
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 8

INDIVIDUAL VOLUNTARY ARRANGEMENTS (IVA)

CHAPTER 1

Preliminary

Interpretation

8.1. In this Part—

“authorised person” means the official receiver where the official receiver is authorised to act as nominee or supervisor under section 389B(1) of the Act⁽¹⁾;

“nominee” and “supervisor” include the proposed nominee or supervisor in relation to a proposal for an IVA; and

“proposal” means a proposal for an IVA.

CHAPTER 2

Preparation of the debtor’s proposal for an IVA

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

Proposal for an IVA: general principles and amendment

8.2.—(1) A proposal must—

- (a) identify the debtor;
- (b) explain why the debtor thinks an IVA is desirable;
- (c) explain why the creditors are expected to agree to an IVA; and
- (d) be authenticated and dated by the debtor.

(2) The proposal may be amended with the nominee’s agreement in writing at any time up to the filing of the nominee’s report with the court under section 256, or the submission of the nominee’s report to the creditors under section 256A⁽²⁾.

Proposal: contents

8.3. The proposal must set out the following so far as known to the debtor—

Assets	(a) the debtor’s assets, with an estimate of their respective values;
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(1) Section 389B is inserted by paragraph 3 of Schedule 22 to the Enterprise Act 2002 (c.40).

(2) Section 256A is inserted by paragraph 7 of Schedule 3 to the Insolvency Act 2000 (c.39).

	<ul style="list-style-type: none"> (b) which assets are charged and the extent of the charge; (c) which assets are to be excluded from the IVA; and (d) particulars of any property to be included in the IVA which is not owned by the debtor including details of who owns such property and the terms on which it will be available for inclusion;
Liabilities	<ul style="list-style-type: none"> (e) the nature and amount of the debtor's liabilities; (f) how the debtor's liabilities will be met, modified, postponed or otherwise dealt with by means of the IVA and, in particular— <ul style="list-style-type: none"> (i) how preferential creditors and creditors who are, or claim to be, secured will be dealt with, (ii) how creditors who are associates of the debtor will be dealt with, (iii) if the debtor is an undischarged bankrupt, whether any claim has been made under section 339 (transactions at an undervalue), section 340 (preferences)(3), or section 343 (extortionate credit transactions)(4) and, if it has, whether, and if so what, provision is being made to indemnify the bankrupt's estate in respect of such a claim; and (iv) if the debtor is not an undischarged bankrupt whether there are circumstances which might give rise to a claim as referred to in subparagraph (iii) if the debtor were made bankrupt and, where there are such circumstances, whether and, if so what, provision will be made to indemnify the bankrupt's estate in respect of such a claim;
Nominee's fees and expenses	<ul style="list-style-type: none"> (g) the amount proposed to be paid to the nominee by way of fees and expenses;
Supervisor	<ul style="list-style-type: none"> (h) identification and contact details for the supervisor; (i) confirmation that the supervisor is qualified to act as an insolvency practitioner (or is an authorised person) in relation to the debtor and the name of the relevant recognised professional body which is the source of the supervisor's authorisation; (j) how the fees and expenses of the supervisor will be determined and paid; (k) the functions to be undertaken by the supervisor; (l) where it is proposed that two or more supervisors be appointed, a statement whether acts done in connection with the IVA may be done by any one or more of them or must be done by all of them;
Guarantees and proposed guarantees	<ul style="list-style-type: none"> (m) whether any, and if so what, guarantees have been given in respect of the debtor's debts, specifying which of the guarantors are associates of the debtor; (n) whether any guarantees are proposed to be offered for the purposes of the IVA, and if so what, by whom and whether security is to be given or sought;
Timing	<ul style="list-style-type: none"> (o) the proposed duration of the IVA; (p) the proposed dates of distributions to creditors, with estimates of their amounts;
Type of proceedings	<ul style="list-style-type: none"> (q) whether the proceedings will be main, territorial or non-EC proceedings with reasons;

(3) Section 339(1) is amended by paragraph 31 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24) and section 340 is amended by paragraph 32 of that Schedule.

(4) Section 343(1) is amended by paragraph 36 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013.

Conduct of business	(r) if the debtor has any business, how that business will be conducted during the IVA;
Further credit facilities	(s) details of any further proposed credit facilities for the debtor and how the debts so arising are to be paid;
Handling of funds arising	(t) the manner in which funds held for the purposes of the IVA are to be banked, invested or otherwise dealt with pending distribution to creditors; (u) how funds held for the purpose of payment to creditors, and not so paid on the termination of the IVA, will be dealt with; (v) how the claim of any person bound by the IVA by virtue of section 260(2)(b)(ii) will be dealt with;
Other proposals	(w) whether another proposal in relation to the debtor has been submitted within the 24 months before the date of the submission of the proposal to the nominee— (i) for approval by the creditors and, if so, (aa) whether that proposal was approved or rejected, (bb) whether, if approved, the IVA was completed or was terminated, and (cc) in what respects such a proposal, where rejected, differs from the current proposal; (ii) to the court in connection with an application for an interim order under section 253(5) and, if so, whether the interim order was made;
Other matters	(x) any other matters which the debtor considers appropriate to enable creditors to reach an informed decision on the proposal.

Notice of nominee's consent

8.4.—(1) A nominee who consents to act must deliver a notice of that consent to the debtor as soon as reasonably practicable after the proposal has been submitted to the nominee under section 256(2) or 256A(2).

(2) The notice must state the date the nominee received the proposal.

Statement of affairs (section 256 and 256A)

8.5.—(1) The statement of affairs which the debtor is required to submit to the nominee under either section 256(2) or 256A(2) must contain—

- (a) a list of the debtor's assets, divided into such categories as are appropriate for easy identification, and with each category given an estimated value;
- (b) in the case of any property on which a claim against the debtor is wholly or partly secured, particulars of the claim and of how and when the security was created;
- (c) the names and addresses of the preferential creditors with the amounts of their respective claims;
- (d) the names and addresses of the unsecured creditors, with the amounts of their respective claims;
- (e) particulars of any debts owed by the debtor to persons who are associates of the debtor;
- (f) particulars of any debts owed to the debtor by persons who are associates of the debtor; and

(5) Section 253 subsection 5 is omitted by paragraph 2 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24).

- (g) any other particulars that the nominee in writing requires to be provided for the purposes of making the nominee's report on the proposal to the court or to the creditors (as the case may be).
- (2) The statement must be made up to a date not earlier than two weeks before the date of the proposal.
- (3) However the nominee may allow the statement to be made up to a date that is earlier than two weeks (but no earlier than two months) before the date of the proposal where that is more practicable.
- (4) If the statement is made up to an earlier date the nominee's report must explain why an earlier date was allowed.
- (5) The statement must be verified by a statement of truth made by the debtor.
- (6) Where the debtor is an undischarged bankrupt and has already delivered a statement of affairs under section 288(6) the debtor need not submit a statement of affairs to the nominee under section 256(2) or 256A(2) unless the nominee requires a further statement of affairs to supplement or amplify the earlier one.

Application to omit information from statement of affairs delivered to creditors

8.6. The nominee, the debtor or any person appearing to the court to have an interest may, if any information in the statement of affairs would be likely to prejudice the conduct of the IVA or might reasonably be expected to lead to violence against any person, apply to the court for an order that specified information be omitted from any statement of affairs required to be delivered to the creditors.

Additional disclosure for assistance of nominee

- 8.7.—**(1) If it appears to the nominee that the report to the court under section 256(1)(7) or to the creditors under section 256A(3)(8) cannot properly be prepared on the basis of information in the proposal and statement of affairs, the nominee may require the debtor to provide—
- (a) more information about the circumstances in which, and the reasons why, an IVA is being proposed;
 - (b) more information about any proposals of the kind referred to in rule 8.3(w);
 - (c) information about any proposals which have at any time been made by the debtor under Part 8 of the Act(9); and
 - (d) any further information relating to the debtor's affairs which the nominee thinks necessary for the purposes of the report.
- (2) The nominee may require the debtor to inform the nominee whether and in what circumstances the debtor has at any time—
- (a) been concerned in the affairs of a company wherever incorporated or limited liability partnership which has become the subject of insolvency proceedings;
 - (b) been made bankrupt;
 - (c) been the subject of a debt relief order; or

(6) Section 288(1) is amended by paragraph 18 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24) and (2A) is inserted and (3) and (4)(b) are amended by paragraph 15 of Schedule 6 to the Deregulation Act 2015 (c.20).

(7) Section 256(1)(aa), (5) and (6) are amended and (1)(b) is omitted by paragraph 61 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(8) Section 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).

(9) Part 8 is amended by paragraph 2 of Schedule 6 to the Deregulation Act 2015 (c.20), paragraphs 2 to 4 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24) and sections 134 and 135 and paragraphs 61 to 72 of Schedule 9 to the Small Business Enterprise and Employment 2015 (c.26).

(d) entered into an arrangement with creditors.

(3) The debtor must give the nominee such access to the debtor's accounts and records as the nominee requires to enable the nominee to consider the debtor's proposal and prepare the report on it.

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)(10) 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.

CHAPTER 4

Cases where no interim order is to be obtained

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

Nominee's report (section 256A)

8.19.—(1) The nominee's report under section 256A(3) 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.

(2) The report must contain sufficient information to enable a person to identify (in accordance with rule 8.20) the appropriate court or hearing centre in which to file an application relating to the proposal or the IVA.

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

(4) Where the nominee gives an opinion in the affirmative on the matters referred to in section 256A(3)(a) and (b), the copy of the report delivered by the nominee to each of the creditors must be accompanied by—

- (a) a statement that an application for an interim order under section 253(11) is not being made;
- (b) a copy of the proposal (as amended, if applicable, under rule 8.2(2));
- (c) a copy of any statement of affairs or a summary of such a statement; and
- (d) a copy of the notice of the nominee's consent to act.

(5) In such a case the nominee must also deliver those documents within 14 days (or such longer period as the court may allow) of receipt of the document and statement referred to in section 256A(2) to—

- (a) the official receiver and any trustee, where the debtor is an undischarged bankrupt; and
- (b) any person who has presented a bankruptcy petition against the debtor.

(6) Where the nominee gives an opinion in the negative on the matters referred to in section 256A(3)(a) and (b) the nominee must within 14 days (or such longer period as the court may allow) of receipt of the document and statement referred to in section 256A(2) —

- (a) deliver a copy of the report to the creditors; and
- (b) give the reasons for that opinion to the debtor.

Court or hearing centre to which applications must be made where no interim order

8.20.—(1) This rule applies where the nominee has made a report under section 256A(3).

(2) Any application relating to a proposal or an IVA must be made—

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

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

(4) The applicant must file with the court (in addition to the documents in support of the application) such other documents required by this Part as the applicant considers may assist the court in determining the application.

Replacement of the nominee (section 256A(4))

8.21.—(1) A debtor who intends to apply under section 256A(4)(a) or (b) for the nominee to be replaced must deliver a notice of the intention to make the application to the nominee at least five business days before filing the application with the court.

(2) A nominee who intends to apply under section 256A(4)(b) to be replaced must deliver a notice of the intention to make such an application to the debtor 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.

CHAPTER 5

Consideration of the proposal by the creditors

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

Consideration of the proposal

8.22.—(1) This rule applies where the nominee is required to seek a decision from the debtor's creditors as to whether they approve the debtor's proposal.

(2) The nominee must deliver to each creditor a notice which complies with rule 15.8 so far as is relevant.

(3) The notice must also contain—

- (a) identification details for the proceedings;
- (b) where an interim order has not been obtained, details of the court or hearing centre to which an application relating to the proposal or the IVA must be made under rule 8.20(2);
- (c) where an interim order is in force, details of the court or hearing centre in which the nominee's report on the debtor's proposal has been filed under section 256(12);
- (d) a statement as to how a person entitled to vote for the proposal may propose a modification to it, and how the nominee will deal with such a proposal for a modification.

(4) The notice may contain or be accompanied by a notice that the results of the consideration of the proposal will be made available for viewing and downloading on a website and that no other notice will be delivered to the creditors to whom the notice under this rule was sent.

(5) Where the results of the consideration of the proposal are to be made available for viewing and downloading on a website the nominee must comply with the requirements for use of a website to deliver a document set out in rule 1.49(2)(a) to (c), (3) and (4) with any necessary adaptations and rule 1.49(5)(a) applies to determine the time of delivery of the document.

(6) The notice must be accompanied by the following (unless they have been delivered already under rule 8.19)—

- (a) a copy of the proposal;
- (b) a copy of the statement of affairs, or a summary including a list of creditors with the amounts of their debts; and
- (c) a copy of the nominee's report on the proposal.

(7) The decision date must be not less than 14 days from the date of delivery of the notice and not more than 28 days from the date on which—

- (a) the nominee received the document and statement of affairs referred to in section 256A(2) in a case where an interim order has not been obtained; or
- (b) the nominee's report was considered by the court in a case where an interim order is in force.

Proposals for an alternative supervisor

8.23.—(1) If in response to a notice of a decision procedure to consider the proposal other than at a meeting, a creditor proposes that a person other than the nominee be appointed as supervisor, that person's consent to act and confirmation of being qualified to act as an insolvency practitioner (or being an authorised person) in relation to the debtor must be delivered to the nominee by the creditor.

(2) If at a creditors' meeting to consider the proposal a resolution is moved for the appointment of a person other than the nominee to be supervisor, that person must produce to the chair at or before the meeting—

- (a) confirmation of being qualified to act as an insolvency practitioner (or being an authorised person) in relation to the debtor; and
- (b) written consent to act (unless the person is present at the meeting and signifies consent).

Report of the creditors' consideration of a proposal

8.24.—(1) A report of the creditors' consideration of a proposal must be prepared by the convener or, if the proposal is considered at a meeting, by the chair.

(2) The report must—

- (a) state whether the proposal was approved or rejected and, if approved, with what (if any) modifications;
- (b) list the creditors who voted in the decision procedure, setting out with their respective values how they voted on each decision;
- (c) if the proposal was approved, state whether the proceedings are main, territorial or non-EC proceedings and the reasons for so stating; and
- (d) include such further information as the nominee or the chair thinks appropriate.

(3) Where an interim order was obtained a copy of the report must be filed with the court, within four business days of the decision date.

(4) The court must endorse the copy of the report with the date of filing.

(5) The nominee must give notice of the result of the consideration to—

- (a) everyone who was invited to consider the proposal and to whom notice of the decision procedure was delivered;
- (b) any other creditor; and
- (c) where the debtor is an undischarged bankrupt, the official receiver and any trustee.

(6) The notice must be given—

- (a) where an interim order was obtained, as soon as reasonably practicable after a copy of the report is filed with the court; or
- (b) where an interim order was not obtained, within four business days of the decision date.

CHAPTER 6

Action following approval of an IVA

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

Hand-over of property, etc. to supervisor

8.25.—(1) As soon as reasonably practicable after the IVA is approved, the debtor or, where the debtor is an undischarged bankrupt, the official receiver or any trustee must do all that is required to put the supervisor in possession of the assets included in the IVA.

(2) Where the debtor is an undischarged bankrupt, the supervisor must—

- (a) before taking possession of the assets included in the IVA, deliver to the official receiver or any trustee an undertaking to discharge the balance due to the official receiver or trustee out of the first realisation of the assets; or

- (b) upon taking possession of the assets included in the IVA, discharge such balance.
- (3) The balance is any balance due to the official receiver or any trustee—
 - (a) by way of fees or expenses properly incurred and payable under the Act or these Rules; and
 - (b) on account of any advances made in respect of the bankrupt's estate, together with interest on such advances at the rate specified in section 17 of the Judgments Act 1838(13) at the date of the bankruptcy order.
- (4) Where the debtor is an undischarged bankrupt, the official receiver and any trustee have a charge on the assets included in the IVA in respect of any sums comprising such balance, subject only to the deduction by the supervisor from realisations of the proper costs and expenses of realisation.
- (5) Any sums due to the official receiver take priority over those due to any trustee.
- (6) The supervisor must from time to time out of the realisation of assets—
 - (a) discharge all guarantees properly given by the official receiver or any trustee for the benefit of the bankrupt's estate; and
 - (b) pay the expenses of the official receiver and any trustee.

Report to the Secretary of State of the approval of an IVA

8.26.—(1) After the creditors approve an IVA the nominee, appointed person or the chair must deliver a report containing the required information to the Secretary of State.

(2) The report must be delivered as soon as reasonably practicable, and in any event within 14 days after the report that the creditors have approved the IVA has been filed with the court under rule 8.24(3) or the notice that the creditors have approved the IVA has been sent to the creditors under rule 8.24(5) as the case may be.

- (3) The required information is—
 - (a) identification details for the debtor;
 - (b) the debtor's gender;
 - (c) the debtor's date of birth;
 - (d) any name by which the debtor was or is known, not being the name in which the debtor has entered into the IVA;
 - (e) the date on which the IVA was approved by the creditors; and
 - (f) the name and address of the supervisor.

(4) A person who is appointed to act as a supervisor as a replacement of another person, or who vacates that office must deliver a notice of that fact to the Secretary of State as soon as reasonably practicable.

Revocation or suspension of an IVA (section 262)

8.27.—(1) This rule applies where the court makes an order of revocation or suspension under section 262.

- (2) The applicant for the order must deliver a sealed copy of it to—
 - (a) the debtor (if different from the applicant);
 - (b) the supervisor; and

(13) 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 of the Civil Procedure Acts Repeal Act 1879 (c.59) and article 3(c) of S.I. 1998/3132.

- (c) where the debtor is an undischarged bankrupt, the official receiver and any trustee (in either case, if different from the applicant).
- (3) If the order includes a direction by the court under section 262(4)(b)(14) for a matter to be considered further by a decision procedure, the applicant for the order must deliver a notice that the order has been made to the person who is directed to take such action.
- (4) The debtor, or the trustee (if the debtor is an undischarged bankrupt) must—
 - (a) as soon as reasonably practicable deliver a notice that the order has been made to everyone to whom a notice to consider the matter by a decision procedure was delivered or who appears to be affected by the order; and
 - (b) within five business days of delivery of a copy of the order (or within such longer period as the court may allow), deliver, if applicable, a notice to the court advising that it is intended to make a revised proposal to the creditors, or to invite re-consideration of the original proposal.
- (5) The applicant for the order must, within five business days of the making of the order deliver a notice of the order to the Secretary of State.
- (6) The applicant for the order must, within five business days of the expiry of any order of suspension, deliver a notice of the expiry to the Secretary of State.

Supervisor's accounts and reports

- 8.28.**—(1) The supervisor must keep accounts and records where the IVA authorises or requires the supervisor—
- (a) to carry on the business of the debtor or trade on behalf of or in the name of the debtor;
 - (b) to realise assets of the debtor or, where the debtor is an undischarged bankrupt, belonging to the bankrupt's estate; or
 - (c) otherwise to administer or dispose of any funds of the debtor or the bankrupt's estate.
- (2) The accounts and records which must be kept are of the supervisor's acts and dealings in, and in connection with, the IVA, including in particular records of all receipts and payments of money.
- (3) The supervisor must preserve any such accounts and records which were kept by any other person who has acted as supervisor of the IVA and are in the supervisor's possession.
- (4) The supervisor must deliver reports on the progress and prospects for the full implementation of the IVA to—
- (a) the debtor; and
 - (b) the creditors bound by the IVA.
- (5) The first report must cover the period of 12 months commencing on the date on which the IVA was approved and a further report must be made for each subsequent period of 12 months.
- (6) Each report must be delivered within the period of two months after the end of the 12 month period.
- (7) Such a report is not required if an obligation to deliver a report under rule 8.31(3) arises in the two months after the end of the period.
- (8) Where the supervisor is authorised or required to do any of the things mentioned in paragraph (1), the report—
- (a) must include or be accompanied by a summary of receipts and payments which paragraph (2) requires to be recorded; or

(14) Section 262(4)(b) is substituted and subsections (1) to (5), (7) and (8) are amended by paragraph 69(7) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

- (b) where there have been no such receipts and payments, must say so.

Production of accounts and records to the Secretary of State

8.29.—(1) The Secretary of State may during the IVA or after its full implementation or termination require the supervisor to produce for inspection (either at the supervisor’s premises or elsewhere)—

- (a) the supervisor’s accounts and records in relation to the IVA; and
- (b) copies of reports and summaries prepared in compliance with rule 8.28.

(2) The Secretary of State may require any accounts and records produced under this rule to be audited and, if so, the supervisor must provide such further information and assistance as the Secretary of State requires for the purposes of the audit.

Fees and expenses

8.30. The fees and expenses that may be incurred for the purposes of the IVA are—

- (a) fees for the nominee’s services agreed with the debtor, the official receiver or any trustee;
- (b) disbursements made by the nominee before the approval of the IVA; and
- (c) fees or expenses which—
 - (i) are sanctioned by the terms of the IVA, or
 - (ii) where they are not sanctioned by the terms of the IVA, would be payable, or correspond to those which would be payable, in the debtor’s bankruptcy.

Termination or full implementation of the IVA

8.31.—(1) Not more than 28 days after the full implementation or termination of the IVA the supervisor must deliver a notice that the IVA has been fully implemented or terminated to the debtor and the creditors bound by the IVA.

- (2) The notice must state the date the IVA took effect.
- (3) The notice must be accompanied by a copy of a report by the supervisor which—
 - (a) summarises all receipts and payments in relation to the IVA;
 - (b) explains any departure from the terms of the IVA as approved by the creditors; and
 - (c) if the IVA has terminated, sets out the reasons why.
- (4) The supervisor must within the 28 days mentioned above—
 - (a) deliver a copy of the notice and report to the Secretary of State; and
 - (b) if the creditors were invited to consider the proposal following a report under section 256(1)(aa), file a copy of the notice and report with the court.
- (5) The supervisor must not vacate office until the notice and report have been delivered to the Secretary of State.

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(15) 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)(16).

(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;

(15) 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).

(16) 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).

- (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(17) 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 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.

(17) 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).

(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(18)), 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.

(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.

CHAPTER 8

Time recording information

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

Provision of information

8.38.—(1) This rule applies where the remuneration of the nominee or the supervisor has been fixed on the basis of time spent.

(2) A person who is acting, or has acted within the previous two years as—

- (a) a nominee in relation to a proposal; or
- (b) the supervisor in relation to an IVA;

must, within 28 days of receipt of a request from a person mentioned in paragraph (3), deliver free of charge to that person a statement complying with paragraph (4) and (5).

(3) The persons are—

- (a) the debtor; and
- (b) where the proposal has been approved, a creditor bound by the IVA.

(4) The statement must cover the period which—

- (a) in the case of a person who has ceased to act as nominee or supervisor in relation to an IVA, begins with the date of that person's appointment as nominee or supervisor and ends with the date of ceasing to act; and
- (b) in any other case, consists of one or more complete periods of six months beginning with the date of appointment and ending most nearly before the date of receiving the request.

(5) The statement must set out—

- (i) the total number of hours spent on the matter during that period by the nominee or supervisor, and by any staff,
- (ii) for each grade of staff engaged on the matter, the average hourly rate at which work carried out by staff in that grade is charged, and
- (iii) the number of hours spent on the matter by each grade of staff during that period.