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STATUTORY INSTRUMENTS

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**2016 No. 1024**

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

**PART 7**

**WINDING UP BY THE COURT**

**CHAPTER 13**

**Public examination of company officers and others (section 133)**

**Examinee unfit for examination**

**7.104.**—(1) Where the examinee is a person who lacks capacity within the meaning of the Mental Capacity Act 2005<sup>(1)</sup> or is unfit to undergo or attend for public examination, the court may—

- (a) stay the order for the examinee’s public examination; or
  - (b) order that it is to be conducted in such manner and at such place as it thinks just.
- (2) The applicant for an order under paragraph (1) must be—
- (a) a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the examinee;
  - (b) a person who appears to the court to be a suitable person to make the application; or
  - (c) the official receiver.
- (3) Where the application is made by a person other than the official receiver, then—
- (a) the application must, unless the examinee is a person who lacks capacity within the meaning of the Mental Capacity Act 2005, be supported by the witness statement of a registered medical practitioner as to the examinee’s mental and physical condition;
  - (b) at least five business days’ notice of the application must be given to the official receiver and the liquidator (if other than the official receiver); and
  - (c) before any order is made on the application, the applicant must deposit with the official receiver such sum as the latter certifies to be necessary for the additional expenses of an examination.
- (4) An order must contain—
- (a) identification details for the proceedings;
  - (b) the name and postal address of the applicant;
  - (c) the name and title of the judge making the order;
  - (d) the capacity in which the applicant (other than the official receiver) made the application;
  - (e) the name and postal address of the examinee;
  - (f) the date of the order for the examinee’s public examination (“the original order”);

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(1) 2005 c.9.

- (g) a statement that the court is satisfied that the examinee specified in the order lacks capacity within the meaning of the Mental Capacity Act 2005 to manage and administer the examinee's property and affairs or is unfit to undergo a public examination;
  - (h) an order that—
    - (i) the original order is to be stayed on the grounds that the examinee is unfit to undergo a public examination, or
    - (ii) the original order is varied (as specified in this order) on the grounds that the examinee is unfit to attend the public examination fixed by the original order; and
  - (i) the date of the order.
- (5) Where a person other than the official receiver makes the application, the court may order that some or all of the expenses of the examination are to be payable out of the deposit under paragraph (3) (c), instead of as an expense of the winding up.
- (6) Where the application is made by the official receiver it may be made without notice to any other party, and may be supported by evidence set out in a report by the official receiver to the court.