



The clock is ticking

Are you ready for the new Insolvency Rules?

In two months' time the Insolvency (England and Wales) Rules 2016 will come into force (with effect from 6 April 2017). This date has been long in the making – the first draft of the new rules was published in September 2013.

The new rules are not intended to change the law. Their main aim is to consolidate provisions in order to reduce repetition, ensure that there is a more logical structure and modernise and simplify the language (including gender neutral drafting).

This briefing highlights a few of the key changes.

Which cases will the new rules apply to?

The new rules will apply to all cases, not just those insolvency proceedings which commenced after the implementation date of the new rules. As such, it is crucial that we all gain a good working knowledge of the new rules before they come into effect, as we will have to hit the ground running on Thursday April 6.

That said, there are certain transitional and saving provisions (in Schedule 2 of the new rules), which provide (amongst other things) that:

- meetings (including final meetings) called before 6 April 2017 will still take place under the old rules (paragraph 5 Schedule 2)
- provisions for electronic communication will only apply to new rules (paragraph 4 of Schedule 2)
- ongoing court applications will continue to use old rules until the application has been determined (paragraph 14 Schedule 2)

The structure of the new rules

The new rules have been simplified in their layout and structure. The rules are split into distinct parts, and helpfully, the different types of liquidation have their own parts. For example:

- **Part 2:** Company voluntary arrangements
- **Part 3:** Administration
- **Part 4:** Receivership
- **Part 5:** Members' voluntary winding up
- **Part 6:** Creditors' voluntary winding up
- **Part 7:** Winding up by the court
- **Part 8:** Individual voluntary arrangements
- **Part 10:** Bankruptcy

In addition, more subjects are dealt with in common parts of the new rules rather than being repeated for each type of insolvency to which they apply. Examples of this include, claims by and distributions to, creditors in administration, winding up and bankruptcy (part 14), the reporting and remuneration of office-holders (in part 18) and disclaimers in winding up and bankruptcy (part 19).

Creditors' meetings

The Small Business Enterprise and Employment Act 2015 (SBEA) will also come into force on 6 April 2017. This act inserts certain new provisions into the Insolvency Act 1986 and when combined with the new rules, demonstrates a new regime for creditors' meetings.

Under the new regime, physical meetings will not be used unless creditors want them. Instead, rule 15.3 provides that office-holders may use virtual meetings (rules 15.2 and 15.5), electronic voting (rules 15.2 and 15.4), meetings by correspondence or any other method which is fair. However, a physical meeting must be used when creditors want one – 10% by value, 10% by number or on the request of 10 individual creditors (this is set out in the new sections 246ZE(7) and 379ZA(7) of the Insolvency Act).

In addition, there is a new procedure for deemed consent. The new sections 246ZF and 379ZB provide that where an officeholder writes to the creditors with a proposal and does not receive objections from 10% of the creditors (in value), the proposal is deemed to have been approved. The new rule 15.7 sets out further requirements in respect of the new deemed consent procedure.

Changes to officeholder reports and communications

Fixed-term reporting has been introduced for administration, creditors' voluntary liquidation, compulsory liquidation and bankruptcy. Part 18 of the new rules sets out the reporting requirements. Progress reports must be circulated every 6 to 12 months (depending upon the insolvency procedure).

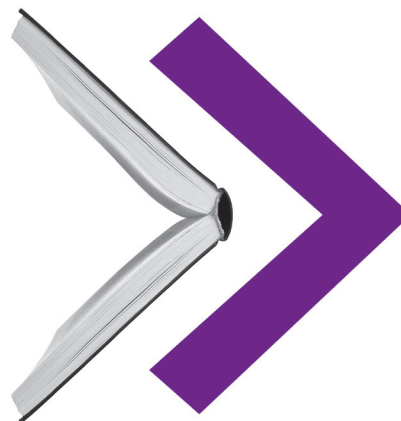
Taking administration as an example, rule 18.6 provides that the administrator's progress report must cover the period of six months ending on the date the company entered administration and each subsequent period of six months. In comparison, for a voluntary winding up, the liquidator's progress reports must cover the periods of 12 months starting on the date the liquidator is appointed, and each subsequent period of 12 months (rule 18.7). The reporting period remains the same, whether or not proceedings have been extended or the officeholder changes (rule 18.3(3) and (5)). There are certain savings provisions in paragraph seven of Schedule 2 of the new rules.

In addition, a final progress report must (from 6 April 2017) be produced when a company is moved from administration to creditors' voluntary liquidation under paragraph 83 of Schedule B1 to the Insolvency Act. This is provided for in new rule 3.60.

The new rules provide (at 1.37, 1.38 and 1.39) how creditors can opt out of receiving documents from officeholders.

In line with the modernisation of the new rules, rule 1.45 provides for the electronic delivery of documents. A document is delivered by email, if the intended recipient had (amongst others) given deemed consent for such electronic delivery.

Deemed consent in this context, is where the intended recipient and the person who is subject to the insolvency proceedings had customarily communicated with each other by electronic means before the proceedings commenced. This will be a welcome step for practitioners.



Prescribed content rather than statutory forms

One of the key points for those running cases on the ground is that the new rules eliminate statutory forms for use in insolvency proceedings. Instead, there will be prescribed contents for documents, rather than forms.

Part 1 of the new rules sets out the form and content of documents. The order in which the prescribed information is to appear is defined in rule 1.8, and rule 1.9 allows for the document to depart from the required contents in certain circumstances. Part 1 of the new rules needs to read in conjunction with the other specific insolvency proceeding parts.

So, for example, chapter six of Part 1 of the new rules sets out the standard contents of documents to be delivered to the registrar of companies, with rule 1.21 confirming the standard contents of all documents.

If we take, for example, an application to court for the appointment of administrators, one must read:

- rule 1.6 which sets out the information required to identify an office-holder, a company
- rule 1.35 for the standard contents and authentication of applications to the court
- rule 3.2 for the contents of the proposed administrator's statement and consent to act
- rule 3.3 for the contents of the administration application

...and so on.

In practice, most firms will develop their own precedent forms for use going forwards that comply with the new rules. In addition, Companies House have confirmed that it will create new forms for the new rules. Companies House will also be producing forms of attachments to such notices (for example, statement of affairs and progress reports), but have said that these forms will not be prescriptive.

There are limited circumstances in which the "old" statutory forms can be used after 6 April 2017. It appears that they should only be used where the 1986 rules still apply under transitional provisions (paragraph 15 of Schedule 2 to the new rules).

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Appointments of trustees in bankruptcy

A significant change in bankruptcy is the new section 291A (to be inserted into the Insolvency Act by the SBEE), which provides that the Official Receiver will immediately be appointed as trustee in bankruptcy upon the making of a bankruptcy order (unless there is an existing supervisor of an approved IVA who would like to take the appointment). The effect of this is that first vesting of the estate will now take place on the date of bankruptcy order.

It is worth noting that the Official Receiver will also become trustee where a bankruptcy order has been made before 6 April 2017 but no trustee has been appointed by that date (paragraph 13 of Schedule 2 of the new rules).

Conclusion

With 6 April 2017 just around the corner, we all need to be familiar with the new layout of the rules, and some of the key changes. In addition, for those with ongoing cases, the transitional provisions will be key to the correct operation of such cases.

Should you want any more information about the new rules, please contact us.

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