STATUTORY INSTRUMENTS

1977 No. 1394

BANKRUPTCY, ENGLAND

The Bankruptcy (Amendment No. 2) Rules 1977

Made - - - -	*5th August* 1977
Laid before Parliament	*19th August* 1977
Coming into Operation	*1st October* 1977

The Lord Chancellor, in exercise of the powers conferred on him by section 132 of the Bankruptcy Act 1914**(a)**, with the concurrence of the Secretary of State for Trade, and after consulting the committee appointed under section 10 of the Insolvency Act 1976**(b)**, hereby makes the following Rules:—

1.—(1) These Rules may be cited as the Bankruptcy (Amendment No. 2) Rules 1977 and shall come into operation on 1st October 1977.

(2) The Interpretation Act 1889**(c)** shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

(3) The amendments set out in these Rules shall be made to the Bankruptcy Rules 1952**(d)**, as amended **(e)**.

2. At the end of rule 8(1) there shall be added the following sub-paragraph:—

"(*k*) Applications under section 6 of the Insolvency Act 1976 for an order dispensing with the public examination of the debtor."

3. At the end of rule 188(1) there shall be added the words:—

"and the Official Receiver shall not delay the application by reason only that the case is one to which rule 196A may apply."

4. After rule 196 there shall be inserted the following rule:—

"*Order dispensing with public examination under the Insolvency Act* 1976, *section* 6 [**Form** 75A]

196A.—(1) When a receiving order has been made against a debtor it shall be the duty of the Official Receiver to consider whether, having regard to the matters specified in section 6(1) of the Insolvency Act 1976, reasonable grounds exist to warrant an application by him under the said section for an order to dispense with the holding of a public examination.

(2) Not later than 21 days before the day appointed for the hearing of the application, the Official Receiver shall give notice of the time and place thereof to the debtor and the creditors and such notice shall inform the

(a) 1914 c. 59.
(b) 1976 c. 60.
(c) 1889 c. 63.
(d) S.I. 1952/2113 (1952 I, p. 213).
(e) The relevant amending instrument is S.I. 1962/295 (1962 I, p. 283).

creditors that any objections to the making of an order under the said section must be received by the Official Receiver not later than 14 days before the day so appointed.

(3) Any such application by the Official Receiver shall be made *ex parte* and shall be supported by evidence in the form of a report by the Official Receiver to the court to be filed not less than seven days before the day appointed for the hearing of the application and the report shall include a statement as to whether the Official Receiver has received from any creditor any objection to the making of an order under the said section 6 and the substance of such objection.

(4) The application may, if the court thinks fit, be heard in the absence of the debtor and if the hearing takes place on a day other than that appointed for the public examination the Official Receiver shall give notice of the outcome of the application to the debtor and to the creditors.

(5) When the court rescinds an order made under the said section 6 the Official Receiver shall apply to the court for the appointment of a time and place for the public examination of the debtor and upon the application the court shall make an order appointing a time and place for the examination and order the debtor to attend thereat."

5. After rule 237 there shall be inserted the following rules:—

"AUTOMATIC DISCHARGE

Consideration by the court

237A.—(1) When the court makes an order which concludes or, under section 6 of the Insolvency Act 1976, dispenses with the public examination of a debtor, the court shall proceed to consider whether or not to make an order under section 7(1) of that Act directing that sub-section (2) of that section shall have effect if the debtor has been or is subsequently adjudged bankrupt in the proceedings.

(2) When the court dispenses with the public examination of a debtor under section 15(10) of the Act it shall proceed to consider whether to make an order under section 7(1) of the Insolvency Act 1976 but may, if it thinks fit, adjourn such consideration for the purpose of receiving from the Official Receiver a report as to the conduct and affairs of the debtor, including his conduct during the proceedings, and such report shall be *prima facie* evidence of the matters contained therein.

Service of order by Official Receiver [**Form** 114A]

237B. If the court thinks fit to make an order under the said section 7(1) not less than two sealed copies of the order shall forthwith be sent by the Registrar to the Official Receiver who shall cause one of the copies to be served on the debtor.

Gazetting of discharge [**Form** 200(9A)]

237C. Where an order made under the said section 7(1) has not been rescinded and the circumstances set out in sub-section (2) of that section apply, the Registrar shall on the fifth anniversary of the date of the adjudication forthwith give notice to the Secretary of State to be gazetted that the debtor has been discharged under the provisions of sub-section (2) of that section.

Application by trustee to rescind order

237D. Unless the court otherwise directs, no application by a trustee to rescind an order made under the said section 7(1) shall be heard unless notice of the intended application and a copy of the affidavits in support of it have been served upon the Official Receiver and the debtor not less than eight days before the hearing of the application.

Application by Official Receiver to rescind order

237E. The Official Receiver shall apply to rescind an order made under the said section 7(1) if—

(*a*) he becomes aware of any misconduct on the part of the debtor which occurred before the making of the order and which was not known to the Official Receiver when the order was made but which, if it had been disclosed to the court, would, in the opinion of the Official Receiver, have been likely to result in the order not being made; or

(*b*) the debtor is guilty of any misconduct which, if it had occurred before the making of the order and had then been known to the court would, in the opinion of the Official Receiver, have been likely to result in the order not being made; or

(*c*) the court so directs when an application by the debtor for his discharge has been refused; or

(*d*) an application by the debtor for his discharge has been granted subject to a suspension or condition such that the debtor may still be an undischarged bankrupt on the fifth anniversary of the date of the adjudication; or

(*e*) the debtor has failed to co-operate with the Official Receiver or trustee; or

(*f*) the debtor has again been adjudged bankrupt; or

(*g*) the debtor has been convicted of any offence under the Act or any other offence connected with his bankruptcy;

and any application by the Official Receiver under paragraph (*c*) or (*d*) above may be made without notice or formality immediately following the making of the order to which the said paragraph (*c*) or (*d*) relates.

DISCHARGE ON APPLICATION OF OFFICIAL RECEIVER

Notice of hearing [**Form** 200(8A)]

237F. Not less than 14 days before the day appointed for the hearing of an application by the Official Receiver under section 8 of the Insolvency Act 1976 in respect of the adjudication of the bankrupt, notice of the time and place appointed for the hearing shall be given by the Official Receiver to the trustee and the bankrupt and to the Secretary of State to be gazetted.

Consequential provisions

237G. Rules 228, 229 and 231 to 237 shall apply to proceedings under the said section 8 as they apply to proceedings under section 26 of the Act except that it shall not be necessary to give notice to creditors of an application by the bankrupt under sub-section (8) of the said section 8."

6. In rule 251 the words "affidavit of" shall be deleted.

7. In rule 321 at the end of paragraph (*e*) the word "or" shall be deleted and after paragraph (*f*) there shall be inserted the following paragraphs:—

"(*g*) to rescind an order made under section 6 of the Insolvency Act 1976 dispensing with the public examination of a debtor, or

(*h*) to rescind an order made under section 7(1) of the Insolvency Act 1976 in relation to automatic discharge."

8. In rule 322 after paragraph (*f*) there shall be inserted the following paragraph:—

"(*g*) to dispense with the public examination of a debtor under section 6 of the Insolvency Act 1976."

9. In Appendix I there shall be inserted at the appropriate places in numerical order the forms set out in the Schedule to these Rules.

Dated 27th July 1977.

Elwyn-Jones, C.

I concur,

Dated 5th August 1977.

Edmund Dell,

Secretary of State
for Trade.

SCHEDULE

Rule 9 FORMS

No. 60A

PROOF OF DEBT (UNSWORN) GENERAL FORM

(Title)

No.

Date of Receiving Order

Name of Creditor	
Address of Creditor	
Total Amount of Claim as at Date of Receiving Order	£
Particulars of how Debt(s) arose and Date(s) incurred (use space overleaf if necessary)	
Particulars of any Security held	
Value of Security	£

Please attach any documentary evidence of claim.

N.B.—Bills or other negotiable securities must be produced before the proof can be admitted.

Signature of creditor or person signing on his behalf.....

Name in block letters .....

Position with or relationship to creditor .....

Admitted to vote for

£

the day of 19 .

Official Receiver

Admitted to rank for dividend for

£

this day of 19 .

Trustee

No. 75A (Rule 196A)

ORDER MADE UNDER SECTION 6 OF THE INSOLVENCY ACT 1976 DISPENSING WITH THE PUBLIC EXAMINATION OF THE DEBTOR

(Title)

UPON the application of the Official Receiver in the above matter and upon reading

and upon hearing

AND IT APPEARING to the Court that this is a suitable matter in which to dispense with a public examination having regard to the provisions of section 6(1) of the Insolvency Act 1976

IT IS ORDERED that the public examination of the debtor be dispensed with.

Dated this day of 19 .

By the Court,

Registrar

No. 114A (Rule 237B)

ORDER FOR AUTOMATIC DISCHARGE UNDER SECTION 7 OF THE INSOLVENCY ACT 1976

(Title)

WHEREAS the public examination of the above-named was [concluded] [dispensed with] by Order dated

[AND WHEREAS the said was adjudged bankrupt by Order dated]

AND IT APPEARING to the Court that this is a suitable matter in which to make an Order under the provisions of section 7(1) of the Insolvency Act 1976 IT IS ORDERED that [if the said is adjudged bankrupt in these proceedings] the same results shall ensue as if this Court had on the fifth anniversary of the adjudication granted to the bankrupt an absolute order of discharge under section 26 of the Bankruptcy Act 1914 But this Order shall cease to have effect if before that anniversary the bankrupt has been discharged in respect of the adjudication within the meaning of section 7(5) of the said Act of 1976 or the adjudication has been annulled under section 21(2) or 29 of the said Act of 1914.

Dated this day of 19 .

By the Court,

Registrar

No. 114B (Rules 231, 232 and 237G)

ORDER OF DISCHARGE ON APPLICATION BY THE OFFICIAL RECEIVER UNDER SECTION 8 OF THE INSOLVENCY ACT 1976

(*Title*)

UPON the application of the Official Receiver, and upon taking into consideration his Report filed on.....as to the bankrupt's conduct and affairs, including the bankrupt's conduct during the proceedings under the bankruptcy [and upon reading]
and upon hearing the Official Receiver and C.D., E.F., &c., creditors, and G.H., the trustee [*as the case may be*]

IT IS ORDERED that the bankrupt be and he is hereby discharged.

OR

IT IS ORDERED that the bankrupt's discharge be and it is hereby refused.

OR

IT IS ORDERED that the bankrupt's discharge be suspended until a dividend of not less than 50p in the £ has been paid to the creditors, with liberty to the bankrupt at any time after the expiration of two years from the date of this Order to apply for a modification thereof, pursuant to section 8(8) of the Insolvency Act 1976.

OR

IT IS ORDERED that the bankrupt's discharge be suspended for and that he be discharged as from the day of 19 .

OR

IT IS ORDERED that the bankrupt be discharged subject to the following condition to be fulfilled before his discharge takes effect, namely, he shall before the signing of this Order, consent to judgment being entered against him in the (*a*) Court by the Official Receiver [*or* trustee] for the sum of £ , being the balance [*or* part of the balance] of the debts provable in the bankruptcy which is not satisfied at the date of this Order, and for costs of judgment.

(*a*) Insert name of Court having jurisdiction in the bankruptcy.

AND IT IS FURTHER ORDERED, without prejudice and subject to any execution which may be issued on the said judgment with the leave of the Court, that the said sum of £ be paid out of the future earnings or after-acquired property of the bankrupt in manner following, that is to say, after setting aside out of the bankrupt's earnings, and after-acquired property a yearly sum of £ for the support of himself and his family, the bankrupt shall pay the surplus, if any [*or such portion of such surplus as the Court may determine*], to the Official Receiver [*or* trustee] for distribution among the creditors in the bankruptcy. An account shall on the 1st day of January in each year, or within fourteen days thereafter, be filed in these proceedings by the bankrupt, setting forth a statement of his receipts from earnings, after-acquired property, and income during the year immediately preceding the said date, and the surplus payable under this Order shall he paid by the bankrupt to the Official Receiver [*or* trustee] within fourteen days of the filing of the said account.

AND IT IS FURTHER ORDERED that upon the required consent being given judgment may he entered against the bankrupt in the (*b*) Court for the said sum of £ together with £ for costs of judgment.

(*b*) Insert name of Court.

Dated this day of 19 .

By the Court,

Registrar

No. 200(8A) (Rule 237F)

APPLICATION BY OFFICIAL RECEIVER TO CONSIDER DISCHARGE OF BANKRUPT

Debtor's Name (*Surname first*) Address

Description Court Number of Matter

Day fixed for hearing Hour Place

No. 200(9A) (Rule 237C)

ORDER FOR AUTOMATIC DISCHARGE

Debtor's Name (*Surname first*) Address

Description Court Number of Matter

Date of Order

Date of operation of Order of Discharge

No. 200(9B) (Rules 233 and 237G)

ORDER MADE ON APPLICATION BY OFFICIAL RECEIVER TO CONSIDER DISCHARGE OF BANKRUPT

Debtor's Name (*Surname first*) Address

Description Court Number of Matter

Date of Order Nature of Order made

EXPLANATORY NOTE

(*This Note is not part of the Rules.*)

These Rules amend the Bankruptcy Rules 1952 for the purpose of implementing sections 5, 6, 7 and 8 of the Insolvency Act 1976. They prescribe in particular the appropriate new procedures and forms for the following matters:—

(i) proof of debt by unsworn claim under section 5 (rules 6 and Form 60A);

(ii) applications (to be heard in open court) by the Official Receiver under section 6 to dispense with the public examination of a debtor (rules 2, 3, 4, 7 and 8 and Form 75A);

(iii) orders under section 7 relating to the automatic discharge of a bankrupt five years after adjudication (rules 5 and 7 and Forms 114A and 200(9A)); and

(iv) applications by the Official Receiver under section 8 for the court to consider the discharge of a bankrupt (rule 5 and Forms 114B, 200(8A) and 200(9B)).

SI 1977/1394
ISBN 0-11-071394-X

