



The Insolvency  
Service

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**DEAR INSOLVENCY PRACTITIONER**  
**Issue 84 – December 2018**

*Message from Angela Crossley  
Head of Insolvency Practitioner Regulation*

*Dear Reader*

*Attached is the latest edition of Dear IP.*

*Thank you to all those who completed our Dear IP survey. We are currently analysing the results and I will provide a further update in the next issue.*

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

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## 77) Closing an estate held in the Insolvency Service Account

Estate Accounts and Scanning (EAS) would like to remind insolvency practitioners that the following documentation is required in order to close a bankruptcy or liquidation case;

- A covering letter/email with instruction to close the account.
- A copy of the final receipts and payments account (Form 1)
- After eight weeks, a copy of the 'Notice to Court of Final Meeting of Creditors' (Form 3.31 for liquidations and 10.87 for bankruptcies)
- A copy of a final receipts and payments account

We would ask that all documentation submitted in order to close a case is now sent via email to [CustomerServices.EAS@insolvency.gsi.gov.uk](mailto:CustomerServices.EAS@insolvency.gsi.gov.uk).

The main body of the email should describe in brief the nature of the query or request. The subject box should conform to the following naming convention: 'case reference – case name – final documents or surplus to debtor'. We would also ask that any original hard copies are no longer sent by post.

Submitting final requests via email will ensure there is always a record of the items practitioners have sent and will prevent the potential for them to be lost in the post, or the need to send them to via tracked mail. Submitting final requests in this way will also reduce unnecessary delays in processing requests, especially at the start of each quarter when cases need to be closed before the next banking fee is applied.

Any enquiries regarding this article may be sent to [CustomerServices.EAS@insolvency.gsi.gov.uk](mailto:CustomerServices.EAS@insolvency.gsi.gov.uk)

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### **31) Insolvency of Further Education and Sixth Form College Corporations**

The Further Education Bodies (Insolvency) Regulations 2018 come into force on 31 January 2019.

#### Insolvency of further education and sixth form college corporations that are limited companies

Insolvency practitioners will use the appropriate forms as listed on the Companies House website.

#### Insolvency of further education and sixth form college corporations that are not limited companies

From 31 January 2019, insolvency practitioners who are appointed over Further Education and sixth form college corporations that are not limited companies will be required to file insolvency documents with Companies House.

All documents that inform Companies House of the commencement of insolvency (for example AM01, notice of appointment of administrator, or a special resolution to wind up) must be accompanied by a form FE01, Notice of insolvency proceedings for a further education or sixth form college corporation. This will be available on the Companies House website. Companies House will not accept these documents without form FE01.

Form FE01 will enable Companies House to create a record for the further education or sixth form college corporation and will be publicly available. Companies House will create a unique identifying number against which the attached insolvency documents will be registered. As the unique number will not be generated until the documents have been examined and are acceptable for registration, the company number element of the initial insolvency documents must be left blank.

Once the unique number is generated, Companies House will issue it to the insolvency practitioner. This number must be used on all subsequent insolvency filings.

Existing insolvency forms on the Companies House website should be used, with the appropriate amendments to the legislative references.

#### Education Administration

The Education Administration (England and Wales) Rules 2018 also come into force on 31 January 2019.

The Rules make provision for a special Administration Regime for both limited companies and Further Education or sixth form college corporations that are not limited companies. The same rules apply as set out above.

Existing Administration forms on the Companies House website should be used, with the appropriate amendments to the legislative references.

General enquiries may be sent to [enquiries@companies-house.gov.uk](mailto:enquiries@companies-house.gov.uk)

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### **32) The Insolvency (Scotland) (Receivership and Winding up) Rules 2018 and The Insolvency (Scotland) (Company Voluntary Arrangement and Administration) Rules 2018**

The Scottish Rules 2018 come into force on 6 April 2019. From this date, Companies House will take ownership of the majority of insolvency forms that are required to be delivered to the registrar. The forms will be available on the Companies House website.

They will follow the same design as the forms which are filed under The Insolvency (England and Wales) Rules 2016. A more detailed communication will be issued nearer the implementation date.

General enquiries may be sent to [enquiries@companies-house.gov.uk](mailto:enquiries@companies-house.gov.uk)

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### **33) Administrator's proposals: Additional content**

Insolvency practitioners are reminded that the names and addresses of former employees, or consumers claiming amounts paid in advance, must not be submitted to Companies House with any insolvency filings under Rule 3.35(4) and Rule 3.35(5) of The Insolvency (England and Wales) Rules 2016.

We are aware of incidents where names and addresses of individuals, which is personal information, have been included on a creditor's list and submitted to Companies House.

General enquiries may be sent to [enquiries@companies-house.gov.uk](mailto:enquiries@companies-house.gov.uk)

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### **63) New corporate insolvency rules for Scotland to commence on 6 April 2019**

The Insolvency Service and the Accountant in Bankruptcy have been working on a project to modernise and consolidate the corporate insolvency rules in Scotland, following a similar project in England and Wales which produced the Insolvency (England and Wales) Rules 2016. The project has been assisted by a working group drawn from insolvency practitioners, lawyers, regulators, creditors and representatives from Companies House.

The devolution position for corporate insolvency is complex with competence for winding up being divided between the UK and Scottish Parliament (the “general legal effect” of winding up is reserved to the UK Parliament and the “process” of winding up is devolved to the Scottish Parliament). In order to facilitate the making of rules relating to the mixed-competence area of winding up in one instrument, an order under the Scotland Act 1998 was made earlier this year<sup>1</sup>. This order enables the making of all of the rules in the area of winding up to be made by either a Minister of the Crown or the Scottish Ministers, subject to appropriate consent. Agreement has been reached across the UK and Scottish Parliaments to include the rules for winding-up within the Scottish Statutory Instrument as these are largely devolved.

Given the devolution position the new rules are contained in two instruments:

- The Insolvency (Scotland) (CVA and Administration) Rules 2018/1082 (“I(S)CVAAR”) made by the UK Government which make provision in relation to the reserved insolvency processes of CVAs and administration; and
- The Insolvency (Scotland) (Receivership and Winding Up) Rules 2018/347 made by the Scottish Government (I(S)RWUR) which make provision in relation to the devolved process of receivership and the mixed-competence process of winding up.

Links to the instruments are below:

<http://www.legislation.gov.uk/id/uksi/2018/1082>.

<http://www.legislation.gov.uk/ssi/2018/347/contents/made>

Whilst the rules are now contained in two instruments, care has been taken to ensure that the layout, language and rules common to all processes are as similar as possible. In addition, the provisions relating to receivership which were contained in the Receivers (Scotland) Regulations 1986 1986/1917 have been incorporated into the I(S)RWUR.

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<sup>1</sup> Scotland Act 1998 (Insolvency Functions) Order 2018/174



In order to assist users the Insolvency Service and the Accountant in Bankruptcy are preparing tables of derivations for the I(S)CVAAR and I(S)RWUR which will be published on our respective websites early in 2019.

The new rules have the following features:

### Modernisation

They follow a more logical structure, with different processes, such as administration, CVA, receivership, and the various forms of liquidation separated out -across the 2 instruments. Repetition within the instruments is minimised by drawing together all common actions into one place - the common parts. In addition the language has been modernised and the rules drafted in gender-neutral terms.

### Implementation of new provisions

They implement some of the changes to the Insolvency Act 1986 made by the Small Business, Enterprise and Employment Act 2015 (“SBEEA15”) in Scotland, such as:

- significant changes to the way in which decisions are made in insolvency proceedings
- abolition of final meetings in liquidation cases
- a new ability for creditors to opt out of receiving correspondence

Some new deregulatory policies did not require changes to primary legislation, and will be implemented by the rules, as follows:

- provision to allow debts of £1,000 or less (“small debts”) to be treated differently for dividend purposes (SBEEA15 added a power to the Insolvency Act to make rules for this)
- enabling greater use of websites by office-holders
- enabling greater use of electronic communication
- fixed term progress reporting
- enabling office-holders to report to creditors that remuneration will not be claimed in an accounting period, rather than making an application to defer the accounting period
- alignment of accounting periods and reporting in winding up procedures, commencing from the appropriate date of appointment
- change of date for creditor claims purposes for winding up to the date company goes into liquidation
- a change to filing requirements where an administration converts to a creditors’ voluntary liquidation
- increased privacy for private individuals who are creditors in insolvency proceedings
- removal of statutory forms and the prescription of contents of notices to enable e-delivery.

Other changes introduced by the rules are:

- creation of three new offences relating to:-
  - (i) & (ii) the inspection of documents in an administration or winding up where a person falsely claims to have a right to inspect documents they are not entitled to; and
  - (iii) with regard to an administrator failing to comply with their duties on vacating office.

#### Limited Liability Partnerships

The new Rules do not apply to LLPs and the Insolvency (Scotland) Rules 1986 continue to have effect in respect of them. Consideration will be given to addressing LLPs in due course.

#### Court rules

Scottish practitioners will be aware that most of the rules for insolvency court processes are in separate court rules, in particular the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986 1986/2297 and the Act of Sederunt (Rules of the Court of Session 1994) 1994, Chapter 74 1994/1443. As a general approach we have not sought to shift the balance away from what exists at present and we have engaged with Scottish civil law agencies with a view to appropriate amendments being made to the court rules to facilitate the commencement of the new insolvency rules in April 2019.

#### The EU Insolvency Regulation (EU 2015/848)

The new Rules (I(S)CVAAR and I(S)RWUR) contain Parts on, and references to, the EU Regulation on insolvency as the UK was a member of the EU when the Rules were laid in the Westminster and Holyrood Parliaments. The outcome of the negotiations for the UK to leave the EU may result in the necessity for early amendments being made to those Parts of the new Rules.

Enquiries regarding this article may be sent to:

[Policy.Unit@insolvency.gsi.gov.uk](mailto:Policy.Unit@insolvency.gsi.gov.uk)  
[aibpolicydevelopmentenquiries@gov.scot](mailto:aibpolicydevelopmentenquiries@gov.scot)

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## **16) Insolvency Practitioners providing support in Criminal Investigations and Proceedings**

Insolvency practitioners play a vital role in the criminal justice system and are valued partners in the criminal enforcement work undertaken by the Insolvency Service. The Service depends heavily upon the skills and expertise of insolvency practitioners in order to effectively tackle financial wrongdoing.

It is common practice for insolvency practitioners to report suspected criminal offences and thereafter to provide relevant documentation supporting this. Occasionally practitioners have been reluctant to provide witness statements, produce relevant documentation or provide critical opinions to assist with any criminal investigation and potential prosecution that may follow.

Unwillingness to provide a witness statement in support of a criminal investigation can often result in a decision taken not to prosecute a criminal offence. This is because without a witness statement, the evidence required sometimes cannot be used and therefore any prospect of a prosecution is stopped in its tracks.

The Insolvency Service pays witness expenses to attend court; there is no similar scheme in place to provide payment for the provision of a witness statement.

Criminal prosecutions are a key element of the enforcement of the insolvency regime and protection of the public from harm. They not only deter offenders, but also frequently lead to disqualification under section 2 of the Company Directors Disqualification Act 1986.

The Insolvency Code of Ethics (Part 2) supports the view that there should be collaborative working between insolvency practitioners and those involved in or considering court proceedings.

Insolvency practitioners' duties go beyond simply providing documentation following a report of suspected criminal behaviour. It is essential that insolvency practitioners are fully supportive of criminal investigations and prosecutions that take place following a report. This underpins the fundamental principles of the Code of Ethics, particularly around Professional Behaviour. We hope to continue the strong partnership that currently exists between insolvency practitioners and those involved in criminal enforcement in the context of insolvency.

*Any enquiries regarding this article may be sent to [IPRegulation.Section@insolvency.gsi.gov.uk](mailto:IPRegulation.Section@insolvency.gsi.gov.uk)*

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