

Insolvency Rules 2016

Latest Update

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The new Insolvency (England and Wales) Rules 2016/1024 (the Rules) represent the first major overhaul to the insolvency legislation since the Act and Rules were introduced in 1986. They consolidate, restructure and modernise the insolvency regime to make it more user-friendly and future-proof. They are in force from 6 April 2017. This article is an overview of some of the most significant developments, and is not intended to be a comprehensive review of all changes. The Rules, together with the Schedules and Explanatory Note, should be referred to in detail. The derivation table is also very helpful to navigate between the old and new rules.

Overview of Topic

1. The Rules consolidate, in a single instrument, the 28 amending instruments which have come into force since the original rules in 1986. They update the structure, language and style of drafting to make the regime more user-friendly. The structure of the Rules is designed to avoid repetition, by having a large number of Rules that are common to all types of insolvency. The winding up provisions are separated into parts dealing with each type of winding up. Somewhat unusually, there are a relatively large number of non-legislative notes in the Rules (contained in square brackets) to assist users for example by signposting definitions, complementary Rules, or the provisions of the Act they are designed to supplement. There is a new emphasis on electronic communications and removing the use of statutory forms. Overall, the intention is to make both the Rules and the insolvency processes more streamlined and responsive to modern technology.
2. **Statutory Forms:** The Rules remove the requirement to use standard forms, and instead prescribe the content of formal documentation. This is to promote flexibility and keep up with modern technology and will reduce the amount of updating needed in the future. Part 1 of the Rules sets out standard contents for all written documents including applications, petitions and notices. These requirements are then supplemented in later parts dealing with each type of insolvency process. For example, the prescribed contents of application notices, creditors winding up petitions and bankruptcy statutory demands and petitions are contained in rr.1.35, 7.5, 10.1 and 10.7 respectively. However, standard forms are useful for practitioners, and help ensure all required information is given. Therefore, it is likely that many will adopt their own pro forma. Rule 1.9 provides that variations from the prescribed contents may be permitted where the relevant requirement is inapplicable or immaterial.
3. **Electronic Communications:** The Rules make it much easier for office-holders to communicate electronically and place documentation on a website. Where electronic

communication was routinely used pre-insolvency, that can continue post-insolvency (as there is deemed consent - this is applicable only to post-commencement insolvencies); or can otherwise be used where actual consent is given: r.1.45. Office-holders may send a notice stating that a particular document, or all future documents will be made available on a website: rr.1.49 and 1.50. Documents required to be served personally are excepted from these provisions. Recipients are entitled to request a hard copy free of charge and a notice must state this right when delivering documents electronically or by website. Documents can only be delivered to a court if expressly permitted by the CPR, a Practice Direction or these rules: r.1.46. Documents sent electronically are deemed to have been delivered to the address to which it is sent at 9.00am on the next business day after it was sent: r.1.45(6). Documents made available by website are deemed delivered when made available or when notice is delivered, whichever is the later.

4. **Other Changes To Communications:** Creditors may opt out from receiving communications (rr.1.37-1.39). Certain documents must still be delivered (e.g. change of office-holder details; notice of distribution). They can choose to opt back in. For proceedings commenced after 6 April 2017, the Statement of Affairs filed at Companies House will omit consumer and employee creditor details (contained in an unpublished schedule).
5. **Creditors' Decision-Making & Deemed Consent:** Sections 246ZE -246ZG and 379ZA-376ZC of the Insolvency Act 1986, inserted by the Small Business Enterprise and Employment Act 2015, together with Pt 15 of the Rules, provide a new regime for creditor decision-making. For the most part, physical meetings will no longer take place and will be replaced by either a deemed consent process, or alternative processes including by correspondence, electronic voting or virtual meeting (see rr.15.2-15.6). A physical meeting can only take place at the written request of 10% of the creditors in value, 10% of the total creditors, or 10 individual creditors (note the exception for appointing liquidators in CVLs). There is deemed consent to a proposal where less than 10% of creditors by value object. The details of the deemed consent procedure are contained in r.15.7. This procedure cannot be used to make a decision on remuneration and is available unless the court or the insolvency legislation requires otherwise.
6. **Reports:** Annual and final creditors' meetings are replaced with a combination of the above decision-making processes, and a fixed regime of progress reports. This reporting regime is set out in Pt 18 of the Rules and applies to administration, winding up and bankruptcy. The progress reports are on a 6 monthly-cycle in administrations and a 12-monthly cycle in winding up and bankruptcy, the timings fixed by reference to the date of appointment of the office-holder (which is unaffected by any later change of IP). This obligation is of immediate effect from 6 April 2017, unless the obligation arose beforehand. Final reports for the different processes are as follows:
 - a. Administration: final progress report (rr.3.53 and 18.3), exit route (rr.3.54-3.61);
 - b. Winding up: final account (r.18.14 and rr.5.9-5.10 for MVLs, r.6.28 for CVLs and r.7.71 for compulsory liquidations);
 - c. Bankruptcies: final report (r.18.14 and r.10.87);
 - d.

For both winding up and bankruptcies, the office-holder will vacate office slightly over 8 weeks later unless an application for further information (r.18.9) or a remuneration challenge is made (r.18.34).

7. A final progress report on conversion of administration to CVL under of Sch.B1 para.83 to the 1986 Act has been re-introduced (see Sch.2 para.22 of the Rules, transitional provisions).
8. **Deemed Proof of Low Value Debts:** Office-holders can treat small debts as proved without the need for a formal claim. This applies where a debt is shown in the Debtor's accounting records or statement of affairs and the debt is less than £1,000. The office-holder must, when sending a notice of dividend to a creditor (r.14.29), include additional information r.14.31) and require the creditor to notify them if the amount is incorrect or no debt is owed. They must also inform the creditor that if the amount is incorrect, the creditor must submit a proof to receive a dividend. If no notice is received from a creditor, the debt is deemed proved r.14.3).
9. **Office-Holders in Bankruptcy:** The Rules, together with legislative changes, herald three key developments:
 - a. The Official Receiver is now automatically Trustee upon appointment (s.287 amended; new s.291A Insolvency Act 1986); this is in force from 6 April 2017 and applies to pre-commencement bankruptcies where a Trustee has yet to be appointed and applies unless the Court appoints a Supervisor as Trustee. This removes the gap between a bankruptcy order and the vesting of property.
 - b. The requirement for the Official Receiver to summon a creditors' meeting to appoint the first Trustee has been removed (ss.293-295 of the Act omitted from 6 April 2017 and s.298 amended) - the procedure to require such (where OR, Court or 25% or more creditors request such) is supplemented by the Rules);
 - c. Extended Power to Appoint IPs as Interim Receivers. The court can appoint an Insolvency Practitioner (alternatively to the OR) as an Interim Receiver after presentation of the petition and before a bankruptcy order is made where it is necessary for the protection of the debtor's property. An amendment to s.286 of the Act is in force from 6 April and rr.10.49-10.54 supplement such, dealing with the application, security, remuneration and termination.
10. **Jurisdiction:** Rule 12.3 clarifies that the County Court's jurisdiction to wind up companies with share capital less than £120,000 also extends to other forms of corporate insolvency. Although already in effect by recent amendment to the old rules, the Rules provide that in corporate matters, the route of appeal from a decision of a District Judge lies to a Registrar in Bankruptcy of the High Court or High Court Judge sitting in a District Registry - see the destination table in Sch.10 para.1.

11. **Transitional and Savings Provisions:** The Rules and Legislative amendments they compliment are in force from 6 April 2017. Most of the new provisions apply to existing insolvencies. The transitional and savings provisions are contained in Sch.2 to the Rules and should be referred to. The following should be noted:
- a. Some provisions do not apply where proceedings were commenced pre-6 April 2017 e.g. deemed consent to electronic communications, statement of affairs;
 - b. Opt-out information - the requirement does not apply where the first communication is before 6 April 2017;
 - c. Petitions presented and Applications filed pre-6 April - the old rules continue to apply whilst the court remains seised of the matter (until the application is determined, bankruptcy or winding up order made, or petition dismissed).

Key Acts

Insolvency Act 1986

Key Subordinate Legislation

Insolvency (England and Wales) Rules 2016/1024

Key Quasi-legislation

None.

Key European Union Legislation

None.

Key Cases

None.

Key Texts

None.

Analysis

KEY AREAS OF COMPLEXITY OR UNCERTAINTY

None.

LATEST DEVELOPMENTS

None.

POSSIBLE FUTURE DEVELOPMENTS

None.

HUMAN RIGHTS

None.

EUROPEAN UNION ASPECTS

None.

Further Reading

None.