
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.

CHAPTER 2

Fixing of remuneration

Fixing of remuneration

163.—(1) The administrator is entitled to receive remuneration—

- (a) to be paid out of the estate of the institution for services given—
 - (i) in respect of the pursuit of Objectives 2 and 3, and
 - (ii) as a consequence of a failure by the institution to safeguard relevant funds, and
- (b) to be paid out of relevant funds for services given in respect of the pursuit of Objective 1.

(2) The basis of remuneration in both cases in paragraph (1) must be fixed—

- (a) as a percentage of the value of the property with which the administrator has to deal,
- (b) by reference to the time properly given by the insolvency practitioner (as administrator) and their staff in attending to matters arising in the special administration, or
- (c) as a set amount.

(3) The basis of remuneration may be fixed as any one or more of the bases set out in paragraph (2), and different bases may be fixed in respect of different things done by the administrator.

(4) Where the basis of remuneration is fixed as set out in paragraph (2)(a), different percentages may be fixed in respect of different things done by the administrator.

(5) It is for the creditors' committee (if there is one) to determine for each case—

- (a) which of the bases set out in paragraph (2) are to be fixed and (where appropriate) in what combination under paragraph (3), and
- (b) the percentage or percentages (if any) to be fixed under paragraphs (2)(a) and (4) and the amount (if any) to be set under paragraph (2)(c).

(6) In making the determinations, the creditors' committee must have regard to the following matters—

- (a) the complexity (or otherwise) of the case,
- (b) any respects in which, in connection with the pursuit of either Objective 1, 2 or 3, there falls on the administrator any responsibility of an exceptional kind or degree,
- (c) the effectiveness with which the administrator appears to be carrying out, or to have carried out, their duties as such, and
- (d) the value and nature in each case of the property with which the administrator has to deal.

(7) If there is no creditors' committee, or the committee does not make the requisite determinations, the basis of the administrator's remuneration in each case may be fixed (in accordance with paragraphs (2) to (5)) by resolutions of a meeting of creditors and customers, or in respect of the administrator's remuneration for the purpose outlined in rule 163(1)(b), a meeting of customers and paragraph (6) applies to them as it does to the creditors' committee.

(8) If not fixed in accordance with paragraphs (5) or (7), the basis of the administrator's remuneration must, on the administrator's application, be fixed by the court and the provisions above apply as they do to the fixing of the basis of remuneration by the creditors' committee.

(9) An application under paragraph (8) may not be made by the administrator unless the administrator has first sought to fix the basis in accordance with paragraph (5) or (7), and in any event may not be made more than eighteen months after the date of the administrator's appointment.

(10) Where there are joint administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred—

- (a) to the court, for settlement by order, or
- (b) to the creditors' committee or a meeting of creditors and customers, for settlement by resolution.

(11) If the administrator is a solicitor and employs their own firm, or any partner in it, to act on behalf of the institution, profit costs must not be paid unless this is authorised by the creditors' committee, the meeting of the creditors and customers, or the court.

Recourse to meeting of creditors and customers

164. If the basis of the administrator's remuneration for either case in rule 163(1) has been fixed by the creditors' committee, and the administrator considers, in either or in both cases, the rate or amount to be insufficient, or the basis to be inappropriate, the administrator may request that the rate or amount be increased or the basis changed by resolution of the creditors and the customers.

Recourse to the court

165.—(1) If the administrator considers that the basis of remuneration for either case in rule 163(1) fixed for the administrator by—

- (a) the creditors' committee, or
- (b) by resolution of the creditors and customers, or as the case may be, a meeting of customers,

is insufficient or inappropriate, the administrator may apply to the court for an order changing it or increasing its amount or rate.

(2) The administrator must give at least fourteen days' notice of the application under paragraph (1) to the members of the creditors' committee, and the creditors' committee may nominate one or more members to appear, or be represented, and to be heard on the application.

(3) If there is no creditors' committee, the notice of the application must be sent to such one or more of the institution's creditors or customers as the court may direct and those creditors or customers must nominate one or more of their number to appear or be represented and be heard on the application.

(4) Notice of the application must also be given to the FCA and the FCA may nominate a person to appear and be heard on the application.

(5) The court may, if it appears to be a proper case, order the costs of the administrator's application, including the costs of any member of the creditors' committee appearing or being represented on it, or any creditor or customer so appearing or being represented, to be paid as an expense of the special administration.

Creditors' and customers' request for further information

166.—(1) If—

- (a) within twenty-one days of receipt of a progress report under rule 87—
 - (i) a secured creditor,
 - (ii) an unsecured creditor with the concurrence of at least five per cent in value of the unsecured creditors (including the creditor in question), or

(iii) a customer with the concurrence of customers whose relevant funds claims represent at least five per cent of all relevant funds claims (including the customer in question), or

(b) with the permission of the court upon an application made within that period of twenty-one days, any unsecured creditor or any customer,

makes a request in writing to the administrator for further information about remuneration or expenses (other than pre-administration costs) set out in a statement required by rule 87(1)(h) or (i), the administrator must, within fourteen days of receipt of the request, comply with paragraph (2).

(2) The administrator complies with this paragraph by either—

(a) providing all of the information asked for, or

(b) so far as the administrator considers that—

(i) the time or cost of preparation of the information would be excessive,

(ii) disclosure of the information would be prejudicial to the conduct of the special administration or might reasonably be expected to lead to violence against any person, or

(iii) the administrator is subject to an obligation of confidentiality in respect of the information,

giving reasons for not providing all of the information.

(3) Any creditor or customer, who need not be the same as the person who requested further information under paragraph (1), may apply to the court within twenty-one days of—

(a) the giving by the administrator of reasons for not providing all of the information asked for, or

(b) the expiry of the fourteen days provided for in paragraph (1),

and the court may make such order as it thinks just.

(4) Without prejudice to the generality of paragraph (3), the order of the court under that paragraph may extend the period of eight weeks provided for in rule 167(4) by such further period as the court thinks just.

Claim that remuneration is excessive

167.—(1) The following persons may apply to the court for one or more of the orders in paragraph (7) in respect of the administrator's remuneration for services set out in rule 163(1)(a)—

(a) a secured creditor,

(b) an unsecured creditor with either the concurrence of at least ten per cent in value of the unsecured creditors (including that creditor) or the permission of the court,

(c) a customer with the concurrence of customers whose relevant funds claims represent at least ten per cent of all relevant funds claims or with the permission of the court, or

(d) the FCA.

(2) A customer, with the concurrence of customers whose relevant funds claims represent at least ten per cent of the total relevant funds claims, or with the permission of the court, may apply to the court for one or more of the orders in paragraph (7) in respect of the administrator's remuneration for services set out in rule 163(1)(b).

(3) An application under paragraphs (1) and (2) may be made on the grounds that—

(a) the remuneration charged by the administrator is, or the expenses incurred by the administrator are, in all the circumstances, excessive, or

(b) the basis fixed for the administrator's remuneration is in all the circumstances excessive or inappropriate.

(4) The application must, subject to any order of the court under rule 166(4), be made no later than eight weeks after receipt by the applicant of the progress report which first reports the charging of the remuneration or the incurring of the expenses in question ("the relevant report").

(5) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application without a hearing but it must not do so without giving the applicant at least five business days' notice.

(6) Upon receipt of notice under paragraph (5), the applicant may require the court to list the application for a without notice hearing.

(7) If the application is not dismissed, the court must fix a venue for it to be heard, and give notice to the applicant accordingly.

(8) The applicant must, at least fourteen days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to provide in support of the application.

(9) If the court considers the application to be well-founded, it may make one or more of the following orders—

- (a) an order reducing the amount of remuneration which the administrator was entitled to charge,
- (b) an order fixing the basis of remuneration at a reduced rate or amount,
- (c) an order changing the basis of remuneration,
- (d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the special administration, or
- (e) an order that the administrator or the administrator's personal representative pay to the institution the amount of the excess of remuneration or expenses or such part of the excess as the court may specify,

and may make any other order that it thinks just, but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report.

(10) Unless the court orders otherwise, the costs of the application must be paid by the applicant, and are not payable as an expense of the special administration.

Review of remuneration

168.—(1) Where, after the basis of the administrator's remuneration has been fixed, there is a material and substantial change in the circumstances which were taken into account in fixing it, the administrator may request that it be changed.

(2) The request must be made—

- (a) where the creditors' committee fixed the basis, to the committee;
- (b) where the creditors and customers fixed the basis, to the creditors and customers;
- (c) where the court fixed the basis, by application to the court;

and this Chapter applies as appropriate.

(3) Any change in the basis for remuneration applies from the date of the request under paragraph (1) and not for any earlier period.

Remuneration of new administrator

169. If a new administrator is appointed in place of another, any determination, resolution or court order in effect under the preceding provisions of this Chapter immediately before the former administrator ceased to hold office continues to apply in respect of the remuneration of the new administrator until a further determination, resolution or court order is made in accordance with those provisions.

Apportionment of set fee remuneration

170.—(1) In a case in which the basis of the administrator’s remuneration is a set amount under rule 163(2)(c) and the administrator (“the former administrator”) ceases (for whatever reason) to hold office before the time has elapsed or the work has been completed in respect of which the amount was set, application may be made for determination of what portion of the amount should be paid to the former administrator or the former administrator’s personal representative in respect of the time which has actually elapsed or the work which has actually been done.

(2) An application under paragraph (1) may be made—

- (a) by the former administrator or the former administrator’s personal representative within the period of twenty-eight days beginning with the date upon which the former administrator ceased to hold office, or
- (b) by the administrator for the time being in office if the former administrator or the former administrator’s personal representative has not applied by the end of that period.

(3) Application must be made—

- (a) where the creditors’ committee fixed the basis, to that committee for a resolution determining the portion;
- (b) where the creditors and customers fixed the basis, to the creditors and customers for a resolution determining the portion;
- (c) where the court fixed the basis, to the court for an order determining the portion;

(4) The applicant must give a copy of the application to the administrator for the time being in office or to the former administrator or the former administrator’s personal representative, as the case may be (“the recipient”).

(5) The recipient may within twenty-one days of receipt of the copy of the application give notice of intent to make representations to the creditors’ committee or to the creditors and customers, or to appear or be represented before the court, as the case may be.

(6) No determination may be made upon the application until expiry of the twenty-one days referred to in paragraph (5) or, if the recipient does give notice of intent in accordance with that paragraph, until the recipient has been afforded the opportunity to make representations or to appear or be represented on the application, as the case may be.

(7) If the former administrator or the former administrator’s personal representative (whether or not the original applicant) considers that the portion determined upon application to the creditors’ committee or the creditors and customers is insufficient, that person may apply—

- (a) in the case of a determination by the creditors’ committee, to the creditors and customers for a resolution increasing the portion;
- (b) in the case of a resolution of the creditors and customers (whether under paragraph (1) or under sub-paragraph (a)), to the court for an order increasing the portion;

and paragraphs (4) to (6) apply as appropriate.

CHAPTER 3

Replacing the administrator

Grounds for resignation

171.—(1) The administrator may resign in the following circumstances—

- (a) on grounds of ill health,
- (b) that the administrator intends ceasing to be in practice as an insolvency practitioner, or
- (c) that there is some conflict of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by that person of the duties of administrator.

(2) The administrator may, with the permission of the court, resign on grounds other than those specified in paragraph (1).

Notice of intention to resign

172.—(1) The administrator must in all cases give at least five business days' notice of their intention to resign, or their intention to apply for the court's permission to do so, to the following persons—

- (a) if there is a continuing administrator of the institution, to that person, and
- (b) if there is a creditors' committee, to it.

(2) If there is no continuing administrator and no creditors' committee, the administrator must give at least five business days' notice of their intention to resign, or their intention to apply for the court's permission to do so, to the institution and its creditors and customers of whose claim the administrator is aware and whom the administrator has a means of contacting.

(3) Where the administrator was appointed on the application of the FCA or the Secretary of State, notice under paragraph (1) or paragraph (2) must also be given to the applicant.

(4) Notice under paragraph (1) or paragraph (2) must set out—

- (a) a statement that the proceedings are being held in the court and the court reference number;
- (b) the full name, registered address, registered number of the institution;
- (c) the full name and business address of the administrator;
- (d) either—
 - (i) the date on which the administrator's resignation shall take effect, or
 - (ii) the date upon which the administrator intends to apply to the court for leave to resign.

Notice of resignation

173.—(1) The notice of resignation must set out—

- (a) a statement that the proceedings are being held in the court and the court reference number,
- (b) the full name, registered address and registered number of the institution,
- (c) the full name and business address of the administrator,
- (d) whether or not the person resigning is the sole administrator of the institution, and
- (e) a statement that either—
 - (i) the administrator resigns from office with effect from a specified date, or

(ii) the court gave the administrator leave to resign (and the statement must include the date of the court's permission) and that the administrator therefore resigns with effect from a specified date.

(2) The notice must be filed with the court and a copy of the notice of resignation must be sent not more than five business days after it has been filed with the court to all those to whom the notice of intention to resign was sent.

(3) The administrator must notify the registrar of companies of their resignation.

Application to court to remove administrator from office

174.—(1) Any application under paragraph 88 must state the grounds on which it is requested that the administrator should be removed from office.

(2) Notice of the application must be served on—

- (a) the administrator,
- (b) the person who made the application for the special administration order,
- (c) the creditors' committee (if any),
- (d) the joint administrator (if any),
- (e) where there is neither a creditors' committee or joint administrator, the institution and all the creditors and customers of whose claim the administrator is aware and of whom they have a means of contacting, and
- (f) the FCA.

(3) Where a court makes an order removing the administrator it must give a copy of the order to the applicant who as soon as is reasonably practicable must send a copy to the administrator.

(4) The applicant must also within five business days of the order being made send a copy of the order to all those to whom notice of the application was sent.

(5) The applicant must send notice of the order to the registrar of companies within five business days of the order being made.

Notice of vacation of office when administrator ceases to be qualified

175. Where the administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the institution gives notice in accordance with paragraph 89, notice must also be given to—

- (a) the registrar of companies, and
- (b) where the administrator was appointed on the application of the FCA or the Secretary of State, the applicant.

Administrator deceased

176.—(1) Subject to paragraphs (2) to (4), where the administrator has died, it is the duty of the administrator's personal representatives to give notice of the fact to the court, specifying the date of the death. This does not apply if notice has been given under either paragraph (3) or (4) of this rule.

(2) Notice of the death must also be sent to the registrar of companies.

(3) If the deceased administrator was a partner in or an employee of a firm, notice to the court may be given by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Secretary of State or the Department for the Economy for Northern Ireland for the authorisation of insolvency practitioners.

(4) Notice of the death may be given to the court by any person producing to the court the relevant death certificate or a copy of it.

Application to replace

177.—(1) Where an application is made to court under paragraph 91(1) to appoint a replacement administrator, the application must be accompanied by a written statement by the person proposed to be the replacement administrator.

(2) The written statement must be in accordance with rule 7.

(3) A copy of the application must be served on—

- (a) the person who made the application for a special administration order,
- (b) the institution (if neither the institution nor its directors are the applicant),
- (c) on the person nominated for appointment as administrator, and
- (d) the FCA (if not the applicant).

(4) Rule 10 shall apply to the service of an application under paragraph 91(1) as it applies to service of the application for a special administration order.

(5) Rules 11 and 13 apply to an application under this rule and rule 16(1) and (2) shall apply to the notice of appointment under paragraph 91(1) as it applies to notice of a special administration order.

Notification and advertisement of appointment of replacement administrator

178.—(1) Subject to rule 180, where a replacement administrator is appointed, the same provisions apply in respect of giving notice of, and advertising, the replacement appointment as in the case of the initial appointment.

(2) All statements, consents and notices as are required for the initial appointment are also required in the case of the appointment of a replacement administrator.

(3) All notices must clearly identify that the appointment is of a replacement administrator.

Notification and advertisement of appointment of joint administrator

179. Subject to rule 180, where, after an initial appointment has been made, an additional person or persons are to be appointed as joint administrator, the same rules apply in respect of giving notice of and advertising the appointment as applied in relation to the initial appointment.

Notification of new administrator

180.—(1) The replacement or additional administrator must send notice of the appointment to the registrar of companies.

(2) The notice in paragraph (1) must contain—

- (a) the name and business address of the administrator appointed,
- (b) the name, registered address and registered number of the institution in respect of which the appointment is made,
- (c) whether the administrator is appointed to replace an existing administrator or in addition to a previously appointed administrator, and
- (d) the date from which the administrator's appointment will take effect.

Administrator’s duties on vacating office

181.—(1) Where the administrator (‘A’) ceases to be in office in consequence of this Chapter, A is under obligation as soon as is reasonably practicable to deliver up to the person succeeding A as administrator (‘B’)—

- (a) the assets (after deduction of any expenses properly incurred and distributions made by A),
- (b) the records of the special administration, including correspondence, proofs and other related papers appertaining to the special administration while it was within A’s responsibility, and
- (c) the institution’s books, papers and other records.

(2) If A makes default in complying with this rule, A is liable to a fine and, for continued contravention, to a daily default fine in each case as set out in the Schedule to these Rules.