

SCHEDULE

Amendment of Part 7 (Court Procedure and Practice) Chapter 6 (Costs and Taxation)

3. In Part 7 for Chapter 6 substitute—

“Chapter 6 – Costs and Detailed Assessment

Application of the CPR

7.33. Subject to provision to inconsistent effect made as follows in this Chapter, CPR Part 43 (scope of costs rules and definitions), Part 44 (general rules about costs), Part 45 (fixed costs), Part 47 (procedure for detailed assessment of costs and default provisions) and Part 48 (costs — special cases) shall apply to insolvency proceedings with any necessary modifications.

Requirement to assess costs by the detailed procedure

7.34.—(1) Subject as follows, where the costs, charges or expenses of any person are payable out of the insolvent estate, the amount of those costs, charges or expenses shall be decided by detailed assessment 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 serve notice in writing requiring that person to commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions) the court to which the insolvency proceedings are allocated or, where in relation to a company there is no such court, that in relation to any court having jurisdiction to wind up the company.

(2) If a liquidation or creditors' committee established in insolvency proceedings (except administrative receivership) resolves that the amount of any such costs, charges or expenses should be decided by detailed assessment, the insolvency practitioner shall require detailed assessment in accordance with (PR Part 47).

(3) Where the amount of the costs, charges or expenses of any person employed by an insolvency practitioner in insolvency proceedings are required to be decided by detailed assessment or fixed by order of the court this does not preclude the 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, when detailed assessment is made, prove to have been overpaid, with interest at the rate specified in section 17 of the Judgments Act 1838⁽¹⁾ 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 decided by detailed assessment.

(5) Unless otherwise directed or authorised, the costs of a trustee in bankruptcy or a liquidator are to be allowed on the standard basis for which provision is made in CPR rule 44.4 (basis of assessment) and rule 44.5 (factors to be taken into account in deciding the amount of costs).

(6) This Rule applies additionally (with any necessary modifications) to winding-up and bankruptcy proceedings commenced before the coming into force of the Rules.

(1) 1838 c. 110 (1 & 2 Vict.).

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Procedure where detailed assessment required

7.35.—(1) Before making a detailed assessment of the costs of any person employed in insolvency proceedings by a responsible insolvency practitioner, the costs officer shall require a certificate of employment, which shall be endorsed on the bill and signed by the insolvency practitioner.

(2) The certificate shall include—

- (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 in insolvency proceedings are required to be decided by detailed assessment shall, on being required in writing to do so by the insolvency practitioner, commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions).

(4) If that person does not commence detailed assessment proceedings within 3 months of the requirement under paragraph (3), or within such further time as the court, on application, may permit, the insolvency practitioner may deal with the insolvent estate without regard to any claim by that person, whose claim is forfeited by such failure to commence proceedings.

(5) Where in any such case such a claim lies additionally against an insolvency practitioner in his personal capacity, that claim is also forfeited by such failure to commence proceedings.

(6) Where costs have been incurred in insolvency proceedings in the High Court and those proceedings are subsequently transferred to a county court, all costs of those proceedings directed by the court or otherwise required to be assessed may nevertheless, on the application of the person who incurred the costs, be ordered to be decided by detailed assessment in the High Court.

Costs of sheriff

7.36.—(1) Where a sheriff—

- (a) is required under section 184(2) or 346(2) to deliver up goods or money, or
- (b) has under section 184(3) or 346(3) deducted costs from the proceeds of an execution or money paid to him, the responsible insolvency practitioner may require in writing that the amount of the sheriff's bill of costs be decided by detailed assessment.

(2) Where such a requirement is made, Rule 7.35(4) applies.

(3) Where, in the case of a deduction under paragraph (1)(b), any amount deducted is disallowed at the conclusion of the detailed assessment proceedings, the sheriff shall forthwith pay a sum equal to that disallowed to the insolvency practitioner for the benefit of the insolvent estate.

Petitions presented by insolvents

7.37.—(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 and expenses to be incurred in respect of the filing and prosecution of the petition; and the deposit shall be noted by the costs officer on the final costs certificate.

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(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 benefited 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.

Costs paid otherwise than out of the insolvent estate

7.38. Where the amount of costs is decided by detailed assessment under an order of the court directing that those costs are to be paid otherwise than out of the insolvent estate, the costs officer shall note on the final costs certificate by whom, or the manner in which, the costs are to be paid.

Award of costs against official receiver or responsible insolvency practitioner

7.39. Without prejudice to any provision of the Act or Rules by virtue of which the official receiver is not in any event to be liable for costs and expenses, 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.

Applications for costs

7.40.—(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 winding up by the court or bankruptcy, on the official receiver.

(3) The 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.

Costs and expenses of witnesses

7.41.—(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 costs officer may allow his expenses of travelling and subsistence.

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Final costs certificate

7.42.—(1) A final costs certificate of the costs officer is final and conclusive as to all matters which have not been objected to in the manner provided for under the rules of the court.

(2) Where it is proved to the satisfaction of a costs officer that a final costs certificate has been lost or destroyed, he may issue a duplicate.”.