

---

STATUTORY INSTRUMENTS

---

**1995 No. 1386**

**CONTRACTING OUT**

**The Contracting Out (Functions of  
the Official Receiver) Order 1995**

*Made* - - - - - *29th May 1995*  
*Coming into force* - - - - - *30th May 1995*

Whereas the Secretary of State has consulted all official receivers pursuant to section 69(3) of the Deregulation and Contracting Out Act 1994.<sup>(1)</sup>

And whereas a draft of this Order has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 77(2) of that Act,

Now therefore the Secretary of State, in exercise of the powers conferred on him by section 69 of that Act and of all other powers enabling him in that behalf, hereby makes the following Order:—

**Citation and commencement**

1.—(1) This Order may be cited as the Contracting Out (Functions of the Official Receiver) Order 1995.

(2) This Order shall come into force on the day after the day on which it is made.

**Interpretation**

2.—(1) In this Order—

“the 1986 Act” means the Insolvency Act 1986;<sup>(2)</sup> “the insolvency legislation” means the Insolvency Act 1986, the Companies Act 1985<sup>(3)</sup> the Company Directors Disqualification Act 1986<sup>(4)</sup> any subordinate legislation made under any of those Acts and any regulations made under rule 12.1 of the Rules;

“the Rules” means the Insolvency Rules 1986<sup>(5)</sup>; and

“right of audience” has the meaning given to it by section 119(1) of the Courts and Legal Services Act 1990<sup>(6)</sup>.

---

(1) 1994 c. 40.  
(2) 1986 c. 45.  
(3) 1985 c. 6.  
(4) 1986 c. 46.  
(5) S.I.1986/1925 amended by S.I. 1987/1919, S.I. 1989/397, S.I. 1991/495, S.I. 1993/602 and S.I. 1995/586.  
(6) 1990 c. 41.

---

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

---

(2) Any expression used in this Order other than one referred to in paragraph (1) above shall bear the same meaning as it bears in the 1986 Act.

(3) In this Order a rule referred to by number means the rule so numbered in the Rules, and except where otherwise expressly provided, a section referred to by number means the section so numbered in the 1986 Act.

### **Contracting out of functions**

**3.**—(1) Subject to paragraph (2) below, any function of the official receiver which is conferred by or under the insolvency legislation, except one which is listed in the Schedule to this Order, may be exercised by, or by employees of, such person (if any) as may be authorised in that behalf by the official receiver.

(2) A function to which paragraph (1) above applies, and which involves the exercise of a right of audience in relation to any proceedings before a court, may only be exercised subject to the fulfilment of the condition specified in paragraph (3) below.

(3) Such right of audience as is mentioned in paragraph (2) shall not be exercised by any person other than a person who has a right of audience in relation to the proceedings in question by virtue of the provisions of Part II of the Courts and Legal Services Act 1990.

29th May 1995

*Jonathan Evans*  
Parliamentary Under-Secretary of State for  
Corporate and Consumer Affairs,  
Department of Trade and Industry

## SCHEDULE

## Article 3

1. The functions of the official receiver as—
  - (a) a receiver appointed pursuant to section 32 (power for court to appoint official receiver);
  - (b) a provisional liquidator appointed pursuant to section 135 (appointment and powers of provisional liquidator); or
  - (c) an interim receiver appointed pursuant to section 286 (power to appoint interim receiver).
2. The receipt of any deposit which relates to a bankruptcy or winding-up petition.
3. The chairing—
  - (a) by virtue of rule 4.55 of the first meeting of creditors (as defined by rule 4.50(7)) or the first meeting of contributories (as defined by rule 4.50(7)) in winding up by the court; or
  - (b) by virtue of rule 6.82 of the first meeting of creditors (as defined in rule 6.79(7)) in a bankruptcy.
4. The making of an application to the Secretary of State—
  - (a) under section 137(1) for the appointment of another person as liquidator in the place of the official receiver; or
  - (b) under section 296(1) for the appointment of a person as trustee instead of the official receiver.
5. The taking of a decision—
  - (a) pursuant to section 137(2), whether or not to refer to the Secretary of State the need for an appointment of a liquidator in any case where at meetings held in pursuance of a decision under section 136(5)(a) no person is chosen to be liquidator;
  - (b) pursuant to section 295(1), whether or not to refer to the Secretary of State the need for an appointment of a trustee in any case where at a meeting summoned under section 293 or 294 no appointment of a person as trustee is made.
6. The making of a reference to the Secretary of State under section 300(4) of the need for an appointment of a trustee by the Secretary of State in the circumstances referred to in that sub-section.
7. The making of a reference to the court or the Secretary of State, as the case may be, under section 300(5) of the need to fill any vacancy in the circumstances referred to in that sub-section.
8. The functions of the official receiver—
  - (a) exercisable under rule 4.172(2) (functions of liquidation committee exercisable by official receiver) or rule 6.166(2) (functions of creditors' committee exercisable by official receiver); or
  - (b) in relation to the hearing of an application made under—
    - (i) section 280 (discharge by order of the court);
    - (ii) rule 4.36(2) (application to court for a release or extension of time in respect of statement of affairs in a winding up by the court); or
    - (iii) rule 6.62(2) (application to court by bankrupt for a release or extension of time in respect of statement of affairs).
9. The bringing or the conduct of proceedings under the Company Directors Disqualification Act 1986.
10. The giving of notice to the Secretary of State pursuant to section 174(3) (release of official receiver in winding up by the court) or section 299(2) (release of official receiver as trustee).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- 11. Consideration—**
- (a) pursuant to rule 4.57(2) as to whether a request by creditors for a meeting of creditors or contributories or meetings of both, or
  - (b) pursuant to rule 4.57(2) as it applies by virtue of rule 4.57(4) as to whether a request by contributories for a meeting of contributories, or
  - (c) pursuant to rule 6.83(2) as to whether a request by creditors for a meeting of creditors
- has been properly made in accordance with the 1986 Act.
- 12. The making or conduct of any application to the court—**
- (a) to commit a bankrupt for contempt of court for failure to comply with an obligation imposed on him by—
    - (i) section 288 (statement of affairs);
    - (ii) section 291 (duties of bankrupt in relation to official receiver);
    - (iii) section 312 (obligation to surrender control to trustee);
    - (iv) section 333 (duties of bankrupt in relation to trustee); or
    - (v) section 363 (general control of court); or
  - (b) pursuant to section 279(3) (suspension of discharge on application by official receiver).
- 13. The making or conduct of any application to the court to commit for contempt of court—**
- (a) a person who has failed to attend his public examination under section 133 (public examination of officers, etc.); or
  - (b) a bankrupt who has failed to attend his public examination under section 290 (public examination of bankrupt).
- 14. The making of a report to the court pursuant to—**
- (a) section 132(1) (investigation by official receiver);
  - (b) section 289(1) (investigatory duties of official receiver);
  - (c) section 289(2) (report to the court on application by bankrupt for discharge from bankruptcy);
  - (d) rule 4.36(5) (report to court, etc. on application by officers of company, etc. for release from duty to submit statement of affairs or for extension of time);
  - (e) rule 6.62(5) (report to court, etc. on application by bankrupt for release from duty to submit statement of affairs or for extension of time); or
  - (f) rule 6.215(2) (report in support of application for suspension of discharge).
- 15. The making or conduct of an application to the court for a public examination under section 133(1) or section 290(1) and the making or conduct of any application in relation to any public examination.**
- 16. The making or conduct of an application to the court to relieve the official receiver from an obligation to make an application for a public examination requested pursuant to section 133(2) or required pursuant to section 290(2).**
- 17. The taking part in a public examination or the questioning of a person pursuant to section 133(4)(a) or the taking part in a public examination or the questioning of a bankrupt pursuant to section 290(4)(a).**
- 18. The making or conduct of an application to the court—**

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) pursuant to section 134(2) for the issue of a warrant for the arrest of a person and for the seizure of any books, papers, records, money or goods in that person's possession, or
  - (b) pursuant to section 364, for the issue of a warrant for the arrest of a debtor, an undischarged bankrupt or a discharged bankrupt, and for the seizure of any books, papers, records, money or goods in the debtor's or the bankrupt's possession, as the case may be.
- 19.** The making or conduct of an application to the court pursuant to section 158 for the arrest of a contributory and for the seizure of his books, papers and movable personal property.
- 20.** The making or conduct of an application to the court for the transfer of winding-up or bankruptcy proceedings from one court to another.
- 21.** The taking of affidavits and declarations pursuant to rule 7.57(5) (taking of affidavits and declarations).
- 22.** Any function of the official receiver in relation to the hearing of—
- (a) an application by a bankrupt for leave to act as a director of, or directly or indirectly to take part in or be concerned in the promotion, formation or management of, a company; or
  - (b) an application by a director in respect of whom a disqualification order made under the Company Directors Disqualification Act 1986 is in force, for leave—
    - (a) to be a director of a company,
    - (b) to be a liquidator or administrator of a company,
    - (c) to be a receiver or manager of a company's property, or
    - (d) to be concerned or to take part in the promotion, formation or management of a company in any way, whether directly or indirectly.
- 23.** The making of a report to the Secretary of State pursuant to section 7(3) of the Company Directors Disqualification Act 1986.
- 24.** Any function corresponding to one referred to in paragraphs 1 to 23 above which is exercisable by the official receiver by virtue of the application (with or without modifications) of any provision of the insolvency legislation to insolvent partnerships or unregistered companies.
- 25.** The presentation of a winding-up petition pursuant to section 124(5) (application by official receiver for winding up of company being wound up voluntarily).

---

## EXPLANATORY NOTE

*(This note does not form part of the Order)*

This Order makes provision to enable an official receiver to authorise another person or that other person's employees to exercise the official receiver's functions under the insolvency legislation (as defined in Article 2(1) of the Order) subject to one condition and with certain exceptions. The condition is that the official receiver's right of audience before the court is only to be exercisable by persons who have a right of audience under the Courts and Legal Services Act 1990. The Schedule to the Order lists functions which the official receiver cannot authorise another person or another person's employees to exercise.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.