

2011 No. 785

INSOLVENCY

The Insolvency (Amendment) Rules 2011

<i>Made</i> - - - -	<i>14th March 2011</i>
<i>Laid before Parliament</i>	<i>15th March 2011</i>
<i>Coming into force</i> - -	<i>6th April 2011</i>

The Lord Chancellor has consulted the committee existing for the purposes of section 413 of the Insolvency Act 1986(a) (“the Act”).

The Lord Chancellor makes the following Rules—

in exercise of the powers conferred by section 412(b) of the Act,

with the concurrence of the Secretary of State, and

with the concurrence of the Chancellor of the High Court (by authority of the Lord Chief Justice under section 412(6)(c) of the Act) in relation to those Rules which affect court procedure.

Citation and commencement

1. These Rules may be cited as the Insolvency (Amendment) Rules 2011 and come into force on 6th April 2011.

Amendments to the Insolvency Rules 1986

2. The Insolvency Rules 1986(d) are amended as set out as follows.

Amendments to Rule 5A.10

3.—(1) Rule 5A.10 (particular descriptions of property to be excluded for the purpose of determining the value of a person’s property) is amended as follows.

(2) In paragraph (1)—

(a) at the end of sub-paragraph (h) omit “or”; and

(b) after sub-paragraph (i) add—

(a) 1986 c. 45.
(b) Subsection (1) was amended by 2005 c. 4, Sch 4, paras 185 and 189(1) and (2), and by 2007 c. 15, Sch 20, para 8
(c) Subsection (6) was inserted by 2005 c. 4, Sch 4, paras 185 and 189(1) and (3).
(d) S.I. 1986/1925; relevant amending instruments are S.I. 2009/642 and 2010/686; there are other amending instruments but none is relevant.

“and

- (j) any right of the debtor under an approved pension arrangement (as defined by section 11 of the Welfare Reform and Pensions Act 1999^(a)).

Substitution of Rule 5A.21

4. For Rule 5A.21 (court in which applications under sections 251M (powers of court in relation to debt relief orders) or 251N (inquiry into debtor’s dealings and property) to be made) substitute—

“Court in which applications under sections 251M (powers of court in relation to debt relief orders) or 251N (inquiry into debtor’s dealings and property) to be made

5A.21.—(1) An application to the court under section 251M or 251N must be made to—

- (a) the High Court, where the proceedings are allocated to the London insolvency district under Rule 7.10ZA(a)(v);
- (b) the Central London County Court, where the proceedings are allocated to the London insolvency district under Rule 7.10ZA(a)(i) to (iv);
- (c) the debtor’s own county court (subject to paragraph (4)), in any other case where the debtor is resident in England and Wales.

(2) If the debtor is not resident in England and Wales but was resident or carried on business in England and Wales within the 6 months immediately preceding the filing with the court of the application and the proceedings are not allocated to the London insolvency district, the application may be made to either the debtor’s own county court or the High Court.

(3) In this Rule the debtor’s own county court is—

- (a) where the debtor has carried on business in England and Wales within the 6 months immediately preceding the making of the application to the court, the county court for the insolvency district where for the longest period during those 6 months—
 - (i) the debtor carried on business, or
 - (ii) the principal place of business was located, if business was carried on in more than one insolvency district; or
- (b) where the debtor has not carried on business in England and Wales within the 6 months immediately preceding the making of the application to the court, the county court for the insolvency district where the debtor resided for the longest period during those 6 months.

(4) Where, for whatever reason, it is not possible for the application to be made to the debtor’s own county court, the applicant may, with a view to expediting the application, make the application—

- (a) where paragraph (3)(a) applies, to—
 - (i) the court for the insolvency district in which the debtor resides, or
 - (ii) whichever court is specified by Schedule 2 to these Rules as being the nearest full time court in relation to—
 - (aa) the court in paragraph (3)(a), or
 - (bb) the court in sub-paragraph (i),
- as the case may be; or

(a) 1999 c. 30; section 11 is amended by SI 2006/745.

- (b) where paragraph (3)(b) applies, whichever court is specified by Schedule 2 to these Rules as being the nearest full time court in relation to the court in that paragraph.

(5) The application must contain sufficient information to establish that it is made to the appropriate court.”.

Amendments to Rule 6.4

5.—(1) Rule 6.4 (application to set aside statutory demand) is amended as follows.

(2) In paragraph (2A)—

- (a) for “High Court where the High Court” substitute “the court to which in accordance with Rule 6.9A(1) a petition based on the debt in the statutory demand must be presented where that court”; and
- (b) at the end of sub-paragraph (c)(ii) add “or the Central London County Court”.

Substitution of Rule 6.9A

6. For Rule 6.9A (court in which petition to be presented) substitute—

“Court in which petition to be presented

6.9A.—(1) Where the proceedings are allocated to the London insolvency district under Rule 7.10ZA(a)(i) to (iv) or (b), the creditor must present the petition to—

- (a) the High Court where the petition debt is £50,000 or more;
- (b) the Central London County Court where the petition debt is less than £50,000;

(2) Where the proceedings are allocated to the London insolvency district under Rule 7.10ZA(a)(v), (c) or (d), the creditor must present the petition to the High Court.

(3) Where the debtor is resident in England and Wales and the proceedings are not allocated to the London insolvency district, the creditor must present the petition to the debtor’s own county court.

(4) In this Rule the debtor’s own county court is—

- (a) where the debtor has carried on business in England and Wales within the 6 months immediately preceding the presentation of the petition, the county court for the insolvency district where for the longest period during those 6 months—
 - (i) the debtor carried on business, or
 - (ii) the principal place of business was located, if business was carried on in more than one insolvency district; or
- (b) where the debtor has not carried on business in England and Wales within the 6 months immediately preceding the presentation of the petition, the county court for the insolvency district where the debtor resided for the longest period during those 6 months.

(5) If the debtor is not resident in England and Wales but was resident or carried on business in England and Wales within the 6 months immediately preceding the presentation of the petition and the proceedings are not allocated to the London insolvency district, the petition may be presented either to the debtor’s own county court or to the High Court.

(6) Notwithstanding any other provision of this Rule except paragraph (2), where there is in force for the debtor a voluntary arrangement under Part 8 of the Act, the petition must be presented to the court to which—

- (a) the nominee’s report under section 256 was submitted, or
- (b) where a nominee has made a report under section 256A(3), an application has been made.

(7) The petition must contain sufficient information to establish that it is presented in the appropriate court.”.

Substitution of Rule 6.40A

7. For Rule 6.40A (court in which petition to be filed) substitute—

“Court in which petition to be presented

6.40A.—(1) Where the proceedings are allocated to the London insolvency district under Rule 7.10ZA(a)(i) to (iv), the debtor must present the petition to—

- (a) the High Court where the unsecured liabilities set out in the statement of affairs attached to the petition total £100,000 or more;
- (b) the Central London County Court where the unsecured liabilities set out in the statement of affairs attached to the petition total less than £100,000;

(2) Where the proceedings are allocated to the London insolvency district under Rule 7.10ZA(a)(v) or (c)(ii), the debtor must present the petition to the High Court.

(3) Where the debtor is resident in England and Wales and the proceedings are not allocated to the London insolvency district, the debtor must present the petition to the debtor’s own county court unless paragraph (6) applies.

(4) If the debtor is not resident in England and Wales but was resident or carried on business in England and Wales within the 6 months immediately preceding the presentation of the petition and the proceedings are not allocated to the London insolvency district, the debtor may present the petition either to the debtor’s own county court or to the High Court.

(5) For the purposes of this Rule, what constitutes the debtor’s own county court is to be determined in accordance with Rule 6.9A(4).

(6) Where, for whatever reason, it is not possible for the petition to be presented to the debtor’s own county court, the debtor may, with a view to expediting the presentation of the petition, present the petition—

- (a) where Rule 6.9A(4)(a) applies, to—
 - (i) the court for the insolvency district in which the debtor resides, or
 - (ii) whichever court is specified by Schedule 2 to these Rules as being the nearest full time court in relation to—
 - (aa) the court in Rule 6.9A(4)(a), or
 - (bb) the court in sub-paragraph (i); or
- (b) where Rule 6.9A(4)(b) applies, whichever court is specified by Schedule 2 to these Rules as being the nearest full time court in relation to the court in that paragraph.

(7) Notwithstanding any other provision of this Rule except paragraph (2), where there is in force for the debtor a voluntary arrangement under Part 8 of the Act, the petition must be presented to the court to which—

- (a) the nominee’s report under section 256 was submitted; or
- (b) where a nominee has made a report under section 256A(3), an application has been made.

(8) The petition must contain sufficient information to establish that it is presented to the appropriate court.”.

Revocation of Rule 6.229

8. Rule 6.229 is revoked.

New Chapter in Part

9. After Rule 7.10 (adjournment of hearing: directions) insert—

“CHAPTER 1ZA

THE LONDON INSOLVENCY DISTRICT

Allocation of proceedings to the London insolvency district

7.10ZA. The following proceedings are allocated to the London insolvency district—

- (a) bankruptcy petitions and applications in relation to a debt relief order under section 251M (powers of court in relation to debt relief orders) or 251N (inquiry into debtor’s dealings and property) where—
 - (i) the debtor is resident in England and Wales and within the 6 months immediately preceding the presentation of the petition or the making of the application the debtor carried on business within the area of the London insolvency district—
 - (aa) for the greater part of those 6 months, or
 - (bb) for a longer period in those 6 months than in any other insolvency district;
 - (ii) the debtor is resident in England and Wales and within the 6 months immediately preceding the presentation of the petition or the making of the application the debtor did not carry on business in England and Wales but resided within the area of the London insolvency district for—
 - (aa) the greater part of those 6 months, or
 - (bb) a longer period in those 6 months than in any other insolvency district;
 - (iii) the debtor is not resident in England and Wales but within the 6 months immediately preceding the presentation of the petition or the making of the application carried on business within the area of the London insolvency district;
 - (iv) the debtor is not resident in England and Wales and within the 6 months immediately preceding the presentation of the petition or the making of the application did not carry on business in England and Wales but resided within the area of the London insolvency district;
 - (v) the debtor is not resident in England and Wales and within the 6 months immediately preceding the presentation of the petition or the making of the application the debtor neither carried on business nor resided in England and Wales;
- (b) creditors’ bankruptcy petitions presented by a Minister of the Crown or a Government Department, and either—
 - (i) in any statutory demand on which the petition is based the creditor has indicated the intention to present a bankruptcy petition to a court exercising jurisdiction in respect of the London insolvency district, or
 - (ii) the petition is presented under section 267(2)(c) on the grounds specified in section 268(1)(b);
- (c) bankruptcy petitions—
 - (i) where the petitioner is unable to ascertain the place where the debtor resides or, if the debtor carries on business in England and Wales, both where the debtor resides and where the debtor carries on business; or
 - (ii) where the debtor is a member of a partnership and—
 - (aa) the partnership is being wound up by the High Court sitting in London, or

- (bb) a petition for the winding up of the partnership has been presented to the High Court sitting in London and at the time of the presentation of the bankruptcy petition, the petition for the winding of the partnership has not been finally disposed of; and
- (d) bankruptcy petitions based on criminal bankruptcy orders under section 264(1)(d).
”.

Amendments to Form 6.1

10.—(1) Form 6.1 is amended as follows.

(2) For “High Court.” where it first occurs substitute “[High Court][Central London County Court].”[Delete as appropriate”.

(3) In Part A, for—

- (a) “Rule 6.40(1) and 6.40(2)” substitute “Rule 6.40A”; and
- (b) “[the High Court of Justice]” substitute “[the High Court][the Central London County Court][or]”.

Amendments to Form 6.2

11.—(1) Form 6.2 is amended as follows.

(2) For “High Court in London” where it first occurs substitute “[High Court][Central London County Court]”.

(3) In Part A—

- (a) for “Rule 6.40(1) and 6.40(2)” substitute “Rule 6.40A”;
- (b) for the second sentence substitute—

“Where the statutory demand is served by a Minister of the Crown or a Government Department you may choose the court to which to make your application. You may choose the court in Rule 6.4(2) or the court which the Minister of the Crown or Government Department has indicated as the court to which it intends to present a bankruptcy petition against you (the High Court or the Central London County Court).”; and

- (c) for “[the High Court of Justice]” substitute “[the High Court][the Central London County Court][or]”.

Amendments to Form 6.3

12.—(1) Form 6.3 is amended as follows.

(2) For “High Court in London” where it first occurs substitute “[High Court][Central London County Court]”.

(3) In Part A for—

- (a) “Rule 6.40(1) and 6.40(2)” substitute “Rule 6.40A”; and
- (b) “[the High Court of Justice]” substitute “[the High Court][the Central London County Court][or]”.

Amendments to Forms 6.7, 6.8, 6.9 and 6.10

13.—(1) Forms 6.7, 6.8, 6.9 and 6.10 are amended as follows.

(2) For paragraph 2 of each substitute—

“2. The debtor is (g)[not] resident in England and Wales. I am presenting this petition to the (g)[High Court][Central London County Court] because (g)[the proceedings are allocated to the London insolvency district as][(g)Rule 6.9A[(1)[(a)][(b)][(2)][(5)][(6)

applies][and the petition debt is (g)[£50,000 or more][less than £50,000]][and within the 6 months immediately preceding its presentation (g)[the debtor carried on business in England and Wales and the debtor carried on business within the area of the London insolvency district (g)[for the greater part of that period of 6 months][for a longer period than in any other insolvency district]][the debtor has not carried on business in England and Wales but has resided in England and Wales and the debtor resided within the area of the London insolvency district (g)[for the greater part of that period of 6 months][for a longer period than in any other insolvency district]].

OR

The debtor is (g)[not] resident in England and Wales. I am presenting this petition to this county court because (g)Rule 6.9A[(3)][(5)][(6)] applies [and within the 6 months immediately preceding its presentation (g)[the debtor has carried on business in England and Wales and for the longest part of the period during which the debtor carried on business within that period of 6 months, the [principal] place of business has been situated in the district of this county court][the debtor has not carried on business in England and Wales, but has resided in England and Wales and for the longest part of the period during which the debtor was resident in England and Wales within that period of 6 months, the debtor resided in the district of this county court]].”.

Amendment to Form 6.27

14.—(1) Form 6.27 is amended as follows.

(2) For paragraph 2 substitute—

“2. I am (f)[not] resident in England and Wales. I am presenting this petition to the High Court because (f)[I have neither carried on business nor resided in England and Wales within the 6 months immediately preceding the presentation of this petition][I am a member of an insolvent partnership (f)[which is being wound up][in relation to which a winding-up petition has been presented which has not yet been disposed of]].

OR

I am (f)[not] resident in England and Wales. I am presenting this petition to the (f)[High Court][Central London County Court] because (f)[I carried on business in England and Wales within the 6 months immediately preceding the presentation of this petition and I carried on business within the area of the London insolvency district (f)[for the greater part of that period of 6 months][for a longer period than in any other insolvency district]][I have not carried on business in England and Wales but have resided in England and Wales within the 6 months immediately preceding the presentation of this petition and I resided within the area of the London insolvency district (f)[for the greater part of that period of 6 months][for a longer period than in any other insolvency district]] and the unsecured liabilities set out in the statement of affairs attached to this petition are (f)[£100,000 or more][less than £100,000].

OR

I am (f)[not] resident in England and Wales. I am presenting this petition to this county court because within the 6 months immediately preceding the presentation of this petition (f)[I carried on business in England and Wales and for the longest part of the period during which I carried on business in England and Wales within that 6 period of months, the (f)[principal] place of business was situated in the district of (f)[this][.....] county court][I have not carried on business in England and Wales but resided in England and Wales and for the longest part of the period during which I resided in England and Wales

within that period of 6 months, I resided in the district of (f)[this][.....] county court][and in order to expedite the presentation of this petition, I am presenting it to this court as it is the [nearest full time] court (f)[to my [principal] place of business][for the insolvency district in which I reside]].”.

Transitional provisions

15. The amendment made by Rule 3 applies where an application is made for a debt relief order on or after 6th April 2011.

16. The amendments made by Rules 4 to 14 apply in relation to a—

- (a) bankruptcy petition, other than a petition to which sub-paragraph (b) applies, where the petition is presented on or after 6th April 2011;
- (b) bankruptcy petition pursuant to a statutory demand to which Rule 6.4(2A) of the Insolvency Rules 1986 applies where the statutory demand is dated on or after 6th April 2011;
- (c) debt relief order where the first application under section 251M or 251N of the Act is made on or after 6th April 2011.

Signed by authority of the Lord Chancellor

10th March 2011

Jonathan Djanogly
Parliamentary Under Secretary of State
Ministry of Justice

I concur, by the authority of the Lord Chief Justice

11th March 2011

The Rt Hon Sir Andrew Morritt
The Chancellor of the High Court

I concur, {on behalf of the Secretary of State}

14th March 2011

Edward Davey
Minister for Employment Relations, Consumer and Postal Affairs

EXPLANATORY NOTE

(This note is not part of the Order)

These Rules make amendments to the Insolvency Rules 1986. They apply in England and Wales only.

Rule 3 amends Rule 5A.10, which details property to be excluded for the purposes of determining eligibility for a Debt Relief Order (DRO). The amendment provides that rights under an approved pension scheme as defined by Section 11 of the Welfare Reform and Pensions Act 1999 are not to be considered for the purposes of determining the value of the debtor's property for the purposes of an application for a DRO.

Rules 4 to 14 provide for the allocation of proceedings to the London insolvency district and the appropriate court in which a bankruptcy petition is to be presented and to which an application is to be made in relation to a DRO under section 251M or 251N of the Insolvency Act 1986.

Rule 9 provides for the proceedings which are allocated to the London insolvency district.

Rule 4 provides that where an application is to be made to the court under section 251M or 251N of the Insolvency Act 1986 and the proceedings are allocated to the London insolvency district, the appropriate court to which the application is to be made is the Central London County Court except where the debtor has not resided in England and Wales in the 6 months preceding the application, in which case the appropriate court is the High Court.

Where proceedings are not allocated to the London insolvency district the appropriate court is the debtor's own county court.

Rule 6 provides for the appropriate court to which a creditor must present a bankruptcy petition.

Where proceedings are allocated to the London insolvency district because the debtor's place of business or residence within the 6 months immediately preceding the presentation of the petition was within the area of the London insolvency district, or because a Minister of the Crown or a Government Department is presenting the petition, the appropriate court is either the High Court or the Central London County Court according to the value of the petition debt.

In other cases where proceedings are allocated to the London insolvency district, the appropriate court is the High Court.

Where proceedings are not allocated to the London insolvency district the appropriate court is the debtor's own county court.

Rule 7 provides for the appropriate court to which a debtor must present a bankruptcy petition.

Where proceedings are allocated to the London insolvency district because the debtor's place of business or residence within the 6 months immediately preceding the presentation of the petition was within the area of the London insolvency district, the appropriate court is either the High Court or the Central London County Court according to the value of the unsecured liabilities set out in the statement of affairs attached to the petition.

Where proceedings are not allocated to the London insolvency district the appropriate court is the debtor's own county court.

Rules 6 and 7 also provide that where a court is seized of a matter in relation to an individual voluntary arrangement in relation to the debtor, the appropriate court to which a creditor or the debtor must present the bankruptcy petition is the court seized of the individual voluntary arrangement matter unless, at the time of the presentation of the petition, the debtor has been residing outside England and Wales for more than six months, the petitioner does not know where the debtor resides or carries on business, the debtor is a member of an insolvent partnership which is being wound up by the High Court or a petition based on a criminal bankruptcy order has been presented in relation to the debtor. In those circumstances the appropriate court is the High Court.

Rules 5, 8 and 10 to 14 make consequential amendments.

Rules 15 and 16 make transitional provisions.

A full impact assessment of the effect that Rule 3 of this instrument will have on the costs of business and the voluntary sector is available from the Insolvency Service website (www.insolvency.gov.uk) and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

A full impact assessment has not been prepared for Rules 4 to 14 as they have no impact on the private, public or voluntary sectors.

© Crown copyright 2011

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

STATUTORY INSTRUMENTS

2011 No. 785

INSOLVENCY

The Insolvency (Amendment) Rules 2011

£5.75