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STATUTORY INSTRUMENTS

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**2016 No. 1024**

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

**PART 10**

**BANKRUPTCY**

**CHAPTER 8**

**Public examination of bankrupt**

**10.102.**—(1) Where the bankrupt is a person who lacks capacity within the meaning of the Mental Capacity Act 2005<sup>M1</sup> or is unfit to undergo or attend for public examination, the court may—

- (a) stay the order for the bankrupt's public examination; or
- (b) direct that it will be conducted in a manner and place the court thinks just.

(2) An application for an order under paragraph (1) must be made—

- (a) by a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the bankrupt;
- (b) by a person who appears to the court to be a suitable person to make the application; or
- (c) by the official receiver.

(3) Where an application is made by a person other than the official receiver, then—

- (a) the application must, unless the bankrupt is a person who lacks capacity within the meaning of the Mental Capacity Act 2005, be supported by a witness statement by a registered medical practitioner as to the bankrupt's mental and physical condition;
- (b) at least five business days' notice of the application must be delivered to the official receiver and the trustee (if one is appointed); and
- (c) before any order is made on the application, the applicant must deposit with the official receiver such sum as the official receiver determines is necessary for the additional expenses of an examination.

(4) The court may order that some or all of the expenses of the examination are to be payable out of the deposit under paragraph (3)(c), instead of out of the bankrupt's estate.

(5) The order must contain—

- (a) identification details for the proceedings;
- (b) the name and title of the judge making the order;
- (c) the date of the original order for the public examination of the bankrupt;
- (d) the name and postal address of the applicant;
- (e) a statement as to the capacity in which the applicant (other than the official receiver) made the application;

- (f) a statement that the court is satisfied that the bankrupt is a person who lacks capacity within the meaning of the Mental Capacity Act 2005 to manage and administer the bankrupt's property and affairs or is unfit to undergo a public examination;
  - (g) an order either that—
    - (i) the original order is stayed on the grounds that the bankrupt is unfit to undergo a public examination, or
    - (ii) the original order is varied (as specified in this order) on the grounds that the bankrupt is unfit to attend the public examination fixed by the original order; and
  - (h) the date of the order.
- (6) If the original order is varied, the order must also contain a warning to the bankrupt, which must be displayed prominently on the front page of the order, stating that if the bankrupt fails without reasonable excuse to attend the public examination at the time and place set out in the order the bankrupt—
- (a) may be arrested without further notice under section 364(1); and
  - (b) may be held to be in contempt of court under section 290(5) and imprisoned or fined.
- (7) Where the application is made by the official receiver, it may be made without notice to any other party, and may be supported by evidence set out in a report by the official receiver to the court.

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**Marginal Citations**

**M1** 2005 c.9.

**Changes to legislation:**

There are currently no known outstanding effects for the The Insolvency (England and Wales) Rules 2016, Section 10.