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STATUTORY INSTRUMENTS

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**2016 No. 1024**

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

**PART 10** **E+W**

**BANKRUPTCY**

**CHAPTER 3** **E+W**

Debtors' bankruptcy applications

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

**Preliminary** **E+W**

**10.34.** This Chapter relates to a debtor's bankruptcy application and the making of a bankruptcy order on the application of a debtor.

**Bankruptcy application for a bankruptcy order** **E+W**

- 10.35.**—(1) In the bankruptcy application the debtor must—
- (a) state that the debtor is unable to pay the debtor's debts;
  - (b) request that the adjudicator make a bankruptcy order against the debtor;
  - (c) state that the debtor is not aware of any pending bankruptcy petition;
  - (d) state whether a bankruptcy order has been made in respect of any of the debts which are the subject of the bankruptcy application;
  - (e) state whether the debtor has taken debt advice before completing the bankruptcy application;
  - (f) consent to verification checks being made by the adjudicator;
  - (g) provide the information set out in Schedule 7;
  - (h) provide the additional information set out in Schedule 8;
  - (i) state that the information provided in accordance with this rule is accurate and up-to-date at the date of the bankruptcy application; and
  - (j) state that the prescribed fee and deposit have been paid in full.
- (2) The bankruptcy application must be authenticated by the debtor.

**Procedure for making a bankruptcy application and communication with the adjudicator** **E+W**

**10.36.**—(1) The bankruptcy application must be completed in accordance with these Rules in electronic form and delivered to the adjudicator by electronic means unless otherwise agreed with the adjudicator in accordance with paragraph (4).

(2) For the purposes of rule 10.35(1)(i) the date of the bankruptcy application is the date that the debtor submits the bankruptcy application to the adjudicator under these Rules.

(3) A bankruptcy application is made when its receipt has been acknowledged by the adjudicator by electronic or other means.

(4) In the event of any malfunction or error in the operation of the electronic form or means of delivery, the adjudicator must—

- (a) agree that debtors may, for a specified period, complete and deliver bankruptcy applications in another format; and
- (b) provide an alternative means of delivery for the bankruptcy application and details of any terms or conditions to which their use is subject.

(5) If a bankruptcy application is completed in hard copy, it may not be delivered by fax.

(6) Where the debtor has given an electronic address in the bankruptcy application, the adjudicator must so far as reasonably practicable communicate with the debtor by electronic means.

(7) Unless the contrary is shown, a document (other than a bankruptcy application) is to be treated as delivered by electronic means to an electronic address where the sender can produce a copy of the electronic communication which—

- (a) contains the document; and
- (b) shows the time and date the communication was sent and the electronic address to which it was sent.

(8) Unless the contrary is shown, a document (other than a bankruptcy application) is to be treated as delivered to the electronic address to which it is sent at 9.00am on the next business day after it was sent.

(9) Rule 1.45 does not apply to electronic delivery of documents between a debtor and the adjudicator.

### **Application to the Chief Land Registrar to register a bankruptcy application** E+W

**10.37.**—(1) When a bankruptcy application is made, the adjudicator must as soon as reasonably practicable deliver to the Chief Land Registrar an application for registration of the bankruptcy application, in the register of pending actions.

(2) The application must contain—

- (a) a statement that the adjudicator is applying for registration of a bankruptcy application as a pending action under section 5 of the Land Charges Act 1972 <sup>M1</sup>;
- (b) the debtor's name and any alternative name by which the debtor has been or is known;
- (c) the debtor's date of birth;
- (d) the debtor's gender, if known;
- (e) the debtor's occupation, including any trading name;
- (f) the postal address for each known place of residence of the debtor;
- (g) the debtor's business address where the adjudicator considers it appropriate for the purpose of the application;
- (h) the relevant key number allocated by the Chief Land Registrar;
- (i) the reference allocated to the bankruptcy application; and
- (j) the date of the bankruptcy application.

(3) The application must be authenticated and dated by the adjudicator.

#### Marginal Citations

**M1** 1972 c.61; there are amending instruments but none is relevant.

### Verification checks **E+W**

**10.38.** For the purpose of determining whether the adjudicator can make a bankruptcy order, verification checks may be made in, or with, one or more of the following—

- (a) the electoral registers for such districts in England and Wales as the adjudicator considers appropriate to determine the identity and residence of the debtor;
- (b) the individual insolvency register;
- (c) the official receiver; or
- (d) a credit reference agency.

### Determination of the bankruptcy application **E+W**

**10.39.**—(1) The adjudicator must determine whether to make a bankruptcy order within the determination period referred to in rule 10.40.

(2) In reaching a determination, the adjudicator must have regard to whether the requirements of section 263K<sup>M2</sup> of the Act are met.

(3) During the determination period the adjudicator may request such further information from the debtor as the adjudicator considers is necessary in order to make the determination, such information to be provided in writing or at the request of the adjudicator, to be provided orally.

(4) Subject to paragraph (5), the adjudicator must make a determination from the information provided under rule 10.35(1)(g), any further information provided under paragraph (3) and from the verification checks.

(5) Before determining that the requirements of section 263K are not met, the adjudicator must have regard to the additional information provided under rule 10.35(1)(h).

#### Marginal Citations

**M2** Section 263K is inserted by paragraph 1 of Schedule 18 to the [Enterprise and Regulatory Reform Act 2013 \(c.24\)](#).

### The determination period **E+W**

**10.40.**—(1) The determination period is 28 days from the date the bankruptcy application is made.

(2) Where the adjudicator requests further information from the debtor more than 14 days after the date the bankruptcy application is made, the determination period is extended by 14 days.

(3) A failure to make a determination within the determination period is a refusal.

### Settlement and contents of bankruptcy order **E+W**

**10.41.**—(1) The bankruptcy order must be settled by the adjudicator.

(2) The bankruptcy order must contain—

- (a) the information set out in Part 1 of Schedule 7;
- (b) the date of delivery of the bankruptcy application on which the order is made;

- (c) the order that upon reading the application it is ordered that person named be made bankrupt;
- (d) the order either—
  - [<sup>F1</sup>(i) that the adjudicator, being satisfied that the EU Regulation as it has effect in the law of the United Kingdom applies, declares that the proceedings are COMI proceedings or establishment proceedings, or]
  - (ii) that the adjudicator is satisfied that the [<sup>F2</sup>EU Regulation] does not apply in relation to the proceedings;
- (e) a statement that the official receiver (or one of them) attached to the court is, by virtue of the order, trustee of the bankrupt's estate; and
- (f) a notice of the bankrupt's duties in relation to the official receiver under section 291(4) (duties of bankrupt in relation to the official receiver), and in particular to the bankrupt's duty to give the official receiver such inventory of the bankrupt's estate and such other information, and to attend on the official receiver at such times, as the official receiver may reasonably require.

#### Textual Amendments

- F1** Rule 10.41(2)(d)(i) substituted (31.12.2020) by [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(3), **Sch. para. 93** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in rule 10.41(2)(d)(i)(ii) substituted (8.12.2017) by [The Insolvency \(England and Wales\) and Insolvency \(Scotland\) \(Miscellaneous and Consequential Amendments\) Rules 2017 \(S.I. 2017/1115\)](#), rules 1(1), **23(9)**

#### Refusal to make a bankruptcy order and contents of notice of refusal **E+W**

**10.42.**—(1) Where the adjudicator determines that the requirements of section 263K are not met, the adjudicator must refuse to make a bankruptcy order.

(2) The adjudicator must deliver notice of the refusal to make a bankruptcy order to the debtor as soon as reasonably practicable after the refusal to make the bankruptcy order under paragraph (1) or under rule 10.40(3).

- (3) The notice of refusal must state—
- (a) the reason or reasons for the refusal to make a bankruptcy order;
  - (b) that the debtor may request that the adjudicator review the decision to refuse to make a bankruptcy order within 14 days from the date of delivery of the notice of refusal;
  - (c) that where a review is requested it will be a review of the information that was available to the adjudicator at the date when the adjudicator refused to make a bankruptcy order;
  - (d) that following a review, the adjudicator must either—
    - (i) confirm the refusal to make a bankruptcy order; or
    - (ii) make a bankruptcy order against the debtor; and
  - (e) where the adjudicator confirms the refusal following a review, that the debtor may appeal to the court against the decision within 28 days from the date of delivery of the notice of confirmation of the refusal.

### **Review of refusal to make a bankruptcy order** **E+W**

**10.43.**—(1) The debtor may request the adjudicator to review the decision to refuse to make a bankruptcy order within 14 days from the date of delivery of the notice of refusal.

(2) The debtor must give reasons for requesting a review but the request may not include additional information that was not available to the adjudicator when the determination was made.

(3) Where the adjudicator makes a bankruptcy order following a review, the bankruptcy order must be settled by the adjudicator in accordance with rule 10.41.

(4) Where the adjudicator confirms the refusal to make a bankruptcy order, the adjudicator must deliver notice to the debtor as soon as reasonably practicable.

(5) The notice will state—

- (a) the reason or reasons for confirming the refusal to make the bankruptcy order; and
- (b) that the debtor may appeal to the court against the decision within 28 days from the date of delivery of the confirmation of the notice of refusal.

### **Appeal to the court following a review of refusal to make a bankruptcy order** **E+W**

**10.44.**—(1) Following a decision by the adjudicator to confirm the refusal to make a bankruptcy order, a debtor may appeal the decision to the court.

(2) An appeal under this rule must be made within 28 days from the date of delivery of the confirmation of the notice of refusal.

(3) The appeal must set out the grounds for the appeal.

(4) The court must either—

- (a) dismiss the application; or
- (b) make a bankruptcy order against the debtor.

(5) The bankruptcy order must contain—

- (a) the information set out in Part 1 of Schedule 7;
- (b) the date of delivery of the bankruptcy application on which the order is made;
- (c) the date and time of the making of the order; and
- (d) a statement that the order has been made following an appeal to the court under this rule.

(6) The adjudicator is not personally liable for costs incurred by any person in respect of an application under this rule.

(7) As soon as reasonably practicable after the making of the bankruptcy order the court must deliver sealed copies of the order to the debtor and the official receiver.

### **Action to follow making of order** **E+W**

**10.45.**—(1) As soon as reasonably practicable following the making of the bankruptcy order the adjudicator must deliver copies of the bankruptcy order to the debtor and the official receiver.

(2) On the application of the bankrupt to the official receiver, the official receiver must deliver to the bankrupt a hard copy of the bankruptcy order.

(3) Subject to paragraph (5), on receipt of the bankruptcy order, the official receiver—

- (a) must as soon as reasonably practicable—
  - (i) deliver an application to the Chief Land Registrar for registration of the bankruptcy order in the register of writs and orders affecting land, and
  - (ii) must cause notice of the bankruptcy order to be gazetted;

- (b) may cause notice of the bankruptcy order to be advertised in such other manner as the official receiver thinks fit; and
  - (c) must cause an entry to be made in the individual insolvency register in accordance with rule 11.16.
- (4) The notice to be gazetted under paragraph (3)(a)(ii) and any notice to be advertised under paragraph (3)(b) must state—
- (a) that a bankruptcy order has been made against the bankrupt;
  - (b) the date of the bankruptcy order;
  - (c) that the bankruptcy order was made on the debtor's own bankruptcy application; and
  - (d) the date of delivery of the bankruptcy application.
- (5) The court may, on the application of the bankrupt or a creditor, order the official receiver to suspend action under paragraph (3), pending a further order of the court.
- (6) An application for such action to be suspended must be supported by a witness statement stating the grounds on which it is made.
- (7) Where an order is made to suspend such action, the applicant must deliver a copy of it to the official receiver as soon as reasonably practicable.

#### **Application to the Chief Land Registrar** E+W

- 10.46.**—(1) The application to the Chief Land Registrar for registration of the bankruptcy order under rule 10.45 must contain—
- (a) a statement that the official receiver is applying for registration of a bankruptcy order made by the adjudicator in the register of writs and orders under section 6 of the Land Charges Act 1972;
  - (b) the bankrupt's name and any alternative names by which the bankrupt has been or is known;
  - (c) the bankrupt's date of birth;
  - (d) the bankrupt's gender, if known;
  - (e) the bankrupt's occupation including any trading name;
  - (f) the postal address for each known place of residence of the bankrupt;
  - (g) the bankrupt's business address where the official receiver considers it appropriate for the purpose of the application;
  - (h) the relevant key number allocated by the Chief Land Registrar;
  - (i) the reference allocated to the bankruptcy order; and
  - (j) the date of the bankruptcy order.
- (2) The application must be authenticated and dated by the official receiver.

#### **The bankruptcy file** E+W

- 10.47.**—(1) On receipt of a bankruptcy application, the adjudicator must open a file on which the adjudicator must place the bankruptcy application and any documents which are filed with the adjudicator under this Chapter.
- (2) As soon as reasonably practicable following the making of the bankruptcy order the adjudicator must deliver the bankruptcy file to the official receiver.
- (3) The official receiver must place on the bankruptcy file—

- (a) any documents delivered to the official receiver by the court; and
  - (b) any notices delivered to the official receiver under these Rules.
- (4) The following persons may inspect the bankruptcy file—
- (a) the court;
  - (b) the trustee;
  - (c) the Secretary of State; and
  - (d) the bankrupt.
- (5) Following the making of a bankruptcy order, a creditor may inspect the following information and documents filed on the bankruptcy file—
- (a) the information provided to the adjudicator and set out in Schedule 9;
  - (b) the bankruptcy order; and
  - (c) directions and orders of the court, if any.
- (6) The right to inspect the bankruptcy file may be exercised on that person's behalf by a person authorised to do so by that person.
- (7) Any person who is not otherwise entitled to inspect the bankruptcy file (or any part of it) may do so if the court gives permission.
- (8) The court may direct that the bankruptcy file, a document (or part of it) must not be made available under this rule without the permission of the court.
- (9) An application for a direction to withhold the bankruptcy file, a document (or part of it) may be made by—
- (a) the official receiver;
  - (b) the trustee; or
  - (c) any person appearing to the court to have an interest.
- (10) An application under this rule for—
- (a) permission to inspect the bankruptcy file; or
  - (b) a direction to withhold the bankruptcy file, a document (or part of it),
- may be made without notice to any other party, but the court may direct that notice must be delivered to any person who would be affected by its decision.

### **Court to which applications are to be made** **E+W**

**10.48.**—(1) An application to the court under this Chapter must be made to the debtor's own hearing centre where the debtor is resident in England and Wales.

(2) If the debtor is not resident in England and Wales but was resident or carried on business in England and Wales within the six months immediately preceding the making of the bankruptcy application, an application may be made to the debtor's own hearing centre or to the High Court.

(3) In this rule the debtor's own hearing centre is—

- (a) where the debtor has carried on business in England and Wales within the six months immediately preceding the filing with the court of the application, the hearing centre for the insolvency district where for the longest period during those six months—
  - (i) the debtor carried on business, or
  - (ii) the principal place of business was located, if business was carried on in more than one insolvency district; or

- (b) where the debtor has not carried on business in England and Wales within the six months immediately before making the application to the court, the hearing centre for the insolvency district where the debtor resided for the longest period during those six months.
- (4) Where, for whatever reason, it is not possible for the application to be made to the debtor's own hearing centre, the applicant may, with a view to expediting the application, make the application—
  - (a) where paragraph (3)(a) applies, to—
    - (i) the hearing centre for the insolvency district in which the debtor resides, or
    - (ii) whichever court or hearing centre is specified in Schedule 6 as being the nearest full-time court or hearing centre in relation to—
      - (aa) the hearing centre in paragraph (3)(a), or
      - (bb) the hearing centre in paragraph (4)(a)(i); or
  - (b) where paragraph (3)(b) applies, whichever court or hearing centre is specified in Schedule 6 as being the nearest full-time court or hearing centre in relation to the court in that paragraph.
- (5) The application must contain sufficient information to establish that it is brought in the appropriate court or hearing centre.



**Changes to legislation:**

There are currently no known outstanding effects for the The Insolvency (England and Wales) Rules 2016, CHAPTER 3.