
STATUTORY INSTRUMENTS

2021 No. 1178

The Payment and Electronic Money Institution
Insolvency (England and Wales) Rules 2021

PART 10

Court procedure and practice

CHAPTER 7

Applications for an order under section 236 of the IA 1986

Application of section 236 of the IA 1986

212.—(1) This Chapter applies to applications to the court for an order under section 236 of the IA 1986.

(2) In this Chapter, “the respondent” means the person in respect of whom an order is applied for.

Form and contents of application

213. An application to which this Chapter applies—

- (a) must be in writing and specify the grounds on which it is made,
- (b) must specify the name of the respondent,
- (c) must state whether the application is for—
 - (i) the respondent to be ordered to appear before the court,
 - (ii) the respondent to be ordered to clarify any matter which is in dispute in the proceedings or to give additional information in relation to any such matter (in which case CPR Part 18 (further information) shall apply to any such order),
 - (iii) the respondent to submit witness statements (if so, particulars must be given of the matters to be included),
 - (iv) the respondent to produce books, papers or other records (if so, the items in question must be specified), or
 - (v) any two or more of those purposes, and
- (d) may be made without notice to any other party.

Order for examination etc.

214.—(1) The court may, whatever the purpose of the application, make any order which it has power to make under section 236 of the IA 1986.

(2) The court, if it orders the respondent to appear before it, must specify a venue for the respondent’s appearance, which must not be less than fourteen days from the date of the order.

(3) If the respondent is ordered to submit witness statements, the order must specify—

- (a) the matters which are to be dealt with in the respondent's witness statements, and
 - (b) the time within which they are to be submitted to the court.
- (4) If the order is to produce books, papers or other records, the time and manner of compliance must be specified.
- (5) The order must be served as soon as is reasonably practicable on the respondent.

Procedure for examination

215.—(1) At any examination of the respondent, the administrator may attend in person, or be represented by a solicitor with or without counsel, and may put such questions to the respondent as the court may allow.

(2) Unless the administrator objects, the following persons may attend the examination with the permission of the court and may put questions to the respondent (but only through the administrator)

- (a) any person who could have applied for an order under section 236 of the IA 1986, and
- (b) any creditor or customer who has provided information on which the application was made under that section.

(3) If the respondent is ordered to clarify any matter or to give additional information, the court must direct the respondent as to the questions which the respondent is required to answer, and as to whether the respondent's answers (if any) are to be made in a witness statement.

(4) The respondent may, at the respondent's own expense, employ a solicitor with or without counsel, who may put to the respondent such questions as the court may allow for the purpose of enabling the respondent to explain or qualify any answers given by the respondent, and may make representations on the respondent's behalf.

(5) Such written record of the examination must be made as the court thinks proper and such record must be read over either to or by the respondent and authenticated by the respondent at a venue fixed by the court.

(6) The written record may, in any proceedings (whether under the Regulations, these Rules or otherwise), be used as evidence against the respondent of any statement made by the respondent in the course of the respondent's examination.

Record of examination

216.—(1) Unless the court otherwise directs, the written record of questions put to the respondent and the respondent's answers, and any witness statements submitted by the respondent in compliance with an order of the court under section 236 of the IA 1986, are not to be filed with the court.

(2) The documents set out in paragraph (3) are not open to inspection without an order of the court, by any person other than the administrator.

(3) The documents to which paragraph (2) applies are—

- (a) the written record of the respondent's examination,
- (b) copies of questions put to the respondent or proposed to be put to the respondent and answers to questions given by the respondent,
- (c) any witness statement made by the respondent, and
- (d) any document on the court file as shows grounds for the application for the order.

(4) The court may from time to time give directions as to the custody and inspection of any 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 IA 1986

217.—(1) Where the court has ordered an examination of any person under section 236 of the IA 1986 and it appears to it that the examination was made necessary because information had been unjustifiably refused by the respondent, it may order that the costs of the examination be paid by the respondent.

(2) Where the court makes an order against a person under—

(a) section 237(1)(1) of the IA 1986, or

(b) section 237(2) of the IA 1986,

the costs of the application for the order may be ordered by the court to be paid by the respondent.

(3) Subject to paragraphs (1) and (2), the administrator's costs will, unless the court otherwise orders, be paid as an expense of the special administration.

(4) A person summoned to attend for examination under this Chapter must be tendered a reasonable sum in respect of travelling expenses incurred in connection with that person's attendance but any other costs falling on that person are at the court's discretion.

(1) Section 237 was amended by Banking Act 2009 (c. 1), S.I. 2011/245, S.I. 2013/1388 and the Financial Services (Banking Reform) Act 2013 (c. 33). There are other amending instruments but none is relevant.