
STATUTORY RULES OF NORTHERN IRELAND

1991 No. 364

The Insolvency Rules (Northern Ireland) 1991

PARTS 7 TO 12

PART 7

COURT PROCEDURE AND PRACTICE

CHAPTER 1

GENERAL PROCEDURE

Heading and title of proceedings

7.01.—(1) Every proceeding under Parts II to VII of the Order shall be headed and, with any necessary additions, be intitled—

“IN THE HIGH COURT OF JUSTICE IN NORTHERN
IRELAND CHANCERY DIVISION (COMPANY INSOLVENCY)

or in respect of proceedings in the winding up of companies

(COMPANIES WINDING UP)

IN THE MATTER OF (*name of company to which the proceedings relate*)

AND IN THE MATTER OF THE INSOLVENCY (NORTHERN IRELAND) ORDER 1989”.

(2) Every proceeding under Parts VIII to X of the Order shall be headed and, with any necessary additions, intitled—

“IN THE HIGH COURT OF JUSTICE IN NORTHERN
IRELAND CHANCERY DIVISION (BANKRUPTCY)

Re (name and short description, including any current trading name, of debtor or bankrupt to which the proceedings relate)”.

[E.R.7.26]

Court and chambers

7.02.—(1) The following matters and applications shall be heard in open court—

- (a) matters and applications heard by the Judge, except those referred by the Master to be heard by the Judge in chambers or directed by the Judge to be so heard;
- (b) petitions to wind up companies;
- (c) applications by bankrupts for leave to be a director of or directly or indirectly to take part or be concerned in the promotion, formation or management of a company;
- (d) public examinations of bankrupts or officers of a company; and
- (e) opposed applications for discharge of bankrupts or for the suspension or the lifting of the suspension of discharge.

(2) Every other matter or application before the Master shall be heard in chambers.

[E.R.7.6]

Judge and Master

7.03.—(1) The following applications shall be made direct to the Judge—

- (a) applications for the committal of any person to prison for contempt;
- (b) applications for injunctions or for the modification or discharge of injunctions;
- (c) applications for interlocutory relief or directions after a matter has been referred to the Judge;
- (d) appeals from an order or decision of the Master;
- (e) applications pursuant to Article 107 (sanctioning dispositions made after commencement of winding up of company);
- (f) petitions for administration orders;
- (g) applications after an administration order has been made, pursuant to Article 27(3) (for directions) or Article 30(3) (to discharge or vary the order, etc.); and
- (h) applications pursuant to Article 18(3) (to stay a winding up or discharge an administration order or for directions where a company voluntary arrangement has been approved).

(2) Subject to paragraph (1), unless the Judge has given a general or special direction to the contrary, the jurisdiction of the court to hear and determine an application may be exercised by the Master, and the application shall be made to the Master in the first instance.

(3) Where the application is made to the Master he may, after giving any necessary directions, refer to the Judge any matter which he thinks should properly be decided by the Judge, and the Judge may either dispose of the matter or refer it back to the Master with such directions as he thinks fit.

(4) Nothing in this Rule precludes an application being made directly to the Judge in a proper case.

(5) Subject to this Rule, anything to be done under or by virtue of the Order or the Rules by, to or before the court may be done by, to or before the Judge or the Master.

(6) Order 32, rules 11 and 12 of the Supreme Court Rules do not apply in insolvency proceedings.

Transfer of certain proceedings

7.04.—(1) This Rule applies where—

- (a) an order for the winding up of a company, or a bankruptcy order in the case of an individual, has been made by the court, or
- (b) in either such case, a provisional liquidator or (as the case may be) an interim receiver has been appointed.

(2) The Judge may, of his own motion, order the transfer to the Chancery Division of any such proceedings as are mentioned in paragraph (3) and are pending against the company or individual concerned (“the insolvent”) in another Division of the High Court.

(3) Proceedings which may be so transferred are those brought by or against the insolvent for the purpose of enforcing a claim against the insolvent estate, or brought by a person other than the insolvent for the purpose of enforcing any such claim (including in either case proceedings of any description by a debenture-holder or mortgagee).

(4) Where proceedings are transferred under this Rule, the Master may (subject to general or special directions of the Judge) dispose of any matter arising in the proceedings which would, but for the transfer, have been disposed of in chambers.

[E.R.7.15]

CHAPTER 2 APPLICATIONS

Preliminary

7.05. This Chapter applies to any application made to the court under the Order or the Rules except a petition for—

- (a) an administration order under Part III,
- (b) a winding-up order under Part V, or
- (c) a bankruptcy order under Part IX

of the Order.

[E.R.7.1]

Interpretation

7.06.—(1) In this Chapter, except in so far as the context otherwise requires—

“originating application” means an application to the court which is not an application in pending proceedings before the court; and

“ordinary application” means any other application to the court.

(2) Every application shall be in the form appropriate to the application concerned.

[E.R.7.2]

Form and contents of application

7.07.—(1) Each application shall be in writing and shall state—

- (a) the names of the parties;
- (b) the nature of the relief or order applied for or the directions sought from the court;
- (c) the names and addresses of the persons (if any) on whom it is intended to serve the application or that no person is intended to be served;
- (d) where the Order or the Rules require that notice of the application is to be given to specified persons, the names and addresses of all those persons (so far as known to the applicant); and
- (e) the applicant's address for service.

(2) An originating application shall set out the grounds on which the applicant claims to be entitled to the relief or order sought.

(3) The application must be signed by the applicant if he is acting in person or, when he is not so acting, by or on behalf of his solicitor.

[E.R.7.3]

Filing and service of application

7.08.—(1) The application shall be filed in court, accompanied by one copy and a number of additional copies equal to the number of persons who are to be served with the application.

(2) Subject to paragraph (6) and Rule 7.09, or unless the Rule under which the application is brought provides otherwise, or the court otherwise orders, upon the presentation of the documents mentioned in paragraph (1), the court shall fix a venue for the application to be heard.

(3) Unless the court otherwise directs, the applicant shall serve a sealed copy of the application, endorsed with the venue for the hearing, on the respondent named in the application (or on each respondent if more than one).

(4) The court may give any of the following directions—

- (a) that the application be served upon persons other than those specified by the relevant provision of the Order or the Rules;
- (b) that the giving of notice to any person may be dispensed with;
- (c) that notice be given in some way other than that specified in paragraph (3).

(5) Unless the provision of the Order or the Rules under which the application is made provides otherwise, and subject to paragraph (6), the application must be served at least 14 days before the hearing date.

(6) Where the case is one of urgency, the court may (without prejudice to its general power to extend or abridge time limits)—

- (a) hear the application immediately, either with or without notice to, or the attendance of, other parties, or
- (b) authorise a shorter period of service than that provided for by paragraph (5);

and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the court thinks fit.

[E.R.7.4]

Other hearings ex parte

7.09.—(1) Where the relevant provisions of the Order or the Rules do not require service of the application on, or notice of it to be given to, any person, the court may hear the application ex parte.

(2) Where the application is properly made ex parte, the court may hear it forthwith, without fixing a venue as required by Rule 7.08(2).

(3) Alternatively, the court may fix a venue for the application to be heard, in which case Rule 7.08 applies (so far as relevant).

[E.R.7.5]

Use of affidavit evidence

7.10.—(1) In any proceedings evidence may be given by affidavit unless by any provision of the Rules it is otherwise provided or the court otherwise directs; but the court may, on the application of any party, order the attendance for cross-examination of the person making the affidavit.

(2) Where, after such an order has been made, the person in question does not attend, his affidavit shall not be used in evidence without the leave of the court.

[E.R.7.7]

Filing and service of affidavits

7.11. Unless the provision of the Order or the Rules under which the application is made provides otherwise, or the court otherwise allows—

- (a) if the applicant intends to rely at the first hearing on affidavit evidence, he shall file the affidavit or affidavits (if more than one) in court and serve a copy or copies on the respondent, not less than 14 days before the hearing date, and
- (b) where a respondent to an application intends to oppose it and to rely for that purpose on affidavit evidence, he shall file the affidavit or affidavits (if more than one) in court and serve a copy or copies on the applicant, not less than 7 days before the hearing date.

[E.R.7.8]

Use of reports

7.12.—(1) A report may be filed in court instead of an affidavit—

- (a) in any case, by the official receiver (whether or not he is acting in any capacity mentioned in sub-paragraph (b)), or
- (b) unless the application involves other parties or the court otherwise orders, by—
 - (i) an administrator, a liquidator or a trustee in bankruptcy,
 - (ii) a provisional liquidator or an interim receiver,
 - (iii) a nominee or a supervisor of a voluntary arrangement under Part II or VIII of the Order,
 - (iv) a special manager, or
 - (v) an insolvency practitioner appointed under Article 247(2).

(2) In any case where a report is filed instead of an affidavit, the report shall be treated for the purposes of Rule 7.11 and any hearing before the court as if it were an affidavit.

(3) Any report filed by the official receiver in accordance with the Order or the Rules is prima facie evidence of any matter contained in it.

[E.R.7.9]

Adjournment of hearing; directions

7.13.—(1) The court may adjourn the hearing of an application on such terms (if any) as it thinks fit.

(2) The court may at any time give such directions as it thinks fit as to—

- (a) service or notice of the application on or to any person, whether in connection with the venue of a resumed hearing or for any other purpose;
- (b) whether particulars of claim and defence are to be delivered and generally as to the procedure on the application;
- (c) the manner in which any evidence is to be adduced at a resumed hearing and in particular (but without prejudice to the generality of this sub-paragraph) as to—
 - (i) the taking of evidence wholly or in part by affidavit or orally;
 - (ii) the cross-examination either before the Judge or the Master on the hearing in court or in chambers, of any deponents to affidavits;
 - (iii) any report to be given by the official receiver or any person mentioned in Rule 7.12(1)(b);
- (d) the matters to be dealt with in evidence.

[E.R.7.10]

CHAPTER 3 SHORTHAND WRITERS

Nomination and appointment of shorthand writers

7.14.—(1) The Judge may in writing nominate one or more persons to be official shorthand writers to the court.

(2) The court may, at any time in the course of insolvency proceedings, appoint a shorthand writer to take down the evidence of a person examined under Article 113, 200, 263 or 337.

(3) Where the official receiver applies to the court for an order appointing a shorthand writer, he shall name the person he proposes for appointment; and that appointment shall be made, unless the court otherwise orders.

[E.R.7.16]

Cost of shorthand note

7.15. Where in insolvency proceedings the court appoints a shorthand writer on the application of the official receiver, in order that a written record may be taken of the evidence of a person to be examined, the cost of the written record is deemed an expense of the official receiver in the proceedings.

[E.R.7.18]

Remuneration

7.16. The remuneration of the shorthand writer shall be paid by the party at whose instance the appointment was made or out of the insolvent estate, or otherwise as the court may direct, at the rates payable for taking a note of evidence and making a transcript for use in the Court of Appeal.

[E.R.7.17]

Mechanical recording

7.17.—(1) The court may, instead of appointing a shorthand writer to take down evidence, direct that the whole or part of such evidence be recorded by mechanical means.

(2) Where evidence is recorded by mechanical means the person who operated the recording machine shall file in court the mechanical record so made, accompanied by a certificate attached to each recording that it is a complete recording or a continuous part of a complete recording taken at the proceedings to which it relates.

(3) Where the court directs that a transcript be made of evidence recorded by mechanical means the transcript shall be certified by the person responsible for transcribing the record as a correct and complete transcript of the mechanical record referred to in the certificate.

(4) The costs of a mechanical recording of an examination of a person made at the instance of the official receiver shall be deemed an expense of the official receiver in the proceedings.

(5) The costs of the mechanical recording shall be paid by the party at whose instance it was made, or out of the insolvent estate, or otherwise as the court may direct.

CHAPTER 4 ENFORCEMENT PROCEDURES

Meaning of “property”

7.18. In this Chapter references to property include books, papers and records.

[E.R.7.21(3)]

Enforcement of court orders

7.19. In any insolvency proceedings, orders of the court may be enforced in the same manner as a judgment to the same effect.

[E.R.7.19(1)]

Orders enforcing compliance with the Order

7.20.—(1) The court may, on application by the competent person, make such orders as it thinks necessary for the enforcement of obligations falling on any person in accordance with—

- (a) Article 34, 57 or 111 (duty to submit statement of affairs in administration, administrative receivership or winding up),
- (b) Article 121(2) (liquidator to furnish information, books, papers, etc.), or
- (c) Article 199 (duty of various persons to co-operate with office-holder).

(2) The competent person for this purpose is—

- (a) under Article 34, the administrator,
- (b) under Article 57, the administrative receiver,
- (c) under Article 111 or 121(2), the official receiver, and
- (d) under Article 199, the official receiver, the administrator, the administrative receiver, the liquidator or the provisional liquidator, as the case may be.

(3) An order of the court under this Rule may provide that all costs of and incidental to the application for it shall be borne by the person against whom the order is made.

[E.R.7.20]

Warrants under Article 114 or 335

7.21. When a person is arrested under a warrant issued by the court under Article 114 (officer of company failing to attend for public examination), or Article 335 (arrest of debtor or bankrupt)—

- (a) the constable apprehending him shall give him into the custody of the governor of the prison named in the warrant, who shall keep him in custody until such time as the court otherwise orders and shall produce him before the court as it may from time to time direct; and
- (b) any property in the arrested person's possession which may be seized shall be—
 - (i) lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or
 - (ii) kept by the constable seizing it pending the receipt of written orders from the court as to its disposal,

as may be directed by the court in the warrant.

[E.R.7.22]

Warrants under Article 200 or 337

7.22.—(1) When a person is arrested under a warrant issued under Article 200 (inquiry into insolvent company's dealings) or 337 (the equivalent in bankruptcy), the constable arresting him shall forthwith bring him before the court in order that he may be examined.

(2) If he cannot immediately be brought up for examination, the constable shall deliver him into the custody of the governor of the prison named in the warrant, who shall keep him in custody and produce him before the court as it may from time to time direct.

(3) After arresting the person named in the warrant, the constable shall forthwith report to the court the arrest or delivery into custody (as the case may be) and apply to the court to fix a venue for the person's examination.

(4) The court shall appoint the earliest practicable time for the examination, and shall—

- (a) direct the governor of the prison to produce the person for examination at the time and place appointed, and
- (b) forthwith give notice of the venue to the person who applied for the warrant.

(5) Any property in the arrested person's possession which may be seized shall be—

- (a) lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or
- (b) kept by the constable seizing it pending the receipt of written orders from the court as to its disposal,

as may be directed by the court.

[E.R.7.23]

Warrants under Article 336

7.23.—(1) A warrant issued under Article 336(3) (search of premises not belonging to the bankrupt) shall authorise any person executing it to seize any property of the bankrupt found as a result of the execution of the warrant.

(2) Any property seized under a warrant issued under Article 336(2) or (3) shall be—

- (a) lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or
- (b) kept by the person seizing it pending the receipt of written orders from the court as to its disposal,

as may be directed by the warrant.

[E.R.7.25]

CHAPTER 5

COURT RECORDS AND RETURNS

Court records

7.24. The court shall keep records of all insolvency proceedings, and shall cause to be entered in the records the taking of any step in the proceedings and such decisions of the court in relation thereto, as the court thinks fit.

[E.R.7.27]

Inspection of records

7.25.—(1) Subject to paragraph (2), the court's records of insolvency proceedings shall be open to inspection by any person.

(2) If in the case of a person applying to inspect the records the Master is not satisfied as to the propriety of the purpose for which inspection is required, he may refuse to allow it. The person may then apply forthwith and ex parte to the Judge, who may refuse the inspection, or allow it on such terms as he thinks fit.

(3) The Judge's decision under paragraph (2) is final.

[E.R.7.28]

File of court proceedings

7.26.—(1) In respect of all insolvency proceedings, the court shall open and maintain a file for each case; and (subject to directions of the Master) all documents relating to such proceedings shall be placed on the relevant file.

(2) No proceedings shall be filed in the Central Office of the Supreme Court.

[E.R.7.30]

Right to inspect the file

7.27.—(1) In the case of any insolvency proceedings, the following have the right, at all reasonable times, to inspect the court's file of the proceedings—

- (a) the person who, in relation to those proceedings, is the responsible insolvency practitioner;
- (b) any duly authorised officer of the Department; and
- (c) any person stating himself in writing to be a creditor of the company to which, or the individual to whom, the proceedings relate.

(2) The same right of inspection is exercisable—

- (a) in proceedings under Parts II to VII of the Order, by every person who is, or at any time has been, a director or officer of the company to which the proceedings relate, or who is a member of the company or a contributory in its winding up;
- (b) in proceedings with respect to a voluntary arrangement proposed by a debtor under Part VIII of the Order, by the debtor;
- (c) in bankruptcy proceedings, by—
 - (i) the bankrupt,
 - (ii) any person against whom, or by whom, a bankruptcy petition has been presented, and
 - (iii) any person who has been served, in accordance with Chapter 1 of Part 6, with a statutory demand.

(3) The right of inspection conferred by paragraph (1) or (2) on any person may be exercised on his behalf by a person properly authorised by him.

(4) Any person may, by special leave of the court, inspect the file.

(5) The right of inspection conferred by this Rule is not exercisable in the case of documents, or parts of documents, as to which the court directs (either generally or specially) that they are not to be made open to inspection without the court's leave.

(6) An application for a direction of the court under paragraph (5) may be made by the official receiver, by the person who in relation to any proceedings is the responsible insolvency practitioner, or by any party appearing to the court to have an interest.

(7) If, for the purpose of powers conferred by the Order or the Rules, the Department or the official receiver requires to inspect the file of any insolvency proceedings, and requests the transmission of the file, the court shall comply with the request (unless the file is for the time being in use for the court's own purposes).

(8) Paragraphs (2) and (3) of Rule 7.25 apply in respect of the court's file of any proceedings as they apply in respect of court records.

[E.R.7.31]

Filing of Gazette notices and advertisements

7.28.—(1) A copy of every issue of the Gazette shall be preserved in the court for a period of not less than 2 years.

(2) Where there appears in a newspaper an advertisement relating to insolvency proceedings, the person inserting the advertisement shall file a copy of it in the court and the copy shall be accompanied by, or have endorsed on it, such particulars as are necessary to identify the proceedings and the date of the advertisement's appearance.

(3) An officer of the court shall from time to time file a memorandum giving the dates of, and other particulars relating to, any notice published in the Gazette, and any newspaper advertisements, which relate to insolvency proceedings.

(4) The officer's memorandum is prima facie evidence that any notice or advertisement mentioned in it was duly inserted in the issue of the newspaper or the Gazette which is specified in the memorandum.

[E.R.7.32]

CHAPTER 6

COSTS AND TAXATION

Application of Supreme Court Rules

7.29. Subject to provision to inconsistent effect made in this Chapter, Order 62 of the Supreme Court Rules applies to insolvency proceedings in the High Court with any necessary modifications.

[E.R.7.33]

Requirement to tax costs

7.30.—(1) Subject to paragraphs (2) and (4), where the costs of any person are payable out of the insolvent estate, those costs shall be taxed unless agreed between the responsible insolvency practitioner and the person entitled to payment, and in the absence of such agreement the responsible insolvency practitioner may require taxation by notice in writing requiring that person to deliver his bill of costs to the Taxing Master for taxation.

(2) If a liquidation or creditors' committee established in insolvency proceedings (except administrative receivership) resolves that any such costs be taxed, the responsible insolvency practitioner shall require taxation.

(3) Where the costs of any person employed by a responsible insolvency practitioner in insolvency proceedings are required to be taxed or fixed by order of the court, this does not preclude the responsible insolvency practitioner from making payments on account to such person on the basis of an undertaking by that person to repay immediately any money which may, on taxation or when fixed by the court, prove to have been overpaid, with interest at the rate applicable to a money judgment of the High Court on the date payment was made and for the period from the date of payment to that of repayment.

(4) In any proceedings before the court, including proceedings on a petition, the court may order costs to be taxed.

(5) Unless otherwise directed or authorised, the costs of a trustee in bankruptcy or a liquidator are to be allowed on the standard basis specified in Order 62, rule 12 of the Supreme Court Rules.

(6) This Rule applies additionally (with any necessary modifications) to winding-up and bankruptcy proceedings commenced before the coming into operation of the Rules and in its application to such proceedings “the responsible insolvency practitioner” includes the Official Assignee for bankruptcy for Northern Ireland and the Official Assignee for company liquidations for Northern Ireland.

(7) In this Rule “costs” does not include the remuneration of the responsible insolvency practitioner.

[E.R.7.34]

Measurement of remuneration by Taxing Master

7.31.—(1) Where under the Rules the court is required to fix or is authorised to allow the remuneration of a responsible insolvency practitioner or of any person employed by him in insolvency proceedings, it may direct that such remuneration be measured by the Taxing Master.

(2) Paragraphs (3) to (9) apply where a direction is given under paragraph (1).

(3) The person whose remuneration is to be measured shall lodge in the Taxing Master's Office a bill containing particulars of his charges and disbursements and a copy of the court's direction.

(4) Upon lodgment of the bill the Taxing Master shall appoint a time and place at which he will proceed to measure the remuneration and shall give notice thereof to the person lodging the bill and to such other persons, if any, to whom he considers notice ought to be given.

(5) Upon receiving such notice the person lodging the bill shall attend on the Taxing Master in accordance therewith and shall produce such information as the Taxing Master may require.

(6) Order 62, rule 22 of the Supreme Court Rules applies in respect of the certification of such measurement as it applies in respect of the issue of a certificate of taxation, with the necessary modifications.

(7) Any party who is dissatisfied with any decision of the Taxing Master on the measurement of the bill as provided by paragraph (4) may apply to the Taxing Master to review his decision.

(8) Part VI of Order 62 of the Supreme Court Rules applies in respect of the review of such measurement as it applies in respect of the review of taxation, with the necessary modifications.

(9) Paragraphs (3) to (8) apply additionally (with any necessary modifications) to the measurement by the Taxing Master of the remuneration of a liquidator or accountant in winding-up proceedings commenced before the coming into operation of the Rules under the Companies (Winding-up) Rules (Northern Ireland) 1984 (1) and of the remuneration of an accountant in bankruptcy proceedings commenced before that date under the Bankruptcy Rules (Northern Ireland) 1983(2).

Procedure where taxation required

7.32.—(1) Before taxing the costs of any person employed in insolvency proceedings by a responsible insolvency practitioner, the Taxing Master shall require a certificate of employment, which shall be endorsed on the bill and signed by the responsible insolvency practitioner.

(2) The certificate shall include—

(1) S.R. 1984 No. 163

(2) S.R. 1983 No. 310

- (a) the name and address of the person employed,
- (b) details of the functions to be carried out under the employment, and
- (c) a note of any special terms of remuneration which have been agreed.

(3) Every person whose costs are required to be taxed in insolvency proceedings shall, on being required in writing to do so by the responsible insolvency practitioner, deliver his bill of costs to the Taxing Master for taxation.

(4) If that person does not so deliver his bill within 3 months of the requirement under paragraph (3), or within such further time as the court, on application, may grant, the responsible insolvency practitioner may deal with the insolvent estate without regard to any claim by that person, whose claim is forfeited.

(5) Where in any such case such a claim lies additionally against a responsible insolvency practitioner in his personal capacity, that claim is also forfeited.

[E.R.7.35]

Petitions presented by insolvents

7.33.—(1) In any case where a petition is presented by a company or individual (“the insolvent”) against himself, any solicitor acting for the insolvent shall in his bill of costs give credit for any sum or security received from the insolvent as a deposit on account of the costs to be incurred in respect of the filing and prosecution of the petition; and the deposit shall be noted by the Taxing Master on the certificate of taxation.

(2) Paragraph (3) applies where a petition is presented by a person other than the insolvent to whom the petition relates and before it is heard the insolvent presents a petition for the same order, and that order is made.

(3) Unless the court considers that the insolvent estate has benefitted by the insolvent's conduct, or that there are otherwise special circumstances justifying the allowance of costs, no costs shall be allowed to the insolvent or his solicitor out of the insolvent estate.

[E.R.7.37]

Costs paid otherwise than out of the insolvent estate

7.34. Where a bill of costs is taxed under an order of the court directing that the costs are to be paid otherwise than out of the insolvent estate, the Taxing Master shall note on the certificate of taxation by whom, or the manner in which, the costs are to be paid.

[E.R.7.38]

Award of costs against official receiver or responsible insolvency practitioner

7.35. Without prejudice to any provision of the Order or the Rules by virtue of which the official receiver is not in any event to be liable for costs, where the official receiver or a responsible insolvency practitioner is made a party to any proceedings on the application of another party to the proceedings, he shall not be personally liable for costs unless the court otherwise directs.

[E.R.7.39]

Applications for costs

7.36.—(1) This Rule applies where a party to, or person affected by, any proceedings in an insolvency—

- (a) applies to the court for an order allowing his costs, or part of them, incidental to the proceedings, and
 - (b) that application is not made at the time of the proceedings.
- (2) The person concerned shall serve a sealed copy of his application on the responsible insolvency practitioner, and, in a winding up by the court or bankruptcy, on the official receiver.
- (3) The responsible insolvency practitioner and, where appropriate, the official receiver may appear on the application.
- (4) No costs of or incidental to the application shall be allowed to the applicant unless the court is satisfied that the application could not have been made at the time of the proceedings.

[E.R.7.40]

Costs and expenses of witnesses

7.37.—(1) Except as directed by the court, no allowance as a witness in any examination or other proceedings before the court shall be made to the bankrupt or an officer of the insolvent company to which the proceedings relate.

(2) A person presenting any petition in insolvency proceedings shall not be regarded as a witness on the hearing of the petition, but the Taxing Master may allow his expenses of travelling and subsistence.

[E.R.7.41]

CHAPTER 7

PERSONS INCAPABLE OF MANAGING THEIR AFFAIRS

Introductory

7.38.—(1) This Chapter applies where in insolvency proceedings it appears to the court that a person affected by the proceedings is one who is incapable of managing and administering his property and affairs either—

- (a) by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986(3), or
- (b) due to physical affliction or disability.

(2) The person concerned is referred to as “the incapacitated person”.

[E.R.7.43]

Appointment of another person to act

7.39.—(1) The court may appoint such person as it thinks fit to appear for, represent or act for the incapacitated person.

(2) The appointment may be made either generally or for the purpose of any particular application or proceeding, or for the exercise of particular rights or powers which the incapacitated person might have exercised but for his incapacity.

(3) The court may make the appointment either of its own motion or on application by—

- (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 incapacitated person, or

- (b) any relative or friend of the incapacitated person who appears to the court to be a proper person to make the application, or
- (c) the official receiver, or
- (d) the person who, in relation to the proceedings, is the responsible insolvency practitioner.

(4) Application under paragraph (3) may be made ex parte; but the court may require such notice of the application as it thinks necessary to be given to the person alleged to be incapacitated, or any other person, and may adjourn the hearing of the application to enable the notice to be given.

[E.R.7.44]

Affidavit in support of application

7.40.—(1) Except where made by the official receiver, an application under Rule 7.39(3) shall, subject to paragraph (3), be supported by an affidavit of a registered medical practitioner as to the mental or physical condition of the incapacitated person.

(2) In the excepted case, the application shall, subject to paragraph (3), be supported by a report by the official receiver referring to a report from a registered medical practitioner as to the mental or physical condition of the incapacitated person.

(3) The affidavit of, or report by, a registered medical practitioner shall not be required where the incapacitated person is a patient within the meaning of the Mental Health (Northern Ireland) Order 1986.

[E.R.7.45]

Service of notices following appointment

7.41. Any notice served on, or sent to, a person appointed under Rule 7.39 has the same effect as if it had been served on, or given to, the incapacitated person.

[E.R.7.46]

CHAPTER 8

APPEALS IN INSOLVENCY PROCEEDINGS

Appeals from Master

7.42.—(1) Without prejudice to the power of the Master to review an order made by him under Article 371, an order or decision of the Master in insolvency proceedings may be reviewed by an appeal to the Judge.

(2) Order 58, rule 1(2) to (4) of the Supreme Court Rules applies to such an appeal, with the substitution in paragraph (3) of the words “28 days” for the words “5 days” and the words “7 days” for the words “2 clear days”.

[E.R.7.47]

Appeals in bankruptcy

7.43. In bankruptcy proceedings, an appeal lies at the instance of the Department from any order of the court made on an application for the rescission or annulment of a bankruptcy order, or for a bankrupt's discharge.

[E.R.7.48]

Appeal against decision of Department or official receiver

7.44. An appeal under the Order or the Rules against a decision of the Department or the official receiver shall be brought within 28 days of the notification of the decision.

[E.R.7.50]

CHAPTER 9

GENERAL

Principal court rules and practice to apply

7.45. Except so far as inconsistent with the Rules, the Supreme Court Rules and the practice of the High Court apply to insolvency proceedings with any necessary modifications.

[E.R.7.51]

Right of audience

7.46. Official receivers have right of audience in insolvency proceedings.

[E.R.7.52]

Right of attendance (company insolvency)

7.47.—(1) Subject to paragraphs (2) to (6), in company insolvency proceedings any person stating himself in writing, in records kept by the court for that purpose, to be a creditor or member of the company or, where the company is being wound up, a contributory, is entitled, at his own cost, to attend in court or in chambers at any stage of the proceedings.

(2) Attendance may be by the person himself, or his solicitor.

(3) A person so entitled may request the court in writing to give him notice of any step in the proceedings; and, subject to his paying the costs involved and keeping the court informed as to his address, the court shall comply with the request.

(4) If the court is satisfied that the exercise by a person of his rights under this Rule has given rise to costs for the insolvent estate which would not otherwise have been incurred and ought not, in the circumstances, to fall on that estate, it may direct that the costs be paid by the person concerned, to an amount specified.

(5) The person's rights under this Rule are in abeyance so long as those costs are not paid.

(6) The court may appoint one or more persons to represent the creditors, the members or the contributories of an insolvent company, or any class of them, to have the rights conferred by this Rule, instead of the rights being exercisable by any or all of them individually.

(7) If two or more persons are appointed under paragraph (6) or represent the same interest, they must (if at all) instruct the same solicitor.

[E.R.7.53]

Responsible insolvency practitioner's solicitor

7.48. Where in any proceedings the attendance of the responsible insolvency practitioner's solicitor is required, whether in court or in chambers, the responsible insolvency practitioner himself need not attend, unless directed by the court.

[E.R.7.54]

Drawing up and filing of orders

7.49.—(1) Subject to paragraph (2), every order of the court shall be drawn up, sealed and filed.

(2) The Judge may direct that specified categories of orders need not be drawn up unless the Judge or the Master making the order otherwise directs.

(3) Where no order is drawn up, a note or memorandum of the order, signed or initialled by the Judge or the Master making the order and filed, shall be sufficient evidence of the order having been made.

(4) Where an order has not been drawn up, a party to the proceedings in which the order is made may, and if he wishes to appeal against the order shall, within 7 days after the order is made, apply to the Master to have the order drawn up, and on such application the order shall be drawn up, sealed and filed.

Formal defects

7.50. No insolvency proceedings shall be invalidated by any formal defect or by any irregularity, unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court.

[E.R.7.55]

Restriction on concurrent proceedings and remedies

7.51. Where in insolvency proceedings the court makes an order staying any action, execution or other legal process against the property of a company, or against the property or person of an individual debtor or bankrupt, service of the order may be effected by sending a sealed copy of the order to whatever is the address for service of the plaintiff or other party having the carriage of the proceedings to be stayed.

[E.R.7.56]

Affidavits

7.52.—(1) Subject to paragraphs (2) to (5), the rules and practice obtaining in the High Court with regard to affidavits, their form and contents, and the procedure governing their use, are to be taken as applicable in all insolvency proceedings.

(2) In applying Order 41 of the Supreme Court Rules (which relates to affidavits generally), there are to be disregarded provisions which are inconsistent with, or necessarily excluded by, paragraphs (3) to (5).

(3) Where in insolvency proceedings an affidavit is made by the official receiver or the responsible insolvency practitioner, the deponent shall state the capacity in which he makes it, the position which he holds, and the address at which he works.

(4) Notwithstanding Order 41, rule 8 of the Supreme Court Rules (affidavit not to be sworn before party's own solicitor), a creditor's affidavit of debt may be sworn before his own solicitor.

(5) The official receiver or any officer of the court duly authorised in that behalf, may take affidavits and declarations.

[E.R.7.57]

Security in court

7.53.—(1) Subject to paragraph (3), where security has to be given to the court (otherwise than in relation to costs) it shall be given by bond.

(2) The bond shall be taken in a penal sum which, except with the consent of the opposite party, shall be not less than the sum for which security is to be given and probable costs.

(3) A person required to give security may, in lieu thereof, lodge in court a sum equal to the sum for which security is to be given and probable costs, together with a memorandum approved by the Master and signed by such person or his solicitor stating the conditions on which the money is deposited.

(4) Upon the lodgment the Master shall forthwith notify the persons for whose protection the security is given that the money has been lodged in court.

[E.R.7.58]

Discovery

7.54.—(1) Any party to insolvency proceedings may, with the leave of the court, administer interrogatories to, or obtain discovery from, any other party to those proceedings.

(2) Application under this Rule may be made ex parte.

[E.R.7.60]

Office copies of documents

7.55.—(1) Any person who has under the Rules the right to inspect the court file of insolvency proceedings may require the court to provide him with an office copy of any document from the file.

(2) A person's rights under this Rule may be exercised on his behalf by his solicitor.

(3) An office copy provided by the court under this Rule shall be in such form as the Master thinks appropriate, and shall bear the court's seal.

[E.R.7.61]