
STATUTORY INSTRUMENTS

2021 No. 1178

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

PART 8

The Administrator

CHAPTER 1

Powers of the administrator

General powers

154.—(1) Any permission given by the creditors' committee (or if there is no such committee, a meeting of the institution's creditors and customers or the court under these Rules), must not be a general permission but must relate to a particular proposed exercise of one or more of the administrator's powers in Schedule 1 to the IA 1986.

(2) A person dealing with the administrator in good faith and for value is not concerned to enquire whether any such permission has been given.

(3) Where the administrator has done anything without that permission, the court or the creditors' committee may, for the purpose of enabling the administrator to meet the administrator's expenses, ratify what the administrator has done, but neither shall do so unless it is satisfied that the administrator has acted in a case of urgency and has sought ratification without undue delay.

Powers of disclaimer

155.—(1) Where the administrator disclaims property under section 178 of the IA 1986⁽¹⁾, the notice of disclaimer must contain such particulars of the property disclaimed as enable it to be easily identified.

(2) The notice of disclaimer must be authenticated and dated by the administrator.

(3) As soon as is reasonably practicable after authenticating the notice of disclaimer, the administrator must—

(a) send a copy of the notice to the registrar of companies, and

(b) in any case where the disclaimer is of registered land as defined in section 132(1) of the Land Registration Act 2002⁽²⁾, send a copy of the notice to the Chief Land Registrar.

(4) For the purposes of section 178 of the IA 1986, the date of the prescribed notice is that on which the administrator authenticated it.

⁽¹⁾ Section 178 was amended by Banking Act 2009 c. 1, S.I. 2011/245. There are other amending instruments but none is relevant.

⁽²⁾ 2002 c. 9.

Communication of disclaimer to persons interested

156.—(1) Within seven business days after the date of the notice of disclaimer, the administrator must send or give copies of the notice to every person who, to the administrator’s knowledge—

- (a) claims under the institution as underlessee or mortgagee, where the property disclaimed is of a leasehold nature,
- (b) claims an interest in the disclaimed property,
- (c) is under any liability in respect of the property, not being a liability discharged by the disclaimer, or
- (d) who is party to the contract or has an interest under it where the disclaimer is of an unprofitable contract.

(2) If subsequently it comes to the administrator’s knowledge, in the case of any person ‘P’, that P has such an interest in the disclaimed property as would have entitled P to receive a copy of the notice of disclaimer under paragraph (1), the administrator must then, as soon as is reasonably practicable, send or give to P a copy of the notice.

(3) Compliance with paragraph (2) is not required if—

- (a) the administrator is satisfied that P has already been made aware of the disclaimer and its date, or
- (b) the court, on the administrator’s application, orders that compliance is not required in that particular case.

Additional notices

157.—(1) The administrator disclaiming property may at any time send or give copies of the notice of the disclaimer to any persons who in the administrator’s opinion ought, in the public interest or otherwise, to be informed of the disclaimer.

(2) Paragraph (1) is without prejudice to the administrator’s obligations under sections 178, 179 and 180 of the IA 1986⁽³⁾ and rules 155 and 156.

Records

158. The administrator must include in the administrator’s records of the special administration a record of—

- (a) the persons to whom that administrator has sent or given copies of the notice of disclaimer under rules 156 and 157, showing their names and addresses, and the nature of their respective interests,
- (b) the dates on which the copies of the notice of disclaimer were sent or given to those persons,
- (c) the date on which, as required by rule 155, a copy of the notice of disclaimer was sent to the registrar of companies, and
- (d) (where applicable) the date on which, as required by rule 155, a copy of the notice was sent to the Chief Land Registrar.

Application by interested party

159.—(1) The following applies where, in the case of any property, application is made to the administrator by an interested party under section 178(5) of the IA 1986.

(3) Sections 178 to 180 were amended by Banking Act 2009 (c. 1) and S.I. 2011/245. There are other amending instruments but none is relevant.

- (2) The application must be delivered to the administrator—
 - (a) personally,
 - (b) by electronic means in accordance with Part 12, or
 - (c) by any other means of delivery which enables proof of receipt of the application by the administrator to be provided, if requested.

Interest in property to be declared on request

160.—(1) If, in the case of property which the administrator has the right to disclaim, it appears to the administrator that there is some person ‘P’ who claims, or may claim, to have an interest in the property, the administrator may give notice to P calling on that person to declare within fourteen days whether P claims any such interest and, if so, the nature and extent of it.

(2) If P fails to comply with the notice, the administrator is entitled to assume that P has no such interest in the property as will prevent or impede its disclaimer.

Disclaimer presumed valid and effective

161. Any disclaimer of property by the administrator is presumed valid and effective, unless it is proved that the administrator has been in breach of their duty with respect to the giving of notice of disclaimer, or otherwise, under sections 178 to 180 of the IA 1986 or under this Chapter of these Rules.

Application for the exercise of court’s powers under section 181

162.—(1) This rule applies with respect to an application by any person under section 181 of the IA 1986 for an order of the court to vest or deliver disclaimed property.

(2) The application must be made within three months of the applicant becoming aware of the disclaimer, or of the applicant receiving a copy of the administrator’s notice of disclaimer sent under rule 156, whichever is the earlier.

- (3) The applicant must with the application file a witness statement—
 - (a) stating whether the application is made under—
 - (i) paragraph (a) of section 181(2), or
 - (ii) paragraph (b) of section 181(2),
 - (b) specifying the date on which the applicant received a copy of the administrator’s notice of disclaimer, or otherwise became aware of the disclaimer, and
 - (c) specifying the grounds of the application and the order which the applicant desires the court to make under section 181.

(4) The court must fix a venue for the hearing of the application, and the applicant must, not later than five business days before the date fixed, give to the administrator notice of the venue, accompanied by copies of the application and the witness statement required by paragraph (3).

(5) On the hearing of the application, the court may give directions as to other persons (if any) who should be sent or given notice of the application and the grounds on which it is made.

(6) Sealed copies of any order made on the application must be sent by the court to the applicant and the administrator.

(7) In a case where the property disclaimed is of a leasehold nature, and section 179 of the IA 1986 applies to suspend the effect of the disclaimer, there must be included in the court’s order a direction giving effect to the disclaimer.

(8) Paragraph (7) does not apply if, at the time when the order is issued, other applications under section 181 are pending in respect of the same property.