
STATUTORY INSTRUMENTS

2009 No. 2477

The Water Industry (Special Administration) Rules 2009

PART 8

Examination of persons in special administration proceedings

Application

109. The rules in this Part relate to applications to the court by a special administrator for an order under section 236 (inquiry into company's dealings, etc.) of the Insolvency Act.

Interpretation

110. In this Part "respondent" means the person in respect of whom an order is applied for.

Form and contents of application

111.—(1) An application must be in writing, and must be accompanied by a brief statement of the grounds on which it is made.

(2) The application must sufficiently identify the respondent and what the application is for.

(3) The applicant may apply for the respondent to be ordered—

(a) to appear before the court;

(b) to clarify a matter in dispute in the proceedings or to give additional information in relation to such a matter;

(c) to submit an affidavit; or

(d) to produce books, papers or other records.

(4) If the application is for an order for the respondent to submit a witness statement or an affidavit, the application must specify the matters about which the respondent is to be required to make the statement, or to which the respondent is to be required to swear.

(5) If the application is for an order for the respondent to produce books, papers or other records, the application must specify the items that the respondent is to be required to produce.

(6) The application may be made without notice being served on any other party.

Order for examination, etc.

112.—(1) In an application under this Part, the court may make any order that it has power to make under section 236 of the Insolvency Act.

(2) If the court orders the respondent to appear before it, it will specify a venue for that appearance.

(3) The date and time specified will be at least 14 days after the date of the order.

(4) If the respondent is ordered to submit an affidavit or witness statement, the order will specify—

- (a) the matters that the affidavit or witness statement must deal with; and
 - (b) the time within which the affidavit or witness statement is to be submitted to the court.
- (5) If the order is to produce books, papers or other records, the order will specify the time, place and manner of compliance.
- (6) The special administrator must serve the order on the respondent as soon as reasonably practicable.
- (7) It must be served on the respondent personally, unless the court otherwise orders.

Procedure for examination

- 113.**—(1) At the examination of the respondent, the special administrator may attend in person, or be represented by a solicitor, and may put any question to the respondent that the court allows.
- (2) If the respondent is ordered to clarify a matter or to give additional information, the court will direct the respondent as to the questions that the respondent is required to answer, and as to whether the answers (if any) are to be made on affidavit.
- (3) If the relevant application under section 236 was made on information provided by a creditor of the water company, that creditor may, with the permission of the court and if the special administrator does not object, attend the examination and put questions to the respondent (but only through the special administrator).
- (4) The respondent may at the respondent's own expense employ a solicitor.
- (5) The respondent's solicitor—
- (a) may put to the respondent any question that the court allows for the purpose of enabling the respondent to explain or qualify an answer; and
 - (b) may make representations on the respondent's behalf.

Recording of proceedings

- 114.**—(1) A written record must be made of the examination.
- (2) The record must be read over by or to the respondent and signed by the respondent at a venue fixed by the court.
- (3) The written record may be used in any proceedings (whether under the Insolvency Act or otherwise) against the respondent as evidence of any statement made by the respondent in the course of the examination.
- (4) The court may appoint, in Form WAT23, a shorthand writer to take down the evidence of a person examined in the course of special administration proceedings.
- (5) A shorthand writer so appointed must make a declaration in Form WAT24.
- (6) The remuneration of a shorthand writer in special administration proceedings is payable by the party who requested the appointment, or out of the assets of the water company concerned, or otherwise, as the court may direct.
- (7) Any question arising as to the rates of remuneration payable must be determined by the court in its discretion.

Warrants under section 236 of the Insolvency Act

- 115.**—(1) The tipstaff and any assistant of the tipstaff are prescribed officers of the court for the purposes of section 236(5) of the Insolvency Act.

(2) If a person is arrested under a warrant issued under that section, the officer or constable who arrests the person must, as soon as reasonably practicable, bring the person before the court so that the person can be examined.

(3) If the person cannot immediately be brought up for examination, the officer or constable must deliver the person into the custody of the governor of the prison specified in the warrant, who must keep the person in custody and produce the person before the court as the court directs.

(4) After arresting the person, the officer or constable must immediately—

- (a) report to the court the arrest or delivery into custody; and
- (b) apply to the court to fix a venue for the person's examination.

(5) The court must appoint the earliest practicable time for the examination, and must—

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

(6) Any property in the arrested person's possession that has been seized must, in accordance with any direction of the court—

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

Filing of record of examination

116.—(1) The written record of the respondent's examination, and any response the respondent gives to, and any affidavit or witness statement submitted in compliance with, an order of the court under section 236 of the Insolvency Act, must not be filed unless the court directs.

(2) The written record, responses and affidavits or witness statements are not open to inspection, without an order of the court, by any person other than the special administrator.

(3) Paragraph (2) applies also to so much of the court file as shows the grounds of the application for an order under that section and to any copy of any order.

(4) The court may from time to time give directions as to the custody and inspection of documents to which this rule applies, and as to the furnishing of copies of, or extracts from, such documents.

Costs of proceedings under section 236 of the Insolvency Act

117.—(1) Subject to paragraphs (2) and (3), the special administrator's costs must be paid out of the assets of the water company unless the court otherwise orders.

(2) If the court orders an examination of a person under section 236 of the Insolvency Act because the respondent unjustifiably refused to provide information, it may order the respondent to pay the costs of the examination.

(3) If the court makes an order against a person under section 237(1) or section 237(2) (court's enforcement powers under section 236) of the Insolvency Act, the court may order the respondent to pay the costs of the application for the order.

(4) A person summoned to attend for examination under this Part must be tendered a reasonable sum in respect of travelling expenses incurred in connection with that attendance.

(5) Other costs incurred by that person are at the court's discretion.