



I wish to apply to rescind a winding up order

What do I do?

Rule 7.47 Insolvency Rules 1986 provides:

- (1) Every court having jurisdiction under the Act to wind up companies may review, rescind or vary any order made by it in the exercise of that jurisdiction
and
- (2) Any application for the rescission of a winding up order shall be made with 7 days after the date on which the order was made.

Further guidance is given in paragraph 7 of the *Practice Direction – Insolvency Proceedings*.

Who may apply?

The application can be made by (a) a creditor or (b) a contributory or (c) by the company **jointly** with a creditor or contributory (para. 7.2 of the *Practice Direction*).

An application made by any other person or by the company alone will not be issued.

When must the application be made?

The application must be made within 7 days (see r.7.47 (4) above).

If the application is not made within 7 days it is possible to apply to extend time (r.4.3 Insolvency Rules 1986). This means issuing a fee paid application.

How is the application made?

If you are applying within the 7 day limit you should complete an application notice (rules 7.1-7.3 and Form 7.1A Schedule 4 Insolvency Rules 1986). If you wish to apply after 7 days you should also apply to extend time. The link below will direct you to the application form 7.1A

<http://www.insolvency.gov.uk/forms/englandwalesforms.htm>

Is evidence required?

Yes, as a general rule (see the exception in para.7.4 Practice Direction). The application should be supported by a witness statement setting out all the relevant facts relied on in support of the application which should normally include evidence as to the company's solvency and financial position, i.e. of its assets and liabilities (para. 7.2 Practice Direction).

If there is also an application to extend time the evidence will need to explain the reason for the delay.

The **original** evidence must be filed and copies served (with a copy of the issued application) on the parties to whom notice must be given (see below). Copy evidence will not generally be accepted for filing.

Who needs to be served/notified?

The Official Receiver (para.7.1 Practice Direction); the petitioner and any supporting or opposing creditors. Evidence of service will have to be produced at the hearing if neither the Official Receiver nor the petitioner attends.

In which circumstances will the court make an order?

Whether the Court will make the order will depend on the circumstances of the case. Note, however that:

- (a) the courts have said that the jurisdiction is an exceptional one and should only be exercised where there are cogent reasons to do so
- (b) payment of the petition debt after making of the winding-up order will not generally of itself justify making an order
- (c) it is unlikely that the court will make an order if the company is plainly insolvent.

What about costs?

Who has to pay the costs of the application will depend on the facts of each case.

However, it is likely that the person who has made the application will be ordered to pay the costs of the Official Receiver and/or the petitioner in any event if the application fails.