and
- (c) that the 28 day period in section 262(3)(a) for applications to be made under section 262(1) has expired and no applications or appeals remain to be disposed of.

(2) The application and witness statement must be filed with the court and the court must deliver a notice of the venue for the hearing to the bankrupt.

(3) Not less than five business days before the date of the hearing, the bankrupt must deliver a notice of the venue, with a copy of the application and witness statement, to—

- (a) the official receiver;
- (b) any trustee (if different to the official receiver); and
- (c) the supervisor.

(4) The official receiver, any such trustee and the supervisor may attend the hearing or be represented and bring to the court's attention any matters which seem to them to be relevant.

Application by the official receiver to annul the bankruptcy order (section 261(2)(b))

8.33.—(1) An application by the official receiver to the court under section 261(2)(b) to annul a bankruptcy order must be supported by a report stating—

- (a) the grounds on which it is made;
- (b) that the time period in paragraph (2) has expired; and
- (c) that the official receiver is not aware that any application under section 262 or appeal remains to be disposed of.

(2) The official receiver must not make such an application before the expiry of the period of 42 days beginning with the day on which—

- (a) the nominee filed the report of the creditors' consideration with the court, where the creditors considered the proposal under section 257(1) following a report to a court under section 256(1)(aa); or
 - (b) the nominee delivered a notice to the creditors of the result of their consideration, where the creditors considered the proposal under section 257 following a report to the creditors under section 256A(3)(2).
- (3) The application and the report must be filed with the court and the court must deliver a notice of the venue for the hearing to the official receiver.
- (4) Not less than five business days before the date of the hearing, the official receiver must deliver a notice of the venue, with a copy of the application and the report, to the bankrupt.

Order annulling bankruptcy

8.34.—(1) An order under section 261(2) annulling a bankruptcy order must contain—

- (a) identification details the proceedings;
- (b) the section number of the Act under which the order is made;
- (c) the name and address of the applicant;
- (d) a statement that it appears that an IVA under section 258(3) has been approved and implemented and the date of approval;
- (e) a statement that there has been no application under section 262 for the revocation or suspension of the IVA and that the time period for making such an application has expired;
- (f) where the applicant is the official receiver under section 261(2)(b) that the time period in rule 8.33(2) has expired;
- (g) the order that the relevant bankruptcy order, identified by its date and the name of the bankrupt as set out in the bankruptcy order, be annulled;
- (h) if appropriate, an order that the relevant bankruptcy petition (identified by the date of its presentation) or the relevant bankruptcy application (identified by the date it was made) (as the case may be) be dismissed;
- (i) where there is a trustee, an order in respect of the trustee's release, having regard to rule 8.37;
- (j) an order that the registration of the bankruptcy petition or bankruptcy application as a pending action at the Land Charges Department of HM Land Registry be vacated (identified by the date of registration and reference number);
- (k) an order that the registration of the bankruptcy order on the register of writs and orders affecting land at the Land Charges Department of HM Land Registry be vacated (identified by date of registration and reference number);
- (l) the date the order is made;
- (m) a notice to the effect that if the former bankrupt requires notice of the order to be gazetted and advertised in the same manner as the bankruptcy order was advertised, the bankrupt must deliver a notice to the official receiver within 28 days; and
- (n) a notice to the effect that it is the responsibility of the former bankrupt and in the former bankrupt's interest to ensure that any registration of the petition or bankruptcy application

(1) Section 257 and the preceding heading are amended by paragraphs 63 and 64 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26) which substitutes subsections (1) and (2) and inserts new subsections (2A) and (2B).

(2) Subsection 256A(3) is amended by paragraph 4 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 and paragraph 62 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(3) Section 258(1), (2), (4) and (5) are amended and (6) is omitted by paragraph 65 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

and of the bankruptcy order at the Land Charges Department of HM Land Registry and any entries relating to the petition or bankruptcy application and bankruptcy order in any registered titles at HM Land Registry are cancelled (such a notice giving relevant HM Land Registry contact details and referring to relevant Registry guidance).

- (2) The court must deliver a sealed copy of the order to—
- (a) the former bankrupt;
 - (b) the official receiver;
 - (c) any trustee (if different to the official receiver); and
 - (d) the supervisor.

Notice of order

8.35.—(1) An official receiver, who has delivered a notice of the debtor’s bankruptcy to the creditors, must, as soon as reasonably practicable, deliver a notice of an annulment under section 261(2) to them.

(2) Expenses incurred by the official receiver in delivering a notice under this rule are a charge in the official receiver’s favour on the property of the former bankrupt, whether or not actually in the hands of the former bankrupt.

(3) Where any such property is in the hands of any person other than the former bankrupt, the official receiver’s charge is valid subject only to any costs that may be incurred by that person in effecting realisation of the property for the purpose of satisfying the charge.

Advertisement of order

8.36.—(1) The former bankrupt may in writing within 28 days of the date of an order for annulment under section 261(2) require the official receiver—

- (a) to cause a notice of the order to be gazetted; and
- (b) to advertise the order in the same manner as the bankruptcy order was advertised.

(2) The official receiver must comply with any such requirement as soon as reasonably practicable.

- (3) The notice must state—
- (a) the name of the former bankrupt;
 - (b) the date on which the bankruptcy order was made;
 - (c) that the bankruptcy order has been annulled;
 - (d) the date of the annulment order; and
 - (e) the grounds of the annulment.

(4) Where the former bankrupt has died, or is a person lacking capacity to manage the person’s own affairs (within the meaning of the Mental Capacity Act 2005(4)), the references to the former bankrupt in paragraph (1) are to be read as references to the personal representative of the same or, as the case may be, a person appointed by the court to represent or act for the former bankrupt.

Trustee’s final account

8.37.—(1) The making of an order under section 261(2) does not of itself release the trustee from any duty or obligation imposed by or under the Act or these Rules to account for all of the trustee’s transactions in connection with the former bankrupt’s estate.

(4) 2005 c.9.

- (2) As soon as reasonably practicable after the making of an order, the trustee must—
 - (a) deliver a copy of the final account of the trustee to the Secretary of State; and
 - (b) file a copy of that account with the court.
- (3) The final account must include a summary of the trustee’s receipts and payments.
- (4) The trustee is released from such time as the court may determine, having regard to whether paragraph (2) of this rule has been complied with.