



**The Insolvency
Service**

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**DEAR INSOLVENCY PRACTITIONER
Issue 79 – December 2017**

*Message from Nick Howard
Head of Insolvency Practitioner Regulation*

Dear Insolvency Practitioner

Attached is the latest edition of Dear IP.

I would like to wish all readers a very Merry Christmas and a Happy New Year.

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26) HMRC – New mailbox

Changes introduced under Part 6 of the Insolvency Rules 2016 in relation to Creditor Voluntary Liquidations (CVLs) have led to challenges for HMRC being able to formally engage in the deemed consent process for meetings called under S100 IA 1986. More specifically, IR 6.14(3) allows for the decision date, for the decision of the creditors on the nomination of a liquidator, to be as little as three business days after the notice is delivered. Feedback from colleagues dealing with ongoing enquiries has found that although the notification may be received into the department, very often they fail to reach the HMRC officers in time for them to actively engage, and we are unable to trace if and where the notification has been made.

Furthermore, changes to the way in which notices are now advertised in the Gazette means that HMRC are no longer able to monitor companies entering into CVL in advance and so review for the purposes of determining if HMRC should engage in the process, in the same way as the department was able to in relation to meetings called under S98 IA 1986, prior to the Insolvency Rules 2016 being introduced.

In order to remedy this, HMRC would like to propose that all insolvency practitioners provide the initial pre-appointment notifications for the deemed consent or virtual meeting procedures for all CVLs to a designated HMRC mailbox that will be set up and provided for practitioners specifically in relation to CVL notifications only. This would then provide more clarity for members in terms of where in HMRC to forward all notifications and help ensure that HMRC can actively engage in the process when deemed appropriate.

The mailbox will be available for use with effect from 01 January 2018 and the address is as follows:

notifications.hmrccvl@hmrc.gsi.gov.uk

It would be very much appreciated if the subject line of the email could include the company name, CRN, and the decision date.

Please note that this mailbox is only for the initial pre-appointment notifications under the deemed consent or virtual meeting procedures.

60) The Employment Rights Act 1996 and Pension Schemes Act (amendment) Regulations 2017

The Employment Rights Act 1996 and Pension Schemes Act 1993 (Amendment) Regulations 2017 (“the Regulations”) make amendments to sections 166 and 183 of the Employment Rights Act 1996 and section 123 of the Pension Schemes Act 1993 (“the Acts”). The Regulations will come into force on 26 December 2017.

The Regulations bring insolvent employers that are not defined as a company, an individual, or Limited Liability Partnership, within the provisions of the Acts for the purposes of enabling their UK-based employees to make a claim for certain redundancy and insolvency related payments by the from the Insolvency Service’s Redundancy Payments Service.

In practice, the Redundancy Payments Service already honours payments to the former employees of such employers. Accordingly, these Regulations will have no impact other than to formalise the position.

Further guidance relating to the Pension Schemes Act 1993 will be published early in 2018.

General enquiries may be sent to: redundancy.payments@insolvency.gsi.gov.uk

61) The Insolvency (England and Wales) Rules 2016: feedback for insolvency practitioners

Article 57 in Dear IP 76 referred to the commencement of The Insolvency (England and Wales) Rules 2016, which came into force on 06 April 2017. Following commencement of the new insolvency rules, we have been glad to receive feedback from insolvency practitioners and other users of the rules on areas where policy intention is unclear, or where there are inconsistencies or unintended consequences. In several cases, the feedback highlighted that some further minor amendments to the rules were needed.

The Insolvency (England and Wales) and Insolvency (Scotland) (Miscellaneous and Consequential Amendments) Rules 2017 was laid before Parliament on 16 November and came into force on 8 December 2017.

These rules make the required amendments, as well as making some further consequential changes to the insolvency rules and associated statutory instruments required for implementation of the recast EU Regulation.

In terms of the amendments made, the following is a list of what might be considered the more significant changes, but it is not exhaustive and insolvency practitioners should satisfy themselves that they have taken into account all of the provisions that may affect them:

- a new provision applies Part 6 of CPR, as supplemented by a Practice Direction, for service of a statutory demand outside of the jurisdiction.
- there is a correction to the order of payment of fees in bankruptcy proceedings.
- there is clarification that the deemed consent process may be used when making a decision as to whether to form a liquidation or creditors' committee, and also that a committee is established when notice of it is sent to the registrar (for companies) or the court or official receiver (for bankruptcies), rather than delivered.
- transitional provisions regarding fee and expenses estimates are clarified
- an amendment is made to Schedule 4 , which deals with service of documents, so that where the court has ordered that service of a document take place in a particular way, then the certificate of service must be accompanied by a sealed copy of the court's order.
- there are some amendments made to the Insolvency Regulations 1994 consequential to the abolition of final meetings, concerning when receipts and payments accounts are sent to the Secretary of State in compulsory winding-up and bankruptcy proceedings.

In addition the transitional provisions which apply to progress reports in paragraph 83 conversions where administration proceedings have commenced prior to 6 April 2010 are clarified, with the following outcomes for various scenarios:

Timing of Para 83 conversion	Outcome of transitional provision
Before 6 April 2010	Article 12 of the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 will apply, and there will be annual meetings in the liquidation proceedings.
Between 6 April 2017 and 7 December 2017 (inclusive)	There will be progress reports in the liquidation proceedings, but prescribed by the 1986 rules. Progress reports in the administration would have been subject to 2016 provisions.
After 8 Dec 2017	There will be progress reports in the liquidation proceedings, prescribed by the 2016 rules. Progress reports in the administration proceedings are subject to 2016 provisions.

The **Insolvency (Miscellaneous Amendments) Regulations 2017** was laid before Parliament on 16 November and came into force on 8th December 2017. The Regulations make a number of consequential amendments to insolvency related legislation and tidy up some gaps, most notably:

Limited Liability Partnerships

Amendments to update the Limited Liability Regulations 2001 mean that LLPs will be subject to the Insolvency (England and Wales) Rules 2016 that came into force on 6 April 2017, bringing them in line with companies. This will ensure that they also follow mainstream insolvency changes.

Companies House

From 8th December insolvency practitioners administering a LLP insolvency will be required to use the [Companies House forms](#).

This implementation will be subject to the same transitional rules as the April 2017 implementation.

Also, the current form 600 (Notice of appointment of liquidator of a company) has been revoked by Schedule 4 of the Insolvency (Miscellaneous Amendments) Regulations 2017 from regulation 5(3) of [The Companies \(Forms\) \(Amendment\) Regulations 1987](#) for England and Wales only. Companies House has taken ownership of Form 600 for England and Wales and it has been re-designed in line with other CH forms, although for ease we have kept the form number.

The new style form 600 will be available on the Companies House website and should be used for appointments on or after 9th December.

Form 600 continues to remain in the Companies (Forms) (Amendment) Regulations 1987 for Scotland and will still need to be delivered to the Accountant in Bankruptcy.

The recast Insolvency Regulation

Practitioners may also wish to note that the amendments made by the Insolvency (Miscellaneous Amendments) Regulations 2017 include applying the changes to the Insolvency Rules (England and Wales) 2016 made by the Insolvency Amendment (EU 2015/848) Regulations 2017 (the implementing Regulations) to LLPs. For more information on what the implementing Regulations do please see Dear IP Chapter 15 Article 59

(<https://www.insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/dearip/dearipmill/chapter15.htm#59>)

The Insolvent Partnerships Order 1994 and The Administration of Insolvent Estates of Deceased Persons Order 1986

In addition, these Regulations tidy up some gaps following previous insolvency amendments. In particular, The Insolvent Partnerships Order 1994 is updated to include amendments to the Company Directors Disqualification Act 1986 regarding a number of reforms to the director disqualification regime made by the Small Business Enterprise and Employment Act 2015. Amendments include extending the matters of unfitness that must be considered when making a disqualification, increasing the limitation date for a disqualification application to 3 years and the ability to seek a compensation order against a disqualified director.

The Regulations also amend The Administration of Insolvent Estates of Deceased Persons Order 1986 to enable the personal representative of a deceased debtor to file a bankruptcy petition with the court, which was revoked in error following the introduction of the Adjudicator in Bankruptcy.

Enquiries regarding this article should be sent to Policy.Unit@insolvency.gsi.gov.uk
