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STATUTORY INSTRUMENTS

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**2016 No. 1024**

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

**PART 10**

**BANKRUPTCY**

**CHAPTER 16**

**Annulment of bankruptcy order**

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

**Application for annulment**

**10.132.**—(1) An application to the court under section 282(1) for the annulment of a bankruptcy order must specify whether it is made—

- (a) under subsection (1)(a) (claim that the order ought not to have been made); or
- (b) under subsection (1)(b) (debts and expenses of the bankruptcy all paid or secured).

(2) The application must be supported by a witness statement stating the grounds on which it is made.

(3) Where the application is made under section 282(1)(b), the witness statement must contain all the facts by reference to which, under the Act and these Rules, the court may be satisfied that the condition in section 282(1)(b) applies before annulling the bankruptcy order.

(4) A copy of the application and the witness statement in support must be filed with the court.

(5) The court must deliver notice of the venue fixed for the hearing to the applicant.

(6) Where the application is made under section 282(1)(a) the applicant must deliver notice of the venue, accompanied by copies of the application and the supporting witness statement, to the official receiver, the trustee (if different), and the person on whose petition the bankruptcy order was made in sufficient time to enable them to be present at the hearing.

(7) Where the application is made under section 282(1)(b) the applicant must deliver notice of the venue, accompanied by copies of the application and the supporting witness statement, to the official receiver and the trustee (if different) not less than 28 days before the hearing.

(8) Where the applicant is not the bankrupt, all notices, documents and evidence required by this Chapter to be delivered to another party by the applicant must also be delivered to the bankrupt.

**Report by trustee**

**10.133.**—(1) The following applies where the application is made under section 282(1)(b) (debts and expenses of the bankruptcy all paid or secured).

(2) Not less than 21 days before the date fixed for the hearing, the trustee must file with the court a report relating to the following matters—

- (a) the circumstances leading to the bankruptcy;
  - (b) a summary of the bankrupt's assets and liabilities at the date of the bankruptcy order and at the date of the application;
  - (c) details of any creditors who are known to the trustee to have claims, but have not proved; and
  - (d) such other matters as the person making the report considers to be, in the circumstances, necessary for the information of the court.
- (3) Where the trustee is other than the official receiver, the report must also include a statement of—
- (a) the trustee's remuneration;
  - (b) the basis fixed for the trustee's remuneration under rule 18.16; and
  - (c) the expenses incurred by the trustee.
- (4) The report must include particulars of the extent to which, and the manner in which, the debts and expenses of the bankruptcy have been paid or secured.
- (5) In so far as debts and expenses are unpaid but secured, the person making the report must state in it whether and to what extent that person considers the security to be satisfactory.
- (6) A copy of the report must be delivered to the applicant as soon as reasonably practicable after it is filed with the court and the applicant may file a further witness statement in answer to statements made in the report.
- (7) Copies of any such witness statement must be delivered by the applicant to the official receiver and the trustee (if different).
- (8) If the trustee is other than the official receiver, a copy of the trustee's report must be delivered to the official receiver at least 21 days before the hearing.
- (9) The official receiver may then file an additional report, a copy of which must be delivered to the applicant and the trustee (if not the official receiver) at least five business days before the hearing.

#### **Applicant's claim that remuneration or expenses are excessive**

**10.134.**—(1) Where the trustee is other than the official receiver and application for annulment is made under section 282(1)(b), the applicant may also apply to the court for one or more of the orders in paragraph (4) on the ground that the remuneration charged, or expenses incurred, by the trustee are in all the circumstances excessive.

(2) Application for such an order must be made no later than five business days before the date fixed for the hearing of the application for annulment and be accompanied by a copy of any evidence which the applicant intends to provide in support.

(3) The applicant must deliver a copy of the application and of any evidence accompanying it to the trustee as soon as reasonably practicable after the application is made.

(4) If the court annuls the bankruptcy order under section 282(1)(b) and considers the application to be well-founded, it must also make one or more of the following orders—

- (a) an order reducing the amount of remuneration which the trustee was entitled to charge;
- (b) an order that some or all of the remuneration or expenses in question be treated as not being bankruptcy expenses;
- (c) an order that the trustee or the trustee's personal representative pay to the applicant the amount of the excess of remuneration or expenses or such part of the excess as the court may specify; and
- (d) any other order that the court thinks just.

### **Power of court to stay proceedings**

**10.135.**—(1) The court may, in advance of the hearing, make an order staying any proceedings which it thinks ought, in the circumstances of the application, to be stayed.

(2) Except in relation to an application for an order staying all or any part of the proceedings in the bankruptcy, application for an order under this rule may be made without notice to any other party.

(3) Where an application is made under this rule for an order staying all or any part of the proceedings in the bankruptcy, the applicant must deliver copies of the application to the official receiver and the trustee, if other than the official receiver, in sufficient time to enable them to be present at the hearing and make representations.

(4) Where the court makes an order under this rule staying all or any part of the proceedings in the bankruptcy, the rules in this Chapter nevertheless continue to apply to any application for, or other matters in connection with, the annulment of the bankruptcy order.

(5) If the court makes an order under this rule, it must deliver copies of the order to the applicant, the official receiver and the trustee (if different).

### **Notice to creditors who have not proved**

**10.136.** Where the application for annulment is made under section 282(1)(b) and it has been reported to the court under rule 10.133(2)(c) that there are known creditors of the bankrupt who have not proved, the court may—

- (a) direct the trustee or, if no trustee has been appointed, the official receiver to deliver notice of the application to such of those creditors as the court thinks ought to be informed of it, with a view to their proving for their debts within 21 days;
- (b) direct the trustee or, if no trustee has been appointed, the official receiver to advertise the fact that the application has been made, so that creditors who have not proved may do so within a specified time; and
- (c) adjourn the application meanwhile, for any period not less than 35 days.

### **The hearing**

**10.137.**—(1) The trustee must attend the hearing of the application under section 282<sup>M1</sup> unless the court directs otherwise.

(2) The official receiver, if not the trustee, may attend, but is not required to do so unless the official receiver has filed a report under rule 10.133.

(3) If the court makes an order on the application or on an application under rule 10.134, it must deliver copies of the order to the applicant, the official receiver and (if other) the trustee.

(4) An order of annulment under section 282 must contain—

- (a) identification details for the proceedings;
- (b) the name and address of the applicant;
- (c) the date of the bankruptcy order;
- (d) the date of the filing of the bankruptcy petition or the making of the bankruptcy application;
- (e) the date and reference number of the registration of the bankruptcy petition or bankruptcy application as a pending action with the Chief Land Registrar;
- (f) the date and reference number of the registration of the bankruptcy order on the register of writs and orders affecting land with the Chief Land Registrar;
- (g) a statement that it appears to the court that—
  - (i) the bankruptcy order ought not to have been made, or

- (ii) the bankruptcy debts and expenses of the bankruptcy have all been paid or secured to the satisfaction of the court;
- and that under section 282(2) the bankruptcy order ought to be annulled;
- (h) an order—
- (i) that the bankruptcy order specified in the order is annulled,
  - (ii) that the bankruptcy petition or bankruptcy application specified in the order be dismissed, and
  - (iii) that the registration of the petition or the bankruptcy application as a pending action with the Chief Land Registrar and of the bankruptcy order with the Chief Land Registrar specified in the order be vacated upon application made by the bankrupt; and
- (i) the date of the order.
- (5) The order must contain a notice to the bankrupt stating—
- (a) should the bankrupt require notice of the order to be gazetted and to be advertised in the same manner as the bankruptcy order was advertised, the bankrupt must within 28 days deliver notice of that requirement to the official receiver; and
  - (b) it is the bankrupt's responsibility and in the bankrupt's interest to ensure that the registration of the petition or bankruptcy application and of the bankruptcy order with the Chief Land Registrar are cancelled.
- [<sup>F1</sup>(6) The adjudicator is not in any event to be liable for costs arising on an application under section 282.]

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**Textual Amendments**

**F1** [Rule 10.137\(6\)](#) inserted (6.4.2017) by [The Insolvency \(England and Wales\) \(Amendment\) Rules 2017 \(S.I. 2017/366\)](#), rules 1, **30**

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**Marginal Citations**

**M1** Section 282(2) is amended by paragraph 13 of Schedule 19 to the [Enterprise and Regulatory Reform Act 2013 \(c.24\)](#) and (4) is amended by section 135(2)(a) of the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

**Matters to be proved under section 282(1)(b)**

- 10.138.**—(1) This rule applies in relation to the matters which—
- (a) must, in an application under section 282(1)(b), be proved to the satisfaction of the court; and
  - (b) may be taken into account by the court on hearing such an application.
- (2) Subject to the following paragraph, all bankruptcy debts which have been proved must have been—
- (a) paid in full; or
  - (b) secured in full to the satisfaction of the court.
- (3) If a debt is disputed, or a creditor who has proved can no longer be traced, the bankrupt must have given such security (in the form of money paid into court, or a bond entered into with approved sureties) as the court considers adequate to satisfy any sum that may subsequently be proved to be due to the creditor concerned and (if the court thinks just) costs.

(4) Where such security has been given in the case of an untraced creditor, the court may direct that particulars of the alleged debt, and the security, be advertised in such manner as it thinks just.

(5) If the court directs such advertisement and no claim on the security is made within 12 months from the date of the advertisement (or the first advertisement, if more than one), the court must, on application, order the security to be released.

(6) In determining whether to annul a bankruptcy order under section 282(1)(b), the court may, if it thinks just and without prejudice to the generality of its discretion under section 282(1), take into account whether any sums have been paid or payment of any sums has been secured in respect of post-commencement interest on the bankruptcy debts which have been proved.

(7) For the purposes of paragraphs (2) and (6), security includes an undertaking given by a solicitor and accepted by the court.

(8) For the purposes of paragraph (6), “post-commencement interest” means interest on the bankruptcy debts at the rate specified in section 328(5) in relation to periods during which those debts have been outstanding since the commencement of the bankruptcy.

### **Notice to creditors**

**10.139.**—(1) Where the official receiver has delivered notice of the debtor's bankruptcy to the creditors and the bankruptcy order is annulled, the official receiver must as soon as reasonably practicable deliver notice of the annulment to them.

(2) Expenses incurred by the official receiver in delivering such notice are a charge in the official receiver's favour on the property of the former bankrupt, whether or not the property is actually in the official receiver's hands.

(3) Where any property is in the hands of a trustee or any person other than the former bankrupt, the official receiver's charge is subject to any costs that may be incurred by the trustee or that other person in effecting realisation of the property for the purpose of satisfying the charge.

### **Other matters arising on annulment**

**10.140.**—(1) Within 28 days of the making of an order under section 282, the former bankrupt may require the official receiver to publish a notice of the making of the order in accordance with paragraphs (2) and (3).

(2) As soon as reasonably practicable the notice must be—

- (a) gazetted; and
- (b) advertised in the same manner as the bankruptcy order to which it relates was advertised.

(3) The notice must state—

- (a) the name of the former bankrupt;
- (b) the date on which the bankruptcy order was made;
- (c) that the bankruptcy order against the former bankrupt has been annulled under section 282(1); and
- (d) the date of the annulment.

(4) Where the former bankrupt—

- (a) has died; or
- (b) is a person lacking capacity to manage the person's own affairs (within the meaning of the Mental Capacity Act 2005 <sup>M2</sup>);

the reference to the former bankrupt in paragraph (1) is to be read as referring to the former bankrupt's personal representative or, as the case may be, a person appointed by the court to represent or act for the former bankrupt.

**Marginal Citations**

M2 2005 c.9.

**Trustee's final account**

**10.141.**—(1) Where a bankruptcy order is annulled under section 282, this does not of itself release the trustee from any duty or obligation, imposed on the trustee by or under the Act or these Rules, to account for all of the trustee's transactions in connection with the former bankrupt's estate.

(2) The trustee must deliver a copy of the trustee's final account to the Secretary of State as soon as practicable after the court's order annulling the bankruptcy order.

(3) The trustee must file a copy of the final account with the court.

(4) The final account must include a summary of the trustee's receipts and payments in the administration, and contain a statement to the effect that the trustee has reconciled the account with that which is held by the Secretary of State in respect of the bankruptcy.

(5) The trustee is released from such time as the court may determine, having regard to whether—

- (a) the trustee has delivered the final accounts under paragraph (2); and
- (b) any security given under rule 10.138 has been, or will be, released.

**Changes to legislation:**

There are currently no known outstanding effects for the The Insolvency (England and Wales) Rules 2016, CHAPTER 16.