
STATUTORY INSTRUMENTS

2021 No. 1178

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

PART 11

Prohibited names

Preliminary

240. The rules in this Part—

- (a) relate to the permission required under section 216 of the IA 1986(1) for a person to act in all or any of the ways specified in section 216(3) in relation to an institution with a prohibited name, and
- (b) prescribe the cases excepted from section 216, that is to say, those in which a person to whom that section applies may so act without that permission.

Application for permission under section 216(3)

241.—(1) At least fourteen days' notice of any application for permission to act in all or any of the ways specified in section 216(3) must be given by the applicant to the Secretary of State, who may—

- (a) appear at the hearing of the application, and
- (b) whether or not appearing at the hearing, make representations.

(2) When considering an application for permission under section 216, the court may call on the administrator, or any former administrator, of the institution for a report of the circumstances in which that institution became insolvent and the extent (if any) of the applicant's apparent responsibility for the institution becoming insolvent.

First excepted case

242.—(1) This rule applies where—

- (a) a person ("P") was within the period mentioned in section 216(1) a director, or shadow director, of an institution that has gone into special administration by virtue of Ground A in regulation 9 being satisfied, and
- (b) P acts in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on (or proposed carrying on) of the whole or substantially the whole of the business of the institution where that business (or substantially the whole of it) is (or is to be) acquired from the institution under arrangements—
 - (i) made by the administrator, or

(1) Section 216 was amended by Banking Act 2009 (c. 1) and S.I. 2011/245. There are other amending instruments but none is relevant.

- (ii) made before the institution entered into special administration by an office-holder acting in relation to it as supervisor of a voluntary arrangement under Part 1 of the IA 1986.
- (2) P will not be taken to have contravened section 216 if prior to P's acting in the circumstances set out in paragraph (1) a notice is, in accordance with the requirements of paragraph (3)—
 - (a) given by P to every creditor and customer of the institution whose name and address—
 - (i) is known by P, or
 - (ii) is ascertainable by P on the making of such enquiries as are reasonable in the circumstances, and
 - (b) published in the Gazette.
- (3) The notice referred to in paragraph (2)—
 - (a) may be given and published before the completion of the arrangements referred to in paragraph (1)(b) but must be given and published no later than twenty-eight days after that completion, and
 - (b) must contain—
 - (i) the name and registered number of the institution,
 - (ii) the date that the institution went into special administration,
 - (iii) P's name,
 - (iv) a statement that P was a director of the institution during the period of twelve months ending with the day before the institution entered special administration,
 - (v) a statement that it is P's intention to act (or, where the institution has not entered into special administration, to act or continue to act) in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on of the whole or substantially the whole of the business of the institution,
 - (vi) the prohibited name or, where the institution has not entered into special administration, the name under which the business is being, or is to be, carried on which would be a prohibited name in respect of P in the event of the institution entering special administration,
 - (vii) a statement that P would not otherwise be permitted to act in all or any of the ways specified in section 216(3) without the leave of the court or the application of an exception created by these Rules,
 - (viii) a statement that contravention of the prohibition created by section 216 is a criminal offence, and
 - (ix) a statement as set out in paragraph (6) of the effect of issuing the notice under this paragraph.
- (4) Notice may in particular be given under this rule—
 - (a) prior to the institution entering special administration where the business (or substantially the whole of the business) is, or is to be, acquired by another company under arrangements made by an office-holder acting in relation to the institution as supervisor of a voluntary arrangement (whether or not at the time of the giving of the notice P is a director of that other company), or
 - (b) at a time where P is a director of another company where—
 - (i) the other company has acquired, or is to acquire, the whole, or substantially the whole, of the business of the institution under arrangements made by the administrator, and

(ii) it is proposed that after the giving of the notice a prohibited name should be adopted by the other company.

(5) Notice may not be given under this rule by a person who has already acted in contravention of section 216.

(6) The statement as to the effect of the notice under rule 242(2) must be as set out below—

“Section 216(3) of the Insolvency Act 1986 lists the activities that a director of an institution that has gone into special administration may not undertake unless the court gives permission or there is an exception in the Payment and Electronic Money Institution Insolvency (England and Wales) Rules 2021. This includes the exceptions in Part 11 of those Rules. These activities are—

- (a) being a director of another company that is known by a name which is either the same as a name used by the institution in special administration during the period of twelve months ending with the day before the institution entered special administration or is so similar as to suggest an association with that institution,
- (b) directly or indirectly being concerned or taking part in the promotion, formation or management of any such company, or
- (c) directly or indirectly being concerned or taking part in the carrying on of a business otherwise than through a company under a name of the kind mentioned in (a) above.

This notice is given under Rule 242 of the Payment and Electronic Money Institution Insolvency (England and Wales) Rules 2021 because the business of an institution which is in, or may go into, special administration is, or is to be, carried on otherwise than by the institution in special administration with the involvement of a director of that institution and under the same or a similar name to that of that institution.

The purpose of giving this notice is to permit the director to act in these circumstances where the institution enters (or has entered) special administration without the director committing a criminal offence and, in the case of the carrying on of the business through another company, being personally liable for that company’s debts.

Notice may be given where the person giving the notice is already the director of a company which proposes to adopt a prohibited name.”

Second excepted case

243.—(1) Where a person (“P”) to whom section 216 applies, applies for permission of the court under that section not later than seven business days from the date on which the institution went into special administration, P may, during the period specified in paragraph (2), act in any of the ways mentioned in section 216(3), notwithstanding that P has not the permission of the court under that section.

(2) The period referred to in paragraph (1) begins with the day on which the institution goes into special administration and ends either on the day falling six weeks after that date or on the day on which the court disposes of the application for permission under section 216, whichever of those days occurs first.

Third excepted case

244. The court’s permission under section 216(3) is not required where the company there referred to, though known by a prohibited name—

- (a) has been known by that name for the whole of the period of twelve months ending with the day before the institution went into special administration, and
- (b) has not at any time in those twelve months been dormant within the meaning of section 1169(1), (2) and (3)(a) of the CA 2006.

Status: *This is the original version (as it was originally made).*
