



The Insolvency  
Service

Insolvency Practitioner Regulation Section  
3<sup>rd</sup> Floor  
Abbey Orchard Street  
London  
SW1P 2HT

Tel: 020 7291 6772  
[www.gov.uk/insolvency-service](http://www.gov.uk/insolvency-service)

## DEAR INSOLVENCY PRACTITIONER Issue 87 – March 2019

*Message from Angela Crossley  
Head of Insolvency Practitioner Regulation*

*Dear Reader*

*Attached is the latest edition of Dear IP.*

*Thank you again to those who took time out to complete our survey. We are encouraged by the positive feedback we received. The main findings of the survey were:*

- 100% of respondents said they found Dear IP useful*
- 94% of respondents said they found the content in Dear IP appropriate*
- The majority of respondents preferred to receive Dear IP on a quarterly basis*
- 76% of respondents said they found the content in Dear IP contained the right amount of detail*

*We will continue to issue Dear IP once a quarter, together with any special editions if there are important announcements to make. We are always happy to receive further feedback or if there are any particular matters you would like us to consider issuing an article on, please let us know by contacting [Dear.IP@insolvency.gov.uk](mailto:Dear.IP@insolvency.gov.uk)*

*I would also like to remind readers that from 31 March 2019, all of our email addresses are changing and emails will now come from the new @insolvency.gov.uk domain. For web based versions of Dear IP, contact points for previous articles will be changed to the new email address, however no changes will be made hard copy issues on Gov.uk.*

*In this issue:*

*Information/Notes page(s):*

**Chapter 6**

Article 34

**Companies House**

[The Insolvency \(Scotland\) \(CVA and Administration\) Rules 2018 and The Insolvency \(Scotland\) \(Receivership and Winding Up\) Rules 2018](#)

**Chapter 15**

Article 64

**Insolvency Rule, Regulations and Orders**

[Scottish Insolvency Rules](#)

**Chapter 20**

Article 17

**Offences and Prosecution**

[Re-use of a prohibited name and the excepted cases](#)

---

### **34) The Insolvency (Scotland) (CVA and Administration) Rules 2018 and The Insolvency (Scotland) (Receivership and Winding Up) Rules 2018**

On 6 April 2019, The Insolvency (Scotland) (CVA and Administration) Rules 2018 and The Insolvency (Scotland) (Receivership and Winding Up) Rules 2018 will come into force in Scotland.

From this date the Registrar of Companies in Scotland will introduce new forms. The forms will be in a new format and will contain a new identifier.

For example:

- Company Voluntary Arrangement Moratorium forms will be VAM(Scot)  
Examples - 1.11(Scot) and 1.12(Scot) will be VAM1(Scot) and VAM2(Scot) respectively and so on
- Company Voluntary Arrangement forms will be CVA(Scot)  
Examples - 1.1(Scot) and 1.2(Scot) will be CVA1(Scot) and CVA2(Scot) respectively and so on
- Administration forms will be AM(Scot)  
Examples - 2.12B(Scot) and 2.16B(Scot) will be AM01(Scot) and AM02(Scot) respectively and so on

The new forms are created in a format which brings them in to line with other Companies Act forms that are delivered to the Registrar of Companies. The forms will be provided via Companies House on GOV.UK in PDF format

#### Statement of Affairs schedule

Insolvency practitioners should ensure they do not send the schedule which includes particulars of creditors who are consumers, employees or former employees of the company to the Registrar. This is to safeguard personal information from being publicly available on the register. It is the insolvency practitioners responsibility to remove this schedule prior to sending it to the Registrar.

## Email or telephone number

The insolvency rules require appointment and termination forms to include insolvency practitioner contact details (either an email address or telephone number). Practitioners should be aware that this information will appear on the public register and therefore it is advised business contact details are provided rather than any personal details. The only way to remove any personal details will be by an order of court under section 1096 of the Companies Act 2006.

## Addresses

Office holders must provide their address for each insolvency case they are appointed over. For subsequent filings in the same insolvency case the address should only be given if it has changed.

## Where more than one insolvency practitioner is appointed

Companies House insolvency forms will provide space for up to two insolvency practitioner's details to be shown. Where there are more than two practitioners, Companies House have created continuation pages to allow for additional insolvency practitioner details to be provided. Forms relating to the notice of an appointment will include a continuation page (i.e. Notice of appointment of an administrator). There is a continuation page for all other forms, called "continuation page, name and address of insolvency practitioner(s)", which can be accessed separately.

A separate notice however is required for each insolvency practitioner where the notice relates to the cessation of their appointment (i.e. notice of vacation of office).

## IP number

Where a specific rule includes a requirement for the IP number to be provided, this is reflected in Companies House insolvency forms and the information should be completed by the insolvency practitioner.

## Conversion from administration to CVL (Para 83(3), Schedule B1 Insolvency Act 1986)

When filing the "Notice of move from administration to creditors' voluntary liquidation" under the new rules a final progress report must be attached. This is a change from the old rules. Any notices of this type received without the final progress report will be rejected and the conversion will not take effect.

Notice of liquidator's resignation in members and creditors voluntary liquidation (Rules 3.5 and 4.23)

In accordance with The Insolvency (Scotland) (Receivership and Winding up) Rules 2018, the Liquidator is released 21 days after delivery of the notice to the Registrar of Companies. This is a change to the current practise.

Transitional arrangements

In many cases the Registrar of Companies will not be aware of the event that triggers the transition and therefore will accept filings from insolvency practitioners in good faith whether on old or new forms. It is the responsibility of insolvency practitioners to ensure they comply with the transitional arrangements.

Limited Liability Partnerships (LLPs)

The insolvency legislative changes that come into force on 6 April 2019 do not affect LLPs. Current insolvency forms for LLPs will continue with no change.

General queries may be sent to [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

[\(Back to top\)](#)

## 65) Scottish Insolvency Rules

The Insolvency (Scotland) (Receivership and Winding up) Rules 2018 (“I(S)RWUR”) and the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 (“I(S)CVAAR”) commence on 6 April 2019.

In order to assist users, a table of destinations for I(S)RWUR and I(S)CVAAR has been published. It is hoped that this will assist users who have been using the 1986 Rules for many years and have a good working knowledge of the layout and provisions.

The table indicates the destinations of provisions in the 1986 Rules. The 2018 Rules broadly derive from the 1986 Rules – however there is rarely an exact match as the structure of the 2018 Rules differs from the 1986 Rules and the language has been modernised in a bid to make the provisions easier to digest. The table of destinations for I(S)RWUR and I(S)CVAAR is available here:

<https://www.gov.uk/government/news/insolvency-scotland-rules-table-of-destinations-now-available?jkj>

The new rules for Scotland may need to be amended if Britain exits the EU without a deal on Insolvency. The Insolvency Service will provide further updates in due course, should it prove necessary.

Enquiries regarding this article may be sent to: [Policy.Unit@insolvency.gov.uk](mailto:Policy.Unit@insolvency.gov.uk)

([Back to top](#))

## **17) Re-use of a prohibited name and the excepted cases**

Guidance has been revised in respect of rule 22.4 of [the Insolvency \(England and Wales\) Rules 2016](#) and ‘completion of the arrangements’. Guidance on GOV.UK is also being updated to reflect this change and this article replaces Chapter 20, article 13 of Dear IP which has been withdrawn.

The Insolvency Service’s Compliance and Targeting Team (formerly its Breach Team) deal with breaches of [section 216](#) of the Insolvency Act 1986 that are reported.

A prohibited name is a name by which the insolvent company was known at any time in the 12 months before liquidation, including a trading style, or any name so similar to that name as to suggest an association with the liquidating company.

The Compliance and Targeting Team’s focus is on the rectification of a breach, but where a breach continues, or there are other public interest factors, the matter may be referred to our Legal Services Directorate for further assessment and possible prosecution.

In all cases it is considered whether any of the exceptions in rules 22.4, 22.6 or 22.7 of the [Insolvency \(England and Wales\) Rules 2016](#) apply (rules 4.228 – 4.230 of the [Insolvency Rules 1986](#) prior to 6 April 2017).

Whilst compliance is a matter for the director, in many cases they will rely on the advice given to them by the insolvency practitioner. Where relevant, contact is made with the insolvency practitioner to confirm the advice provided to a director prior to determining whether a criminal referral is appropriate.

In a number of cases, directors have stated that they have complied with the exception in rule 22.4; however, it is not always possible able to accept this as sometimes not all elements of the rule are fully complied with.

When considering whether an excepted case in rules 22.4 and 22.5 will apply all the following elements must be present:

- the person was a director, or shadow director, of a company in insolvent liquidation at any time in the twelve months before liquidation
- the person intends to be a director of, or directly/ indirectly be concerned/ take part in the promotion, formation or management of a company known by a prohibited name or directly/ indirectly be concerned or take part in the carrying on of a business under a prohibited name in connection with the carrying on of the whole, or substantially the whole, of the business of the insolvent company

- the business is to be acquired from the insolvent company under arrangements made by the liquidator, or made before the insolvent company entered into insolvent liquidation by its administrator, administrative receiver or supervisor of a CVA (the arrangements may be made with the liquidator etc by that person, a company or other third party)

For the exception to apply, notice must be given by that person prior to their acting in the above circumstances as follows:

- notice must be given to every creditor of the insolvent company known, or reasonably ascertainable, to that person
- notice must be published in the Gazette
- the notice may be given and published before completion of the arrangements, but must be published no later than 28 days after completion, and in any event prior to acting

A template that can be used to give notice to creditors and for the Gazette is published on GOV.UK at [Insolvency Service forms: England and Wales](#) (Rule 22.4 – notice to creditors – s216 re-use of a prohibited name). The prescribed content for any notice under rule 22.4 can also be found in rules 22.4 and 22.5.

In rule 22.5 it states that notice may not be given under this rule by a person who has already acted in breach of section 216.

### **The meaning of ‘completion of the arrangements’**

The meaning of ‘completion of the arrangements’ has not been defined in the rules

The Insolvency Service previously considered that the arrangement is completed at the point at which the agreement is made between the insolvency practitioner and the purchaser to acquire the business. Having reconsidered this issue, it is now considered that in a case involving a sale/purchase the completion of the arrangements happens on completion of the sale of the whole, or substantially the whole, of the business. That is the date from which it can be established that the sale/ purchase was completed and ownership/ responsibility for that business has transferred.

Practitioners should note rule 22.4(4)(a) and (b) where notice can be given prior to the acquisition.



The date of completion of the arrangements triggers the countdown of the 28 day maximum notice and advertising period. Obviously, this is subject to rule 22.4(2) and (5) which requires notice to be given before acting in any of the ways set out in section 216(3).

The purpose of rule 22.4 is to alert creditors of a company in liquidation to the fact that a person who had been involved in managing that company is also to be involved in managing the successor company or business. To ensure that this purpose is achieved, notice under the rule has to be given to the creditors before that person becomes involved in the management of the successor company/ business under what would otherwise be a prohibited name. This can be seen from the case of *Churchill v First Independent* [2006].<sup>[1]</sup>

Generally speaking, the 28 day time limit associated with the completion of arrangements takes on importance when the consideration for a purchase/ sale passes in a single transaction.

However, in every case regardless of the form of arrangements, or how they are effected, it is imperative that the relevant notices are given before the director acts in any way in contravention of section 216.

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

<sup>[1]</sup> *Churchill v First Independent Factors & Finance Ltd* [2006] EWCA Civ 1623

[\(Back to top\)](#)