Response of the Insolvency Practitioners Association
to The Insolvency Service Consultation:
"Insolvency Rules 1986 – modernisation of rules relating to insolvency law"

Closing date: 24 January 2014

Overview and general remarks

The comments and views expressed below represent the combined opinion of a number of our senior practitioner members with expertise in the practice areas concerned, compliance specialists and regulatory personnel.

- **Cost to the profession**

Our initial observation is that this re-structuring will necessitate major and invariably costly systemic changes within the profession, and a considerable investment on their part in re-training. Furthermore, the entire profession will effectively be undergoing this process simultaneously. This could have some serious implications for the cost-effectiveness of the profession whilst this process is undergone and will exert upward pressure on practitioner fees.

We accept that there is precedent for the major revision of insolvency legislation from the 1985/86 changes. However, in this era of electronic communication, insolvency practice generally moves more rapidly than it did 30 years ago. The impact of legislative changes, once implemented, will be felt very quickly.

Given the practical implications for practitioners in making extensive systemic changes and meeting their training needs, we would urge that a lengthy transition period should be provided, commencing **after** the rules have been finalised and lasting **not less than 6 months**.

- **Universal application**

Practice management and training issues will be exacerbated by the existing rules remaining in place for cases opened prior to the implementation date of the new rules, to the effect that practices will have to run concurrent case administration systems and will require staff to be trained on both old and new legislation.

Some of these issues could perhaps be ameliorated were the new rules to be cast in such a way that they could be applied to all open cases (not retrospectively, per se, but with effect to those cases going forward). If, as is claimed, these rules are intended to consolidate existing legislation rather than change the law, this should be possible. We believe that this option should be given serious consideration.

- **Finalisation**

Whilst the consultation seeks comments as to the extent of any "inadvertent" legislative changes, we would suggest that this is not possible in the absence of a destination table, which has not been provided. We are concerned that there may be considerable inadvertent change which can only realistically be identified thought systematic and detailed review.

It is apparent, however, that there is still some considerable way to go in the development of these rules and we note that the rules are described as “work in progress”.

Practitioner involvement in this process will be vital to ensuring their final form is workable and there is as smooth a transition as possible. Working parties including practitioners experienced in the respective procedures should be formed to facilitate this.

Furthermore, we do not consider that it makes sense to finalise these rules until any further changes to primary legislation resulting from the Transparency & Trust and Red Tape Challenge consultations, and the Kempson and Graham reviews, have been decided. To do so could result in the rules requiring almost immediate amendment, which would not be desirable.

- **Red Tape Challenge Proposals**

Any reduction in unnecessary and burdensome regulation is to be welcomed, however, we are not without some reservations about the current proposals.

A move towards the removal of creditors’ meetings as a fixture in all cases takes away one of the facilitating provisions for creditors to act in unison and appears to run counter to a theme of improving creditor engagement. Similarly, it is difficult to envisage how the opting out provisions will improve levels of creditor participation and would question why these provisions have been re-adopted now when they were previously removed following consultation on the 2010 rule changes

We also have some reservations that the opting out provisions will have the intended cost saving effect, as presently drafted. We had suggested in our response to the Red Tape Challenge consultation that opting in to ongoing communication would be more viable and cost effective that an opting out system, and remain of that view.

In either case, the election should only be capable of being made once. If creditors are to be allowed to opt in and out repeatedly, practitioners will need to track creditors options and doing so will necessarily bring an additional administrative costs to estates. Arguably, it is cheaper and easier to circulate a notice to all known creditors, particularly if that circulation is an electronic one with little direct cost, than to manage a system where creditors may elect to be in or out at various times

The continuing move towards electronic communication is welcomed. However, the draft rules on the use of websites require the Court to be satisfied that the expense is disproportionate before allowing the office holder to send a single notice saying all documents will be filed online, rather than a sending a separate notice to this effect for each document generated throughout the case. We question whether this is necessary and would suggest that the office holder be allowed to make this decision himself, subject to challenge by creditors if they disagree, in keeping with the desire to reduce "red tape". This is consistent with other Red Tape proposals seeking to remove unnecessary Court involvement.

We would suggest that creditors receive an initial notification from the practitioner, advising them that all further documents will be available on a website. Thereafter, the need for further direct communication could reasonably be limited to notices relating to dividends.

With regard to company voluntary arrangements rules revisions have missed the opportunity to address the poor uptake of CVA moratoriums through further simplification of the rules. We are doubtful that what is proposed will have a significant impact on the uptake of this little-used process.

The rules relating to voluntary arrangement meetings, particularly in IVAs, are reported to be working well and practitioners conducting significant volumes of cases have questioned whether there is really any need for the revision of these well-understood rules. These meetings are generally paper exercises in any event, and practitioners have questioned whether additional provision for obtaining approval by correspondence is necessary.

In connection with administrations, we specifically oppose the proposals to omit the disclosure of any prior professional relationship between the administrator and the company from the administrators consent to act (see changes to rule 3.2).

We do not recall any prior consultation on this suggested change, and with current levels of public and political concern around issues of transparency, particularly in relation to pre-pack administrations, we consider this to be a retrograde step.

- **Enterprise & Regulatory Reform Act**

The ability for a debtor to present their bankruptcy petition online to an adjudicator was not something our practitioners supported in previous consultations. The reservations and concerns expressed in our prior responses remain.

We would question why the drafting note does not take account of changes in the Enterprise and Regulatory Reform Act 2013 (which repeals section 273) and proposed amendments contained in the Deregulation Bill 2013 (to allow an insolvency practitioner to be appointed as interim receiver and concerning the debtor's statement of affairs). Failure to do so makes it difficult to comment on the operation of these incoming provisions.

Consultation Question Responses:

Q1. Do you agree that replacing the current instruments with a single set of rules will make the legislation;
- **less confusing?**
- **easier to use?**

We agree a single set of rules would be less confusing for some users.

On first reading, these draft rules appears hastily compiled, they are not cohesive and comprehensive and it is premature to suggest that this may be the successor framework given the number of open consultations. Once these processes have been concluded we would hope that a single set of rules would be less confusing.

It is, however, worth noting that insolvency professionals already use consolidate versions of the rules (such as Sealy & Milman or Butterworths), so the practical benefit for practitioners of the supposed simplification will be minimal and is likely to be outweighed by the adverse implications of a wholesale revision.

Members have expressed concern that confusion may be caused by virtue of the existing rules' continued application to cases opened prior to the commencement date of the new rules. This may result in an increased administrative burden (and cost) by virtue of practices having to run dual case management systems.

Q2. Do you think that all of the definitions included are clear?

Broadly, yes. However, we would question whether all of the definitions are entirely necessary and / or add value (e.g. “non-OR office holder”, which is subsequently not used in rule 1.11(b))

The inclusion of fax communications within the definition of electronic means is outmoded and unnecessary and a number of definitions merely replicate those in the Act.

The “standard fee for copies” should refer to a regulation that can be updated from time to time

Given the multiplicity of definitions, it is not always clear within the rules whether a term can be read upon its own merits or has been previously defined (e.g. rule 14.3 – “proofs”).

Defined terms used elsewhere could usefully be referenced, italicised, hyperlinked to their definitions, or otherwise indicated.

Q3. Are there any further definitions that should be included?

The definitions appear incomplete in some respects and a duplication in others. It is noted that a number of definitions, as used in the Act, are included in schedule 3. Therefore, definitions are currently contained in 2 places.

It is suggested that either all definitions used in the Act could be placed in that schedule, or alternatively, schedule 3 and the definitions in rule 1.1 could usefully be combined.

Suggested additional definitions:

- Contributories
- Creditor [and whether they remain so, once paid]
- Nominee
- Secured Creditor
- Security
- Stakeholders
- Proposer

Q4. Is the guidance in Part 1 (e.g. about standard content of notices, delivery of documents) helpful?

Generally, the provisions are prescriptive and, therefore, not “guidance” as suggested in the consultation question. However, providing a defined area within the rules where all relevant matters can be located should improve usability.

Chapters 3 and 4 (and 5, to a lesser degree) regarding standard contents contain significant duplication. We suggested that these could be redrafted to a single chapter which did not replicate all of the information required in both gazette and other notices, and stated this once, with additional gazette information listed at the end.

The rationale for requiring additional information to be published in the gazette and not otherwise provided is unknown and we would suggest that a single set of standard contents for all notices would be an improvement.

With regard to electronic delivery of documents, it would be preferable for the office holder to be able to determine if the costs of delivering separate notices for each document were disproportionate without requiring a Court Order to that effect.

See technical summary below at question 20 for additional comments on Part 1.

Q5. Do you agree that grouping processes common to different types of insolvency procedures (common parts) is helpful to users?

The majority of view canvassed supported the suggested grouping and found it to be more helpful to users. However, we feel that these would be better located after the procedure specific rules, which should follow the order contained within the Act.

One large practice reported a contrary view, considering there to be a lack of signposting within the procedural elements to the relevant common parts. They further considered that the existing rules provided a more logical progression through an insolvency process.

It is noted that a number of the common parts are not truly “common” in that they are limited to certain types of proceedings and/or varied in their application. It is accepted that this is not entirely avoidable.

Yet approach has not been consistently applied, with provisions such as those for disclaimer, replicated identically in 3 places.

Some elements of application to specific parts could usefully be extended to all type of procedures. Requirements for the provision of records to subsequent office holders, for instance (see commentary to rule 3.68 within the technical summary below q.20).

We are of the view that these discrepancies highlight that these rules still require considerable work and revision.

Q6. Do you find the way that liquidation parts have been set out helpful?

Yes – excepting provisions re: disclaimer which are unnecessarily duplicated in three places.

Q7. Do you agree that the structure of the rules as drafted is clearer and more logical?

We think it would preferable to follow the format of the Insolvency Act in grouping the common parts after the procedure specific elements. Retaining some element of commonality and familiarity with existing provisions would facilitate a smoother transition to the new provisions.

Some ambiguities, inaccuracies and linguistic inconsistencies have been noted and are detailed in the technical summary contained below. Furthermore, the logic of the revisions is not consistency applied throughout (e.g. replicating disclaimer provisions whilst moving permission to act as a director has been separated).

Part 11: It has been questioned whether the provisions relating to BROs / BRUs would be more logically located within the other bankruptcy provisions have been noted.
Part 12: Uses section numbering which is inconsistent with the number style used within other parts.

Q8. Do you think that the draft rules are easier to follow than the existing Rules?

Without having the time to consider the full practical implications of the changes, we do not feel able to respond to this question at this time. We are currently unconvinced.

Q9. Is the plainer, modern language used easy to understand?

Yes, although we do not consider that the existing rules are difficult to understand and the language used is not markedly different from the existing provisions. It is noted that language is used with greater consistency, which is welcomed.

There are a number of instances where the language could be further simplified or clarified: e.g. the use of “insolvent or compulsory winding up”, for which we assume means all liquidations excepting MVL, although this is not entirely clear.

Q10. Are there any examples where you believe that the language used could be made simpler?

We would suggest using the term liquidation as an alternative to winding up.

The use of fees and expenses as an alternative to remuneration and disbursements is considered an improvement.

Insolvency is inherently technical and we consider that it would be difficult to simplify the language further.

Q11. Do you agree that the draft rules improve consistency across insolvency procedures?

We agree that this is an appropriate objective although we are unable to comment at this stage whether this has been fully achieved.

Some improvements in consistency of language are noted, however, differences in drafting style remain. In some areas a tabular format is adopted, whilst in other, narrative style is used.

Q12. Do you have any suggestions as to how consistency could be further improved?

We have not had sufficient opportunity to properly ascertain the consistency of the draft. Not least, we have suggested elsewhere that some re-ordering would be beneficial.

It may also be preferable to ensure that the common parts only contain elements that are truly “common” and where they are not, include the relevant provisions within the procedure-specific provisions.

Q13. Do you agree that prescribing <u>content</u> instead of the form on which that information must be provided will make it easier to use electronic forms of communication?

No. We perceive some benefits to this approach in terms of clarity, as each rule can be read effectively as a standalone provision (although, this could equally be achieved with a form).

However, the approach is not without considerable disadvantages in terms of the additional content to the rules. This can been seen in the lengthy lists of information contained in a number of the new rules (e.g. rules 5.1, 6.4, 7.6).

We would question whether Companies House is in agreement with the approach. Previous experience would suggest that they will prescribe forms for use by practitioners and will be unwilling to accept a multiplicity of styles. The use by the profession of a small number of software providers will in practice dictate that substantially the same forms are used in any event.

It simplifies drafting to prescribe a form and state that the information contained in it must be delivered. The form format itself need not be mandatory, provided that the prescribed information is delivered. This would also assist in reducing the number of legislative changes required over time, as the prescribed form could be replaced in the event additions or deletions were warranted.

It is also noted that this approach is not consistent with that being adopted in consumer credit IVA cases where there is a continuing move towards consistency of format, to streamline data handling and minimise cost.

Lastly, prescribing the content rather the form itself may present the risk of items being accidentally missed from in-house form templates and creditors will necessarily receive a variety of form formats, so are less likely to develop a familiarity with them.

Q.14 Do you find the write–out of the contents requirements in the rules to be helpful?

We consider that doing so make the rules' requirements easier to understand in isolation. However, we also note that this does add considerably to the length of the rules, which makes them cumbersome in places.

In the absence of engagement with Companies House, we are dubious whether the intended effect will be achieved. There does not appear to be any benefit in allowing practitioners to devise their own form formats when previous experience would suggest that Companies House will insist on prescribing a particular format. This will be an unnecessary duplication of cost and effort.

Q.15 What problems do you encounter with the delivery of documents by post?

Practitioners report an element of uncertainty regarding delivery dates, and delays and lost items causing issues. However, electronic delivery is noted as being not without some similar issues, although the time delay between sending and delivery is clearly less of a problem in most instances.

Increasing postal costs and the logistics of large scale mailings are also noted as problem areas and e-delivery is broadly considered to be a more cost effective option.

Q.16 Do you agree with the estimated savings outlined?

We consider that it is difficult to accurately estimate the actual saving that will result; however, no doubt there will be some savings. We are sceptical about the projected quantum. From the recipients' perspective, there is a potential reallocation of costs of printing and stationery which has not been factored in to the impact assessment.

We are of the view that if real cost savings are to be achieved, then post should no longer be the default option for communication. This would be far more forward looking than the current proposals and given the broad public access to the internet, we do not believe this would cause any significant disenfranchisement of creditors.

Q.17 Are you aware of any other savings or benefits associated with removing the requirement for first class postal delivery?

None aside from cost savings in postage. We note that the position is merely reverting to that pre-April 2010. As noted above, we consider that post should no longer be the default delivery mechanism in any event, although should remain an option, given that some smaller practices report that they do not have facilities for web publication.

Q.18 Do you agree that the technical changes listed should be made? If not, please identify which change(s) you do not think should be made and explain why.

Technical commentary on some of the changes may be found below in response to q.20. Our more general observations are as follows:

- We understand that Bills of exchange and promissory notes may still be in use for certain forms of international trade;

- Addressing the issues created by the Kaupthing, Singer and Friedlander judgement are welcomed, but may need some further revision to fully address the problems;

- We agree that the rules for a foreign currency claim need to be amended, but we are not sure that the definition suggested is sufficiently precise. We suggest it would be helpful to follow the approach adopted by the Court in that debts must be converted into sterling at the spot exchange rate published by the Bank of England on the relevant date.

- We note that meetings and consideration by correspondence are alternatives and would question whether this distinction is necessary as meetings are invariably convened by correspondence in any event. The current procedure reportedly works well.

Q.19 Do you agree that contributories should not be able to form part of liquidation committees? If not, what value do contributories bring to a committee?

Yes.

Q.20 Do you have any other suggestions or comments on the structure or content of the rules?

Given that the rules are stated to be in draft form and subject to further revision, we have not conducted a detailed rule by rule comparison of the existing and draft new rules at this stage. Attention has been focussed on the areas highlighted in the general drafting note and where other matters have become apparent, we have commented on them also. Provision of a destination table will be essential if a detailed technical commentary is to be provided. Given the scale of the task, failure to comment on a specific rule does not imply that its content has been endorsed by the IPA.

It is noted that the rules make no provisions for PVAs, or partnership matters generally, and we question whether this is a missed opportunity to consolidate these provision. If the old rules continue to apply to partnership, this will further complicate and already complex area of insolvency practice. It is also unclear what is intended for other associated secondary legislation, such as the Insolvency Practitioner Regulations and the schedules to the current rules.

Lastly, in relation to technical matters noted that some of the rule changes proposed, such as the removal of contributories from liquidations committees and those forming part of the Red Tape Challenge, are not be possible without changes to the primary legislation.

Part 1	**Interpretation, Time and Rules about Documents**
1.3	There is an inconsistency between parts 1.3(1) / 1.3 (2) in that the former refers to “a judge, district judge or the registrar” and the latter only refers to “the registrar or district judge”. It is unclear if this is intentional.
1.4	Clarification as to whether these provisions (and those of s.246A and 379A) apply to the chair of the meeting would be welcome. A number of queries have been raised on this subject and there appears to be some divergence of opinion within the profession as to whether the chair may attend remotely as physical meeting being held elsewhere.
1.5	The working of this section is cumbersome. A month period could more usefully be explained by the provision of an example. This approach would be consistent with extract from the CPR contained within Schedule 4.
1.9	It is unclear what this rule adds to those that follow in relation to standard contents. However, in the event that it is retained, we would suggest that in addition to the information required: • Company: identifying information should include any trading style other than its registered name and its principal place of business. • Office holder: should include their IP number. • Contact details: It is unclear if this rule will require provision of the officeholder’s direct email address, or whether an alternative first point of contact (such as the case manager or group email address) could be supplied. This may be particularly relevant in larger practices. A comma needs to be inserted between “proceedings” and “that” in order for the rule to read properly.

1.36	See opening remarks re: costs of operating an opting out system. There may also be risks associated with allowing creditors to opt in and out repeatedly.
1.37	How is the authorisation to be evidenced? Must the authorisation be actual, or may the practitioner rely upon a reasonable belief? What are the consequences in the event the third party was not properly authorised to receive delivery on behalf of a creditor?
1.46 – 1.47	Both require that documents delivered online must remain available for minimum periods of time. We suggest the addition of a qualifier that all documents so delivered must remain on the website until the later of the expiry of the stated periods or, say, three months after closure of the case, if longer. Is it not clear if the intention is to change the provisions relating to the issuing of a notice every time a practitioner wishes to issue a document via a website (without first having to get the permission of the Courts).
1.50	What is the "standard fee" and how is it to be fixed?
1.53	The meaning of "insolvent or compulsory winding up" is unclear.
Part 2	**Company Voluntary Arrangements (Part 1 of the Act)**
2.27	This clarification is welcome.
2.34	We are content with the approach to differentiate between creditors' claims and determining right to vote.
2.35	2.35(3) states: "For the purposes of voting (but not otherwise), such a debt is to be valued at £1 unless the nominee, an appointed person *or the chair of a meeting* decides to put a higher value on it." Given the provisions of rule 2.27, we question who could legally chair a meeting other than nominee or appointed person?
2.37	We suggest that provision for promissory notes and bills of exchange should be retained. Issues could arise when determining whether more than 50% in value of the unconnected creditors voted against a resolution if there isn't a determined total figure of the amount owed to creditors. In the current rules the relevant figure is those creditors who were sent notice of the meeting. This will no longer be the case under the revised rules where the nominee may be unaware of creditors not disclosed in the SoA, but who nonetheless should be taken into consideration when determining the >50% vote.
Part 3	**Administration (Schedule B1)**
3.2	We do not support the omission of the prior professional relationship disclosure: There is little external scrutiny of administrator appointments, particularly those made under paragraph 14 and 22, and the inclusion of the statement promotes transparency and assists in exercising a degree of control. It should also be noted that current SIP9 provisions do not require the disclosure to creditors of fees generated from non-regulated pre-appointment work (e.g. IBRs). Therefore, if the disclosure of the prior relationship is removed, creditors will be unsighted on the extent of the practitioner's prior involvement with the company. Given the apparent concern about issues of transparency, particularly in

	relation to pre-pack administrations, we consider this to be a retrograde step.
3.7	We do not agree that the 5 business day limit is in conflict with “as soon as reasonably practicable” in para 12(2), it just gives a measurable “long-stop”. We are of the opinion that this should be retained.
3.12 / 3.16 / 3.24	We consider that making a para 100 statement within the order and the notice of appointments is a good idea.
3.13	We do not think that the detail in current rules 2.16(4) and (5) is unhelpful, rather it helps ensure that consent is given consistently.
3.34	The requirement for a separate resolution to be taken for remuneration is welcomed.
3.48	The terms “expenses associated” could usefully be defined.
3.50	See note to rule 17.15.
3.53	3.53(4)(b) - no harm in doing so. See also note to rule 1.9 re: inclusion of any trading name. Creditors may be unable to identify the company in the absence of this information.
3.54 / 3.55 / 3.57	We are unclear how these rule will operate given the omission of the existing rule 2.33(6) in instances where no proposals have been sent to creditors.
3.58	Where is the requirement for the administrator to send the Final Progress Report to the Registrar of Companies?
3.68	Given the increasing incidence of succession in insolvency appointments, we would suggest that the common parts would benefit from a provision of this type for all forms of insolvency proceedings. It is noted that similar provision is repeated at rules 5.11 and 6.29. Clarification is also required as to the extent to which the former office holder should retain records (or copies of records) for the purposes of satisfying his obligations under the Insolvency Practitioner Regulations. Similarly, the extent to which a former office holder is obliged to give access to computerised records of his administration could usefully be clarified. 3.68(1)(c). We are not clear how documents differ from records and would suggest simply using “records”.
General	We would question whether the flawed interaction between R2.47(3B) & (4) and R2.112 has been resolved (relating to the requirement to send to the Registrar a copy of the progress report used for any extension or consent within 1 month of the period covered by the report)? If the court is unable to deal with any extension application within 1 month of the date of the progress report, under the present drafting, this technically means that a copy of the report submitted as part of the extension application needs to be sent to creditors to comply with R2.46(4), then if the extension is approved, under R2.112(4) another copy of the report should be sent to creditor with notice of the order extending the administration creating a potential duplication of effort.
Part 5	**Members’ Voluntary Winding Up**
5.5	It is noted that progress reports will be required when there is to be a change of liquidator. However, no similar provision exists in rule 5.31 when there is a

	conversion to CVL.
5.11	See comments above at 3.68.
5.31	See note to 5.5.
Part 6	**Creditors' Voluntary Winding Up**
6.1	Rule 6.1(2) cannot be read in isolation and cross-references 12 different rules, paragraphs and sections. It would benefit from the incorporation of the explanatory note in the drafting guide to ensure it is understandable at first reading.
6.29	See comments above at 3.68
Part 7	**Winding Up by the Court**
7.4	This rule is yet to be drafted but we do not foresee any problems in allowing the official receiver to invite creditors and contributories to nominate and vote on the appointment of a liquidator and creditors' committee by correspondence.
Part 8	**Individual Voluntary Arrangements (Part 8 of the Act)**
8.2	The tabular approach is welcomed. The provision may benefit from the inclusion of an explicit presumption that all assets are included within the proposal, unless specifically excluded, to prevent any future problems, such as those encountered in respect of PPI claims.
8.14	8.14(2) It is questioned whether the inclusions of the words "should not" in respect of inviting the creditors to consider the proposals is necessary.
8.33	We consider that this rule needs to be reviewed. 8.33(1) - implies a resolution is passed by a majority in value and should be re-ordered with 8.33(2) and recast to say "any other resolution". 8.33(3) was considered irrelevant as no resolution is passed, by correspondence or otherwise, unless at least one creditor has voted for it. 8.33(4) It is not clear what "qualifying votes of unassociated creditors (whether or not actually cast)" means. Is this the same as unassociated creditors entitled to vote or some other measure?
Part 9	**Debt Relief Orders (Part 7A of the Act)**
9.16	It is unclear if the client can appeal the creditor request to revoke the DRO due to a change in income or if the revocation will be automatically granted?
Part 10	**Bankruptcy**
10.37 – 10.53	We have a number of comments about these provisions: • Whilst agree that court not necessarily right place for debtor petitions, is the adjudicator? • Why must debtors be restricted to electronic submission only when creditors can still use paper application? • Verification and ID per r10.42 is optional – surely this needs to be mandatory. • The 28 days determination period is long time to leave debtor in limbo – what protection does debtor have during the hiatus? • The proposed s.263K is not reproduced so we are unsure what it will provide. Refusal to make a BO should not be subjective.

10.76	The current rule 6.142(2) provides that IP must cover costs initially but can then be reimbursed from the estate – if removed, then some IPs may opt out of advertising if no funds are available.
10.107	We consider that disclaimer provisions should be within the common parts to prevent unnecessary repetition.
10.152	This provision is punitive to debtor where made self bankrupt as a fee is payable although no such fee applies where there was a creditor's petition.
Part 14	**Claims by and Distributions to Creditors**
14.0	The Part is confused in its application: 14.0(c) states that the Part applies to bankruptcies but 14.1 states it applies in relation to a winding up. The definition of "relevant date" in 14.1(c) includes reference to both administration and bankruptcy. 14.1(5) also provides for the application of the rule to administrations. We consider these inconsistencies to be confusing. Additionally, there is no reference to the definition of debt in a bankruptcy provided by section 382 IA86.
14.3	Proving a debt: it is unclear who it is that must deliver the proofs to the office-holder, i.e. it should be the creditor wishing to recover their debt.
14.4	14.4(1)(a) – Statement of Insolvency Practice 14 states that employee preferential creditors are not to be deemed to have full knowledge of their rights and entitlements and that the receiver should calculate their claims (other than those which are paid by the Secretary of State) for them. We understand that practitioners usually adopt this approach in all types of insolvency process where there will be a distribution in respect of employee claims, whether preferential or non-preferential. It would be helpful if the rules on proving claims could be modified to provide that where an office holder has calculated an employee's residual claim and has obtained the employee's agreement to the amount, the proof is deemed to have been made out under the authority of the creditor.
14.24	Whilst 14.24(5) does address part of the judgment in Kaupthing, Singer and Friedlander Ltd, in respect of a contingent/prospective debt being payable in full without any reduction under Rule 14.45, we consider that reference should be to the debt not being "discounted", rather than reduced. We think that there are further matters raised in the KSF judgment that require further amendments: • It would be helpful to clarify that "prospective" debts means a debt payable at a future date. • 14.24(8)(b) should apply to sums due to and from the company. • 14.24(8)(b)(iii) needs to clarify that for the purpose of ascertaining the balance arising from mutual dealings post-administration interest is to be ignored on each side, but the company remains able to claim interest on the balance from the date of administration. • R14.24(8)(c) when carrying out the set-off calculation in respect of interest bearing debts which are also future debts, the discount formula should be applied to the debt as it stands at the date of the rule 14.31 notice and the company cannot add in interest arising

	between that date and the maturity date of the loan. • R14.24(8)(c) – this should be amended to clarify that it applies to debts payable in the future from the date of the notice under rule 14.31 and not the date of the administration.
14.25	14.25(5) – typo in brackets, should be a cross reference to 14.45, not 14.46. 14.25(8)(b) should apply to sums due to and from the company. 14.25(8)(b)(iii) needs to clarify that for the purpose of ascertaining the balance arising from mutual dealings post-administration interest is to be ignored on each side, but the company remains able to claim interest on the balance from the date of administration. Inconsistent drafting between 14.24(8)(c) and 14.25(8)(b)(iv), which should be 14.25(8)(c).
14.31	14.31(4); current rule 11.2(1A) provides that the notice in the Gazette is only to be given when it is a first dividend that is being declared. The drafting of revised rule 14.31(3), which presumably is intended to give similar effect, is not as clear as the current drafting of 11.2(1A) and it would be helpful if the requirement to Gazette only when the first dividend is declared was stated more explicitly. Clarification is needed in relation to requirement over gazetting notice of intended dividend to preferential creditors, where notice under paragraph (3) is deemed unnecessary. 14.31(4) - by inference, if no notice to preferential creditors is deemed necessary, presumably no gazette notification is also required. 14.31 has amended the provision in current Rule 2.95, to bring administrations into line with liquidations. However, this may have unintended consequences for the operation of rule 14.24 (set-off) in administration. Under the current drafting of Rule 2.95 an administrator has to send notice of proposed distribution to all creditors. Under the proposed rule notice would only be given to creditors who have not proved. If all creditors in an administration had proved then no notice of proposed dividend would be given and set-off would not apply. This is because Rule 14.24 states that set-off applies when administrator has delivered a notice under Rule 14.31, "notice of intention to declare a dividend", this was an important point in the KSF case.
14.33	We consider that these provisions remain inadequate. There can be many (unforeseen) reasons why a dividend needs to be postponed after the last date of proving. Practically speaking, the rules as currently drafted only provide for postponement or cancellation where a proof is rejected and a court application is pending - there can be many other valid reasons for postponement and the process in such circumstances remain unclear. It would be useful if further thought could be given to widening the parameters for postponement where an office holder feels this is appropriately justified and not just resulting from an internal delay.
General	Current rules 2.72(6) and 4.73(8) deemed proving in administration following

	liquidation and liquidation following administration, respectively, appear to be missing.
Part 15	**Making Decisions: Correspondence and Meetings (Including Proxies and Corporate Representation)**
15.5	The table demonstrates that the provisions are not truly "common".
15.7 / 15.8	We are not sure that the interaction between requirement to gazette notices under s95 & s98 is clear between these two rules.
15.9	There is drafting inconsistency between 15.9 / 17.15.
15.9	The rule makes separate provision for different forms of insolvency process and is not "common".
15.42	15.42(2) - different provisions for different procedures – not "common".
Part 16	**Creditors' Committees**
16.2	We agree that the rules in administrations and administrative receiverships should be different from those in bankruptcy and winding up, otherwise the trading on of administrations etc. would be very difficult.
16.9	We are pleased to see that the rules for termination of membership of committees in liquidations will be brought into line with the changes introduced in 2010 for administrations.
16.24	See 16.2 above.
Part 17	**Progress Reports and Remuneration**
17.10 / 17.11	The proposed wording appears adequate.
17.12	We would question if the detail set out in current rules 4.126A(4)(a) and 4.126(1E) has been dropped as the new rule only refers to "a summary of the office-holder's receipts and payments".
17.15	Remuneration - procedures for initial determination: Provisions regarding approval where Para 52(1)(b) statement has been made appear unchanged. What consideration if any, has been given to extending this to statements made under the provisions of Para 52(1)(c) also? If this applies, by inference, the objective is that laid down by Para 3(1)(c) ie, to realise property in order to make a distribution to one or more secured or preferential creditors. Given the uncertainty at times surrounding the appropriateness of make a Para 52(1)(b) statement instead where there will be no prescribed part distribution to unsecured creditors, wouldn't it be more appropriate to make a Para 52(1)(c) statement and extend the approval process/mechanism in Rule17.15 to Para 52(1)(c) statements as well such that the affected stakeholders are the approving body in this situation also?
17.15	17.15(3)(a) – in cases where the administrator has made a statement under paragraph 52(1)(b) and there is more than one secured creditor problems have been experienced where the "out of money" secured creditors do not respond to any requests to fix the basis of remuneration. It would be helpful if the rule for secured creditors could follow the approach for preferential creditors in rule 17.15(3)(b)(ii), ie you can disregard any secured creditor who

	does not respond to the invitation to give or withhold approval. It would also be helpful if same amendment was made to rule 3.50(3)(b) and 17.16(2)(a). Further, if a suitable legislative vehicle were available it would be helpful to make the same amendments to the following paragraphs 78, 98 and 108 of Schedule B1. 17.15 (3)(b) It would useful to remove the ambiguity of seeking preferential creditors approval over whether it is acceptable approach the majority preferential creditor or if practitioners are required to ask every preferential creditor. It is suggested that given the provision for the determination of remuneration are not "common" across the different insolvency procedures, they might be better located within the respective home Parts.
17.22	We consider that this should only apply unless agreed otherwise with the secured creditors.
Part 20	**Permission to Act as Director etc. of Company with a Prohibited Name (Section 216)**
20	We agree that locating these rules in a separate part is sensible, although inconsistent with the approach otherwise adopted in respect of the liquidation provisions. We question whether rules as currently set out are sufficiently robust to effectively deal with phoenix situations and an extension of s.216 to administrations would be welcomed (accepting that this would require primary legislation).
Schedules	
Sch. 1	the following Amendment Rules SIs appear to have been missed: • 1987/1919 • 2002/1307 • 2002/2712 • 2007/1974
Sch. 3	Cross reference should be to Rule 1.2, not 1.3; The definition of "business day" and Gazette do not add anything given the definitions in Rule 1.1 It may be preferable to incorporate this schedule into Rule 1.1.
Sch. 4	Cross reference should be to 1.5 not 1.4.

Note: these comments are not intended to represent a complete technical analysis of the draft rules, which may contain other errors or omissions that have gone unnoticed and upon which we may wish to comment subsequently.

About the IPA

The Insolvency Practitioners Association is a membership body recognised in statute for the purposes of authorising Insolvency Practitioners under the Insolvency Act 1986 Insolvency (Northern Ireland) Order 1989. It is the only recognised professional body to be solely involved in insolvency and for over fifty years, the IPA is proud to have been at the forefront of development and reform within the industry.

The IPA has approximately 2,000 members, of whom 548 are currently licensed insolvency practitioners. In addition to its recognition under the Insolvency Act for the purpose of licensing IPs, the IPA is also a Competent Authority approved by the Official Receiver for the purpose of authorising intermediaries to assist with debtors' applications for Debt Relief Orders.

The IPA currently licenses approximately one third of all UK insolvency appointment takers, who are subject to a robust regulatory regime, applied by the IPA's dedicated regulation teams carrying out complaints handling, monitoring and inspection functions. Additionally, the IPA conducts inspection visits of those appointment-takers licensed by the Law Society (Solicitors Regulation Authority), one of the other recognised professional bodies under the Insolvency Act. The IPA also undertakes monitoring visit work for the Debt Resolution Forum, a membership body which sets standards for its members when involved in providing non-statutory debt solutions to insolvent individuals (such as Debt Management Plans).

The IPA has a longstanding and continuing commitment to improving standards in all areas of insolvency (and related) work. It was the first of the recognised bodies to introduce insolvency-specific ethics guidance for IPs, and the IPA continues to be a leading voice on insolvency matters such as the development of professional standards, widening access to insolvency knowledge and understanding, and encouraging those involved in insolvency case administration and insolvency-related work to acquire and maintain appropriate levels of competence and skills.

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