



Insolvency Licensing Regulations and Guidance Notes

EFFECTIVE FROM 1 MAY 2018

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The Institute of Chartered Accountants in England and Wales (ICAEW), under section 391 of the Insolvency Act 1986, is a recognised professional body (RPB) for the regulation of insolvency practitioners. It must have rules setting out how insolvency practitioners will be regulated.

CONTENTS

Introduction	1
General	2
Scope and status	2
Transitional arrangements	2
Interpretation	2
Definitions	2
Insolvency practitioners: eligibility and authorisation	7
New applicants – eligibility	7
Eligibility of overseas applicants	8
Application for an insolvency licence.....	8
Licence holders - application for renewal of insolvency licence	10
Fees and other costs of authorisation	10
Changes in circumstances.....	11
Cessation of authorisation	12
Continuing responsibilities after authorisation has ceased.....	12
Compliance with the regulations.....	13
Monitoring and enforcement.....	13
Voluntary cessation of insolvency practice.....	14
Competence and conduct of licence holders	14
Competence and continuing professional development	15
Professional integrity and independence	15
Statutory requirements.....	15
Technical standards.....	16
Quality control	16
Disclosure of status.....	18
The committees	18
Insolvency Licensing Committee - composition	18
Responsibilities	19
Delegation	19
General.....	20
Disclosure of information	20
Notification to committees.....	21
The Review Committee.....	21
The Appeal Committee	21
The procedures of the committees.....	21
Representation before committees.....	22

Regulatory action, restrictions and withdrawal of licence	22
Dispensation	22
Undertakings	22
Restrictions and conditions	23
Regulatory penalties	23
Withdrawal of authorisation	24
Urgent orders	25
Implementation of orders	25
The serving of notice.....	26
Variation of orders.....	27
The review of regulatory decisions	27
Appeal	28
Insolvency affiliates	29
Application for affiliate status	29
The withdrawal of affiliate status	30
Fees	30
Disciplinary arrangements	30
Overseas applicants	30
Index	31

Introduction

The objectives of ICAEW in issuing these *Insolvency Licensing Regulations* are to make sure:

- insolvency practitioners licensed by ICAEW are fit and proper persons to act and meet acceptable requirements as to education, practical training and experience;
- the good reputation of licensed insolvency practitioners with the public is maintained; and
- the regulations are clear.

These regulations apply to all insolvency practitioners authorised by ICAEW. Guidance is included to help insolvency practitioners to apply the regulations, which take precedence over the guidance.

Guidance is given to help firms apply the regulations. This is printed in light type and regulations are displayed in **bold** type.

Where defined terms are used in the regulations they are displayed in ***bold italics***. This does not apply to the guidance.

Telephone numbers

Insolvency regulation, licensing queries – insolvency regulation manager +44 (0)1908 546 330.

Insolvency administration, new applications, licence renewals, bond and cover schedule enquiries – insolvency administrator +44 (0)1908 546 262.

Insolvency fees (payment and invoicing queries) – credit controller +44 (0)1908 546 265.

Insolvency ethical and technical advice – Technical Advisory Services +44 (0)1908 248 250.

ICAEW insolvency website pages – icaew.com/insolvency.

General

This chapter deals with the scope and interpretation of the regulations.

Scope and status

- 1.1 These *regulations* apply to persons authorised by *ICAEW* to act as *insolvency practitioners* under the *Act* and to persons seeking such *authorisation*.
- 1.2 These *regulations* are issued by the authority of the *Council*.

Transitional arrangements

- 1.3 These *regulations* come into force on 1 January 2004 (with the exception of *Regulations* 3.12 and 3.13 which come into force on 1 January 2005) and supersede the Insolvency Licensing Regulations dated 1 December 1997 as amended.
- 1.4 Where any regulatory or disciplinary action is being taken against an *insolvency practitioner* by *ICAEW* for actions or omissions arising wholly before these *regulations* came into force, the Insolvency Licensing Regulations in force at the material time shall apply.

Interpretation

- 1.5 Words and expressions have the meanings given by the *Act* and the Interpretation Act 1978 unless defined in these *regulations*. In the event of a conflict the definitions in these *regulations* take precedence over the *Act* and the Interpretation Act 1978.
- 1.6 In these *regulations* words importing the singular number include the plural and vice versa. Words importing the masculine gender include the neuter (as well as, by virtue of the Interpretation Act 1978 as applied by 1.5 above, the feminine). Words importing the neuter gender include both the masculine and the feminine. Section headings are not part of the *regulations* and are for guidance only. The *regulations* will be governed by and interpreted according to English Law.
- 1.7 Any references to legislation, regulations, *Bye-laws*, *regulations* or other documents will apply to any re-enactment, re-issue or amendment.

Definitions

- 1.8 In these *regulations* the following words have the following meanings.

Accountancy & Actuarial Discipline Board	The Accountancy & Actuarial Discipline Board Limited or its successors, being the company (or scheme) which has responsibility for operating the investigation and discipline scheme in which <i>ICAEW</i> participates pursuant to clause 1(b) (viiA) of the Supplemental Royal <i>Charter</i> of 21 December 1948.
Accountant	A <i>member</i> of any accountancy body.

Act	The Insolvency Act 1986 and its subordinate legislation including any rules, regulations or orders, as from time to time re-enacted or amended. All references to the Act include, where the context so admits, all equivalent legislation in Northern Ireland (i.e. the Insolvency (Northern Ireland) Order 1989 and its subordinate legislation).
Agent	A <i>monitoring unit</i> or such other person or body who may from time to time be appointed by the <i>Licensing Committee</i> .
Appeal Committee	The <i>Appeal Committee</i> of ICAEW established under the <i>bye-laws</i> .
Appointment	The position of <i>office holder</i> held by an <i>insolvency practitioner</i> in respect of an insolvency made under the <i>Act</i> .
Associate	Associate has the meaning set out in section 435 of the <i>Act</i> .
Authorisation	The issue of an <i>insolvency licence</i> by ICAEW under these <i>regulations</i> and "authorise" and "authorised" are to be interpreted accordingly.
Body corporate	Includes a body corporate constituted under the laws of a country or territory outside the United Kingdom or Republic of Ireland. The term body corporate includes a limited liability partnership.
Business day	A day excluding weekends and United Kingdom public holidays.
Bye-laws	The <i>bye-laws</i> of ICAEW.
Charter	The Royal Charter of 11 May 1880 and the Supplemental Royal Charter of 21 December 1948 granted to ICAEW as from time to time modified or amended.
Controller	A person who, alone or with any <i>associate</i> or <i>associates</i> , is entitled to exercise or control 15% or more of the rights to vote on all or most matters at general meetings of a <i>body corporate</i> , or of another body corporate of which it is a subsidiary undertaking.
Council	The Council of ICAEW under Clause 2 of the Supplemental Royal <i>Charter</i> of 21 December 1948.
Cover schedule	A form defined in the Insolvency Practitioners Regulations 2005 (as amended) upon which an <i>insolvency practitioner</i> enters certain details in relation to his <i>appointment</i> as an <i>insolvency practitioner</i> .
Director	Any person occupying the position of director (called by whatever name) in a <i>body corporate</i> . Also, any person under whose directions or instructions the directors of the <i>body corporate</i> are used to acting.

Direct sanctions direction	A direction by the Secretary of State to a RPB in relation to an <i>insolvency practitioner</i> .
Direct sanctions order	An order made by the High Court against an <i>insolvency practitioner</i> .
Disciplinary bye-laws	The <i>disciplinary bye-laws of ICAEW</i> .
Disciplinary Committee	The Disciplinary Committee appointed by the <i>Council</i> in accordance with the Schedule to the <i>disciplinary bye-laws</i> .
Employee	Anyone who carries out <i>insolvency work</i> for a licensed <i>insolvency practitioner</i> , including sub-contractors and consultants.
Firm	<ul style="list-style-type: none"> a. a sole practitioner; or b. a partnership; or c. a <i>body corporate</i> including limited liability
Group	A <i>body corporate</i> , any parent or subsidiary undertakings and any parent or subsidiary undertakings of any of them.
Insolvency affiliate	A person granted affiliate status in accordance with these <i>regulations</i> .
Insolvency experience	<p>The content of the insolvency experience required prior to the grant of an <i>insolvency licence</i> falls into two main categories:</p> <ul style="list-style-type: none"> a. involvement in <i>insolvency work</i> of a type reserved to <i>insolvency practitioners</i> under the <i>Act</i>; b. involvement in: <ul style="list-style-type: none"> i). other <i>insolvency work</i> not reserved to <i>insolvency practitioners</i> under the <i>Act</i> but which the <i>Licensing Committee</i> decides is relevant experience; and/or ii). other work done at the request of creditors, or involving liaison with creditors, which might lead to formal insolvency or the avoidance of formal insolvency. <p>Experience in category (a) may make up the whole of an applicant's insolvency experience requirements. Experience in category (b) may be included in the calculation of insolvency experience but only to a maximum of fifty per cent of the total insolvency experience required by these regulations, the remainder being category (a) experience. However, in the case of a person engaged in insolvency related work in a <i>recognised professional body</i> or the Insolvency Service of the Department for Business, Energy & Industrial Strategy or an agent for such a body, category (b) experience may make up the whole of an applicant's three years' experience (provided that the applicant can demonstrate additional experience of</p>

category (a) work covering a period of at least two years within the five years prior to the application).

Category (b)1 includes the following:

- the giving of insolvency advice generally;
- work in relation to the role of an advising member in the period immediately prior to commencement of a creditors' voluntary liquidation;
- work in relation to receiverships other than administrative receiverships; and
- work of a regulatory nature such as investigating complaints about the conduct of insolvency practitioners or the conduct of directors of insolvent companies, insolvency monitoring, practice review and compliance work relating to insolvency practice or regulation.

Category (b) 2 includes the following:

- work done for banks, other lenders or creditors, such as viability reviews, monitoring of solvency, etc; and
- work involved with the turnaround of companies' and/or other company rescue work.

**Insolvency
licence**

An *authorisation* issued to a *member* or an *insolvency affiliate* by ICAEW under the *Bye-laws* and these *regulations* for the purposes of the *Act* and the words 'licence' and 'licensed' are to be defined accordingly.

**Insolvency
practitioner**

A person acts as an insolvency practitioner and requires *authorisation* for the purposes of these *regulations* where he acts:

a. in relation to a *body corporate*:

- as its liquidator, provisional liquidator, administrator or administrative receiver; or**
- as nominee or supervisor of a voluntary arrangement proposed or approved by it under Part 1 of the *Act*; (a person acts as nominee if he performs any of the functions conferred on nominees under Part I of the *Act* in relation to a voluntary arrangement proposed under that Part),**

b. in relation to an individual:

- as his trustee in bankruptcy or interim receiver of his property or as a permanent or interim trustee in the sequestration of his estate; or**
- as a trustee under a deed which is a deed of arrangement made for the benefit of creditors or, in Scotland, of a trust deed for his creditors; or**
- as nominee or supervisor of a voluntary arrangement proposed or approved under Part VIII of the *Act*; (a person acts as a nominee if he performs any of the functions conferred on nominees under Part VIII of the *Act* in relation to a voluntary arrangement proposed under that Part),**
- as administrator of the estate of a deceased individual by virtue of an order under Section 421 of the *Act* (application of provisions of the *Act* to insolvent estates of deceased persons);**

c. in relation to a partnership, as nominee or supervisor of a voluntary arrangement, administrator, trustee or liquidator or provisional liquidator under the Insolvent Partnerships Orders 1986 or 1994.

Insolvency work

The work undertaken by the *licence holder* himself, and his *employees* under his direction, in respect of his activities as an *insolvency practitioner*.

ICAEW

The Institute of Chartered Accountants in England and Wales.

Investigation Committee

The Investigation Committee appointed by the *Council* in accordance with the Schedule to the *Disciplinary Bye laws*.

Licence holder

An individual who has been issued with and continues to hold a current *insolvency licence* under these *regulations*.

Licensing Committee

The Insolvency Licensing Committee of *ICAEW* appointed under Regulation 4.1 and, where the context so admits, any sub-committee of that committee.

Meeting

A meeting includes any consideration by the *Licensing Committee*, through the medium of conference telephone or similar form of communication provided that all persons participating in the meeting are able to communicate simultaneously with each other throughout the meeting. A member of the *Licensing Committee* participating in any meeting in this way is deemed to be present in person at the meeting and is counted in a quorum.

Member

A member of *ICAEW*.

Monitoring unit

The monitoring agent of *ICAEW*.

Office holder

A person who acts or has acted as an *insolvency practitioner*, or a judicial factor on the bankrupt estate of a deceased person or in a corresponding capacity under the law of any country or territory outside Great Britain and Northern Ireland.

Practising certificate

A certificate issued to a member by *ICAEW* authorising the member to engage in public practice.

Principal

An individual in sole practice or any partner or a *director* of a firm, or member of a limited liability partnership.

Professional Indemnity Insurance Regulations

The regulations of *ICAEW* concerning professional indemnity insurance (PII) as may be applicable from time to time.

Recognised professional body	A body declared by Order of the Secretary of State for Business, Innovation and Skills, or the Department of Economic Development in Northern Ireland, to be a recognised professional body for the purposes of the <i>Act</i> .
Regulations	These regulations, as amended or modified, which may be cited as the <i>Insolvency Licensing Regulations</i> .
Regulatory penalty	An amount charged with the consent of a <i>licence holder</i> as a penalty for breaches of these <i>regulations</i> which the licence holder agrees have been committed.
Review Committee	The Review Committee of <i>ICAEW</i> appointed by the <i>Council</i> .
Secretariat	The persons engaged by <i>ICAEW</i> to carry out its functions.
Targeted visit	A monitoring visit to the office or offices of a <i>licence holder</i> ordered by the <i>Licensing Committee</i> .

Insolvency practitioners: eligibility and authorisation

The first section of this chapter sets out the eligibility criteria for, and how to become, an authorised insolvency practitioner. Applicants who are not members of ICAEW should refer first to Chapter 6 which explains how to apply for insolvency affiliate status.

This chapter also explains the actions which must be taken by all licence holders to maintain their authorisation as licensed insolvency practitioners. A key purpose of the Act is to make sure that only appropriately qualified persons are authorised as insolvency practitioners. Therefore ICAEW, as a recognised professional body, must have rules to make sure that its insolvency practitioners are fit and proper persons to act and that they meet acceptable requirements as to education, practical training and experience. Persons authorised by ICAEW to be insolvency practitioners are issued annually with an insolvency licence as evidence of their authorisation.

New applicants – eligibility

- 2.1** The *Licensing Committee* may authorise a person to act as an *insolvency practitioner* only if it is satisfied that the individual:
- a. is a fit and proper person to act as an *insolvency practitioner*; and
 - b. is subject to the rules of *ICAEW* and:
 - i). if a *member*, subject to Regulation 2.1A, holds a current *practising certificate*;
 - ii). if not a member, has been granted *insolvency affiliate* status; and
 - c. has professional indemnity insurance or other appropriate arrangements as required by the *Professional Indemnity Insurance Regulations*; and
 - d. either
 - i). has acquired a minimum of 600 hours of recent *insolvency experience* over three years, subject to a minimum of 150 hours per annum; or

- ii). where currently authorised by another *recognised professional body* or the Insolvency Service of the Department for Business, Energy & Industrial Strategy, met that organisation's experience requirements in order to be authorised; and
- e. either
- i). has passed the Joint Insolvency Examination Board's examination; or
 - ii). was authorised by another *recognised professional body* or the Insolvency Service of the Department for Business, Energy & Industrial Strategy within the last five years and has provided evidence which satisfies the *Licensing Committee* that such *authorisation* has been relinquished, or will be relinquished upon the grant of a licence by *ICAEW*; or
 - iii). was previously authorised by *ICAEW* within the last five years.

In the context of regulation 2.1 d, 1 the Licensing Committee would generally regard recent insolvency experience as being that obtained within the three years immediately prior to the application. However, the Licensing Committee may, in some circumstances, consider experience gained in the five years immediately prior to the application. The eligibility requirements in Regulation 2.1a, b and c apply on an ongoing basis.

2.1A A non-appointment taker is not required under these *regulations* to hold a *practising certificate*.

These regulations do not require a non-appointment taker to have a practising certificate in order to have an insolvency licence. However, a member may require a practising certificate because he or she is a principal in an accountancy firm.

Non-appointment takers are not authorised to act as office holders. When a non-appointment taker wishes to be appointed as an office holder, he or she must apply to the Licensing Committee to have their licence upgraded. If a member, the individual must also obtain a practising certificate.

All individuals who are not members who wish to hold a licence must become affiliates, regardless of whether they will be office holders.

Eligibility of overseas applicants

- 2.2 Applicants holding an overseas qualification will be required to satisfy the *Licensing Committee* on an individual basis that their education, qualifications, professional status and *insolvency experience* are sufficient to meet the criteria in Regulation 2.1.**
- 2.3 When deciding whether an overseas applicant satisfies the requirements of Regulation 2.1 the *Licensing Committee* will have regard to any guidance on the criteria to be applied.**

Application for an insolvency licence

- 2.4 An applicant who wishes to be authorised must apply in the manner that the *Licensing Committee* decides. The *Licensing Committee* may have regard to any information which comes to its attention. The application must include:**
- a. full details of the circumstances involved if at any time the applicant has been bankrupt or the subject of a Bankruptcy Restriction Order or Bankruptcy Restriction Undertaking, or the subject of a sequestration order, or of a deed of

- arrangement, or an individual or partnership voluntary arrangement, or a scheme or composition relating to his financial affairs;
- b. full details of the circumstances involved if at any time an adverse finding has been made against the applicant by *ICAEW*, another professional body or the Insolvency Service of the Department for Business, Energy & Industrial Strategy;
 - c. full details of the circumstances involved if at any time the applicant has been removed for misconduct from the office of liquidator, trustee, administrative receiver, administrator or nominee or supervisor of a voluntary arrangement, or any provision of the law of a country or territory outside the United Kingdom which corresponds to such legislation;
 - d. full details of the circumstances involved if at any time the applicant has been the subject of a disqualification order under the Companies Acts 1948, 1976 or 1985, Insolvency Act 1985, or Company Directors Disqualification Act 1986 or any other enactment, or any provision of the law of a country or territory outside the United Kingdom which corresponds to such legislation;
 - e. full details of the circumstances involved if at any time the applicant has been found to have knowingly and wilfully, in relation to the conduct of insolvencies as an *office holder* or potential *office holder*, infringed the requirements of the Bankruptcy Act 1914 or the Bankruptcy (Scotland) Act 1985 or the Companies Act 1985 or the Insolvency Act 1985 or the *Act* or any other enactment; or any provision of the law of a country or territory outside the United Kingdom which corresponds to such legislation;
 - f. full details of the circumstances involved if at any time the applicant has been found guilty of or pleaded guilty to an indictable offence or an offence corresponding to one which is indictable in England and Wales;
 - g. full details of the circumstances involved if at any time the applicant has been the subject of a successful claim that he was negligent or in breach of contract of any matter forming part of that *insolvency experience* requirement;
 - h. a declaration that the applicant agrees that *ICAEW*, its officers, servants, members of its *Council* or Committees, or agents or servants of Committees, or a *monitoring unit*, or the Committees or agents or servants of the *Accountancy & Actuarial Discipline Board* shall not be liable in damages or otherwise for anything done or omitted in discharge or purported discharge of any of its functions connected with *authorisation* under the *Act* or under these *regulations* or the enforcement of any of the terms thereof or the monitoring of compliance with these *regulations* in those or any respects, unless the act or omission is shown to have been in bad faith;
 - i. an undertaking that the applicant will obtain, before accepting any *appointment*, a bond of security under Section 390(3) of the *Act*. This bond must comply with the requirements set out in the Insolvency Practitioners Regulations 2005 (as amended) or the Insolvency Practitioners Regulations (Northern Ireland) 1991 (as amended) and a copy must be lodged with the *ICAEW*;
 - j. an undertaking that the applicant will obtain, for each *appointment*, a specific penalty under the bond of security, as set out in the Insolvency Practitioners Regulations 2005 (as amended) or the Insolvency Practitioners Regulations (Northern Ireland) 1991 (as amended), and will each month lodge with *ICAEW* a copy of his *cover schedule*; and
 - k. payment of the appropriate fee (Regulation 2.10).

Application forms may be obtained from ICAEW. In addition to the information required by Regulation 2.4, the form will require sufficient information for the Licensing Committee to be satisfied that the applicant meets the standards required by legislation and by ICAEW. This will include, for example:

- details of the applicant's insolvency experience and practice and/or employment; and
- a declaration that the applicant agrees to be bound by these regulations.

2.5 The *Licensing Committee* may:

- a. grant the application;**
- b. refuse the application; or**
- c. grant the application with restrictions or conditions.**

On granting any application, ICAEW will as soon as practicable issue an insolvency licence to the applicant. An applicant may apply for a review of a decision to refuse authorisation or to grant it with restrictions or conditions. Details of the review process are set out in Chapter 5.

Licence holders - application for renewal of insolvency licence

2.6 A *licence holder* must apply annually to the *Licensing Committee* for renewal of his licence. The timing, form and content of the application for renewal will be decided by the *Licensing Committee* and may be amended from time to time. If a *licence holder* fails to comply with this regulation the licence lapses unless the *Licensing Committee* is satisfied that there is reasonable cause for the failure to renew.

2.7 An *insolvency licence* will be renewed only if the *Licensing Committee* is satisfied that the *licence holder* has continued to meet the eligibility requirements in Regulations 2.1a, b and c to act as an *insolvency practitioner* and continues to meet the requirements of these *regulations* as to education and practical training.

2.8 In considering the *licence holder's* application for renewal the *Licensing Committee* must have regard to any information which comes to its attention and may:

- a. grant the renewal of the licence; or**
- b. refuse to renew the licence; or**
- c. grant the renewal of the licence with restrictions or conditions.**

The requirement is for licence holders to apply for annual renewal of their licence. All licence holders are required to complete an annual application to renew the licence at the end of the year. ICAEW will as soon as practicable issue an insolvency licence to the licence holder. The licence will normally be effective for a period of twelve months.

A licence holder who has applied for renewal but who has been refused authorisation or granted authorisation with restrictions or conditions may apply for a review of the Licensing Committee's decision. Details of the review process are set out in Chapter 5.

Fees and other costs of authorisation

2.9 The costs that the *ICAEW* incurs in implementing these *regulations*, including any costs that it is required or has agreed to pay to any other person or body exercising a regulatory or supervisory role in relation to it, will be recovered through fees payable by all *licence holder* at the times and at the rates set by *Council*.

2.10 The fee is first due when an applicant applies for *authorisation*.

If an application is not accepted, the fee will be refunded less an amount reflecting the costs of administration.

2.11 The amount of any fee and the timing of its payment will be set by *Council* or any committee to whom it delegates this power.

2.12 In addition to the fees referred to above, a *licence holder* will be required to pay the charges the *Licensing Committee* makes for a *targeted visit* to the *licence holder's* practice. The *Licensing Committee* will decide how much the charge will be and may fix an amount of deposit that the *licence holder* must pay before the visit is carried out.

A licence holder may apply for a review of the amount charged for his targeted visit.

2.13 If a *licence holder* has not paid any fee under Regulation 2.9 or any deposit or charge made under Regulation 2.12 within 30 days of the invoice date, a notice may be sent warning the *licence holder* that the *Licensing Committee* may withdraw his *authorisation* or consider other appropriate regulatory action, including a *regulatory penalty*.

If the outstanding amount is not received within 30 days of the notice, the secretariat of ICAEW has delegated powers from the Licensing Committee to withdraw authorisation under regulation 5.12.

Changes in circumstances

2.14 A *licence holder* or an applicant for *authorisation* must notify the *Licensing Committee*, in writing, as soon as possible and no later than ten *business days* after becoming aware of any matter which may affect his status as a fit and proper person to hold an *insolvency licence*.

2.15 A *licence holder* must notify the *Licensing Committee* as soon as possible after becoming aware of any change in circumstances which might affect his eligibility for *authorisation* or his ability to accept *appointments*.

2.16 A *licence holder* must inform the *Licensing Committee* as soon as possible after becoming aware of:

- a. any changes to:
 - i). the name and address of the *licence holder*; or
 - ii). the *licence holder's* business names and addresses, if different from 1 above; or
 - iii). in respect of a partnership, the name and principal business address of the partnership; or
 - iv). in respect of a *body corporate*, the name and registered office address; or
 - v). the address where insolvency case records including details of *appointments*, are kept.
- b. any matter relating to any of the *firm's principals* or *employees* which could render the *licence holder* no longer fit and proper to be appointed as an *insolvency practitioner*; or
- c. cessation of compliance with the Professional Indemnity Insurance Regulations by the *licence holder* or his *firm*; or

- d. cessation of compliance with the *regulations* relating to bonds of security or specific penalty cover under a bond of security by the *licence holder*.

Cessation of authorisation

2.17 *Authorisation ceases if:*

- a. the *Licensing Committee* agrees to a *licence holder's* request that his *authorisation* should cease; or
- b. the *Licensing Committee* withdraws *authorisation* in accordance with Regulation 5.12; or
- c. the *Licensing Committee* withdraws *insolvency affiliate* status in accordance with Regulation 6.5; or
- d. a licence previously issued lapses in accordance with Regulation 2.6; or
- e. a *licence holder* ceases to be either a *member* or an *insolvency affiliate*; or
- f. any of the conditions described in Section 390 of the *Act* become applicable to a *licence holder*; or
- g. a *licence holder* fails to comply with any order as to fines and/or costs made by the *Investigation Committee*, the *Disciplinary Committee*, the *Appeal Committee* or any order imposed by the Accountancy & Actuarial Discipline Board by the date upon which the same are due; or
- h. a *licence holder* fails to renew his licence or fails to pay the fees due under Regulation 2.9.

Section 390 of the *Act* provides that a person is not qualified to act as an insolvency practitioner unless he has appropriate bonding in place and:

- he has not been adjudged bankrupt nor has his estate been sequestrated and (in either case) he has not been discharged or released; or
- he has not been the subject of a Company Directors disqualification order; or
- he has not been made a patient under the Mental Health Acts.

2.18 In agreeing to a request from a *licence holder* that his *authorisation* should cease the *Licensing Committee* may make its agreement subject to such conditions as it may think fit.

2.19 The eligibility of a *licence holder* for *appointment* is not invalidated by any breach of these *regulations* except that, where the *Licensing Committee* has imposed a restriction on the acceptance of *appointments*, any purported acceptance will be void.

Continuing responsibilities after authorisation has ceased

2.20 A person who has held an *authorisation* from *ICAEW* and who has ceased, for whatever reason, to be an *insolvency practitioner* and to hold an *insolvency licence* may still be subject to disciplinary action in respect of his conduct during the time he was authorised or if he fails to comply with any regulation or other obligation having a continuing effect after his *authorisation* has ceased.

2.21 *ICAEW's* right to recover any unpaid fees or other amounts due from a *member* or *insolvency affiliate* under these *regulations* does not end when a *member* or *insolvency affiliate* is no longer authorised.

- 2.22** Where a person who has held *authorisation* from *ICAEW* has ceased, for whatever reason, to be an *insolvency practitioner* and/or to hold an *insolvency licence* and where *ICAEW* is a proper person for the purposes of making an application to the court for the transfer of the *appointments* held when the *member* or *insolvency affiliate* was authorised, *ICAEW* has the right to recover all legal and other professional fees or other amounts arising from such action from that person, irrespective of whether he has ceased, for whatever reason, to be a *member* or *insolvency affiliate*.
- 2.23** Where a *member* or *insolvency affiliate* has ceased to be authorised and has ceased to be a *member* of *ICAEW* or an affiliate (whether under these *regulations* or otherwise), he continues to be subject to the requirements of *Regulations 2.24* and *2.25*, irrespective of the cessation of membership or affiliate status.

The effect of regulation 2.20 is that a member or insolvency affiliate cannot escape disciplinary action by ceasing to be a licence holder. If, in the process of de-authorisation, the Licensing Committee places a condition on a member or insolvency affiliate and that condition is broken, then disciplinary action may be taken.

Ceasing to be a licence holder does not remove the obligation of a member or insolvency affiliate to pay outstanding fees and to provide information and returns concerning appointments.

ICAEW, under the insolvency legislation, is able to make applications to court for the transfer of cases from insolvency practitioners whom it authorises. Such transfers may arise both during the period of a licence or after a member or affiliate has ceased to be authorised.

ICAEW will recover the costs of such transfers from the former insolvency licence holder. Please note that this is a contractual requirement and is contained in the application form which is signed by all those who apply to ICAEW for a licence. It is also incorporated, as a reminder, in the annual renewal form.

Compliance with the regulations

- 2.24** A *licence holder* must comply with these *regulations* and any orders made under these *regulations* or undertakings given under Regulation 5.4. In deciding whether a *licence holder* is in breach of these *regulations* or such orders or undertakings, the *Licensing Committee* will have regard to any guidance concerning insolvency practice issued or endorsed by *ICAEW*.

All those involved in insolvency work should be aware of the need to comply with these regulations and the Act. A licence holder who is a principal should therefore establish and maintain procedures to bring these matters to the attention of those principals and employees.

A licence holder who is not a principal should endeavour to ensure the firm has such procedures in place.

Monitoring and enforcement

- 2.25** Subject to Regulation 2.23 a *licence holder* must provide such returns, statements and other information as the *Licensing Committee* considers necessary. These must be in the format decided by the *Licensing Committee*.
- 2.26** The *Licensing Committee* will monitor a *licence holder's* compliance with these *regulations*. Monitoring will include periodic reviews of the returns required under these *regulations* and visits which may be conducted by *ICAEW* or by its *agent*. The

form, content and timing of monitoring and of monitoring visits (including *targeted visits*) will be decided by the *Licensing Committee* from time to time.

- 2.27** Following any *meeting* held as part of a monitoring visit, the *licence holder* must, within 14 days of a request, provide a copy of his notes of the *meeting* to *ICAEW* or its *agent*. The notes should deal with the issues raised at the *meeting* and may be considered by the *Licensing Committee*.
- 2.28** The costs of routine monitoring visits by *ICAEW* or any *agent* will be included in the fee payable under Regulation 2.9. The costs of a *targeted visit* ordered by the *Licensing Committee* will be payable by the *licence holder* subject to that visit in accordance with Regulation 2.12.

A visit will be carried out in accordance with the monitoring standards agreed from time to time by ICAEW with the Secretary of State. A copy of the Principles for Monitoring can be found on the Insolvency Service website, www.gov.uk/government/organisations/insolvency-service.

The costs of a targeted visit will depend on the time spent in carrying out the visit and in writing the report. The current rate will be notified to a licence holder in advance of the visit. Under regulation 5.21, a licence holder may apply for a review of the costs of a targeted visit, to be carried out when the visit has been concluded, but this will not stop the visit taking place.

Voluntary cessation of insolvency practice

- 2.29** Where a *licence holder* wishes to cease acting as an *insolvency practitioner*, he must inform *ICAEW* of this fact. The *licence holder* may achieve this by requesting either:
- that his *authorisation* ceases in accordance with Regulation 2.17(a); or
 - that he be granted a licence restricted at his request to taking no new *appointments*.

An insolvency practitioner may voluntarily cease acting as an insolvency practitioner in one of two ways. The first way is where a practitioner decides to cease practice completely.

Where a practitioner retires from practice completely, he should ensure that appropriate arrangements are made for a transfer of any outstanding cases to another practitioner, and should inform ICAEW of any such arrangements.

The second way (regulation 2.29(b), a conditional licence) is designed to enable a practitioner who wishes to cease acting as an insolvency practitioner to do so in an orderly manner. This may be particularly convenient to persons who are selling their practices and/or who wish to pass cases across to a new appointment taker in an orderly fashion. Such a licence is conditional in that the licence holder cannot accept any new appointments. It may be granted for a period of up to 24 months.

Practitioners who are retiring should transfer or close their cases in a timely manner. If cases cannot be dealt with within 24 months they should be transferred to another insolvency practitioner prior to the end of the 24 months. If a licence holder wishes to extend the period of his conditional licence he should apply to the Licensing Committee, stating the reason why it is necessary for an extension of the licence. Additional conditions may then apply.

Competence and conduct of licence holders

This chapter explains the steps which licence holders should take to ensure that they remain fit and proper persons to be authorised. This includes the requirements for continuing professional

development and the ethical and technical matters which must be observed by every licence holder.

Competence and continuing professional development

- 3.1 **A licence holder must maintain an appropriate level of competence in the conduct of *insolvency work*.**
- 3.2 **A licence holder must make arrangements so that all *principals* and *employees* involved in *insolvency work* for which the *licence holder* is responsible, are competent in the conduct of such work.**
- 3.3 **A licence holder must:**
- a. **keep under review his training and development needs having regard to the *insolvency work* undertaken;**
 - b. **consider and have regard to the *ICAEW's* Guidance on Continuing Professional Development;**
 - c. **develop and undertake each year a programme of continuing professional development designed to address any specific *insolvency* related training and development needs identified; and**
 - d. **keep a record of all continuing professional development and provide the *Licensing Committee* with a copy of the record on request.**

ICAEW's guidance on continuing professional development can be found at icaew.com/regulations

- 3.4 **When it considers the fit and proper status of a *licence holder* the *Licensing Committee* will take into account whether his procedures are adequate to ensure that he is fully aware of all relevant statutory obligations and guidance.**

Professional integrity and independence

- 3.5 **A licence holder must at all times conduct *insolvency work* with integrity and objectivity.**
- 3.5A **A licence holder must preserve the security of estate money entrusted to his care in the course of the *insolvency work* undertaken.**
- 3.6 **A licence holder must take steps to prevent individuals who are not *insolvency practitioners* from being able to exert undue influence over the acceptance of an *appointment* or the way in which an *appointment* is conducted.**

Before accepting an appointment a licence holder must have regard to the Code of Ethics, Statements of Insolvency Practice and Insolvency Guidance Papers issued by ICAEW.

Statutory requirements

- 3.7 **A licence holder must comply with the requirements of the *Act* and any other relevant legislation.**

3.8 In accordance with the Insolvency Practitioners Regulations 2005 (as amended) and Insolvency Practitioners Regulations (Northern Ireland) 1991, *licence holders* are required to maintain records of their *appointments* and to notify ICAEW of the place where insolvency case records, including details of *appointments*, and all papers relating to their *insolvency work* are kept.

Details of the place where records are kept are notified to ICAEW or its agent annually and a licence holder is obliged to notify ICAEW or its agent of any changes during the course of the year.

Technical standards

3.9 A *licence holder* must comply with Statements of Insolvency Practice issued under the authority of the Council.

3.10 A *licence holder* must have regard to guidance produced and/or promulgated by the Department for Business, Energy & Industrial Strategy and ICAEW.

Quality control

3.11 A *licence holder* must establish and maintain procedures designed to ensure that:

- a. anyone, at any time, employed by or associated with him in connection with his *insolvency work* is a fit and proper person;
- b. when deciding whether to accept an *appointment* he considers:
 - i). his own independence;
 - ii). the availability of the resources required;
 - iii). his ability to perform the *appointment* with an appropriate level of competence;
- c. he maintains an appropriate level of competence in the conduct of *appointments*;
- d. all *principals* and *employees* employed by or associated with him in connection with his *insolvency work* adhere to the principles of independence and confidentiality set out in the ICAEW's *Code of Ethics*.

3.12 A *licence holder* must make sure that there are adequate procedures and supervision in place to comply with these *regulations* in relation to the conduct of *insolvency work* for which he is responsible¹.

All those involved in insolvency work should be aware of the need to comply with these regulations and the Act.

Licence holders should ensure that systems are in place so that all principals and employees involved in insolvency work maintain adequate ethical and technical standards and consult on ethical, technical or practical issues as appropriate. Such consultation may be with the licence holder or otherwise. The licence holder must be satisfied that the procedures are adequate to ensure his compliance with the Act, relevant technical standards, the ethical guidance and these regulations.

¹ Regulations 3.12 and 3.13 have an implementation date of 1 January 2005. Prior to that date, the previous regulations in force at the material time will apply.

It is important that a licence holder who takes appointments has in place arrangements to ensure that in the event of his incapacity, loss of licence or death another licensed insolvency practitioner may act as his alternate.

3.13 A licence holder must review and record, at least once a year, the effectiveness of his own and/or his firm's quality control procedures and compliance with these regulations².

Licence holders should establish and maintain quality control procedures, including as a minimum an annual compliance review which they consider appropriate to their circumstances, having regard to statutory requirements, technical standards and insolvency guidance notes.

A thorough review of a licence holder's work can bring benefits and assurance far in excess of this requirement. If appropriately carried out, it could highlight practical ways for a licence holder to improve procedures and to deliver a better service.

The review can identify situations where improvements in procedures can have benefits not only for the licence holder but can also ensure that the firm and the licence holder are not needlessly exposed to risk through poor work, whatever its cause.

The annual review should cover the licence holder's obligations under these regulations and this should include the licence holder's continued eligibility for authorisation, the maintenance of appropriate standards of competence and the conduct of insolvency work.

The latter should also consider the licence holder's compliance with his own or his firm's internal compliance procedures and should encompass a cold file review of insolvency work.

This is a review after the particular work which is to be reviewed has been completed, to check that it was conducted in accordance with the licence holder's (or his firm's) procedures.

How many and which files should be cold reviewed is a matter for the licence holder to consider, taking into account factors such as the employees or principals involved with the case, high-risk cases or high profile cases. Definitive guidance cannot be given on the number of cases to be reviewed.

One approach to this question of frequency is simply to review the work of every licence holder each year. Completed files would be selected and reviewed to make sure that the statutory requirements, Statements of Insolvency Practice and the firm's procedures had been followed. For many licence holders, particularly in smaller practices, this may be the easiest procedure to adopt.

In multi-office firms a different approach may be necessary and it may be appropriate for quality assurance/compliance review programmes to be adopted on a structured risk management approach.

Some insolvency practitioners operate within larger general practices. It is likely that the general practice will already be undertaking regular quality assurance/compliance reviews.

In many such firms, a rolling cycle of compliance reviews has been adopted and this can be carried over into the insolvency area. Insolvency practitioners are encouraged to co-ordinate their own reviews with that of the firm. Results of annual compliance reviews should be disseminated to all partners and staff involved in the specific discipline. It is consequently the responsibility of individual insolvency practitioners to consider the results and implement, if appropriate, the specific action points arising from such reviews.

There is no need for the licence holder to conduct the review himself. Some licence holders may find it more practical and cost-effective to use a service provided by an external organisation or provided by another licence holder. However, using an external reviewer does not reduce the

² Regulations 3.12 and 3.13 have an implementation date of 1 January 2005. Prior to that date, the previous regulations in force at the material time will apply.

licence holder's own responsibility for the review or for ensuring that any necessary action is taken. Licence holders may also benefit from reviewing another licence holder.

The compliance review, and cold file reviews carried out as part of that review, are likely to vary in formality according to the size of the firm. However, every licence holder should be able to provide evidence of the review and, where appropriate, any action taken.

All relevant principals and employees should be informed of the results of the monitoring exercise at the earliest opportunity. If improvements are needed, any necessary changes should be made as soon as possible.

The licence holder should be satisfied that where issues arise out of the review there is a system in place to ensure that appropriate action is taken.

In order to place reliance on the practitioners own (or in larger firms the firm's own) compliance review, ICAEW or its agent would seek, during its monitoring visits, to re-perform part of the work undertaken. If reliance can be placed on the practitioner's own review, the benefit of this approach will be to enable ICAEW or its agent to focus on the action the practitioner has taken to address any matters arising. This approach would lead, over time, to a reduction in the duration of monitoring visits allowing ICAEW or its agent to undertake shorter, more focussed visits.

Disclosure of status

3.14 A licence holder must disclose as soon as possible to those he is in contact with in connection with his *insolvency work* that ICAEW licenses him.

This is most easily achieved by expressly referring to the insolvency practitioner's licensing body on the headed notepaper of the firm, but may be by other means such as information on a website or in documents available to a client or potential client. This should identify clearly to whom the licence has been issued and to comply with the EU Services Directive, the insolvency practitioner should also disclose that he is licensed in the UK. Guidance on letterheads is provided on ICAEW's website.

The committees

This chapter describes the various committees involved in the regulatory process and their powers and responsibilities. Some, but not all, of the powers may be delegated by the Licensing Committee either to sub-committees or to the secretariat.

Insolvency Licensing Committee - composition

4.1 An Insolvency Licensing Committee (the *Licensing Committee*) will be appointed by the *Council*.

4.2 The *Licensing Committee* must:

- a. consist of at least eight people;**
- b. include at least two members who are not *accountants or insolvency practitioners*;**
and
- c. at any *meeting* have a quorum of three members, one of whom must not be an *accountant or insolvency practitioner*.**

Responsibilities

4.3 The *Licensing Committee* is responsible for:

- a. granting applications for *authorisation* and for *insolvency affiliate* status;
- b. granting applications for *authorisation* and for *insolvency affiliate* status subject to restrictions or conditions;
- c. refusing applications for *authorisation* and for *insolvency affiliate* status;
- d. dealing with applications for renewals of *insolvency licences*;
- e. granting or refusing dispensation from the requirements of these *regulations*;
- f. requesting undertakings from a *licence holder*;
- g. imposing restrictions or conditions on the acceptance of *appointments* or on the conduct of *insolvency work* by a *licence holder*;
- h. ordering a *targeted visit* to the office or offices of a *licence holder* and deciding the terms of reference of the visit and the charge or basis of the charge for the visit;
- i. proposing a *regulatory penalty* it considers appropriate to a *licence holder*;
- j. withdrawing *authorisation* and *insolvency affiliate* status;
- k. reviewing the returns and reports made under these *regulations* and investigating failure to make returns or reports;
- l. making appropriate enquiries into the eligibility of a *licence holder* or an applicant for *authorisation* or for *insolvency affiliate* status (by writing, visiting the office or offices of a *licence holder*, or in any other way);
- m. making appropriate enquiries to confirm that a *licence holder* or *insolvency affiliate* is complying with these *regulations* (by writing, visiting a *licence holder's* offices, using a periodic return, or in any other way);
- n. reviewing all reports and complaints about a *licence holder* or *insolvency affiliate*;
- o. requiring a *licence holder* or an applicant for *authorisation* or for *insolvency affiliate* status to disclose and/or submit any information which the *Licensing Committee* considers appropriate. Such information may include books, papers and records about the *licence holder* or applicant or any *firm* with which he is connected and about the *licence holder's appointments*;
- p. publishing, in any manner it decides, its orders or decisions if it considers this appropriate; and
- q. making such orders as may be necessary to effect an orderly winding down or transfer of *appointments*.

Delegation

4.4 Except where Regulation 4.5 applies, the *Licensing Committee* may delegate its powers to the chair, *secretariat* or an *agent*.

4.5 The *Licensing Committee* cannot delegate the power to:

- a. impose a *regulatory penalty* (Regulation 5.6); or
- b. publicise decisions and orders (Regulation 4.3.p); or
- c. withdraw a licence under Regulation 5.12a, b, c, d or e.

Such decisions must be taken by the *Licensing Committee* at a *meeting* thereof.

The *Licensing Committee* may delegate some of its duties but regulation 4.5 reserves certain specified decisions to the *Licensing Committee* itself.

The ability to request undertakings is one area which the *Licensing Committee* may delegate to the *secretariat* or an *agent*. Undertakings provided to the *secretariat* or ICAEW's *agent* will be regarded as provided to the *Licensing Committee*.

General

- 4.6 The *Licensing Committee* may require a person who has held an *authorisation* from *ICAEW* and who has ceased, for whatever reason, to hold an *insolvency licence*, to submit the returns required under Regulation 2.25 until all of his *appointments* have been closed or transferred to another *insolvency practitioner*.

Disclosure of information

- 4.7 In exercising its powers under these *regulations* the *Licensing Committee* will treat all information as confidential but may disclose any information if it considers it appropriate in the following circumstances:
- a. to individuals appointed to investigate complaints arising out of *ICAEW*'s functions as a *recognised professional body*;
 - b. to the Secretary of State, the Department for Business, Energy & Industrial Strategy or any *recognised professional body*;
 - c. as required by law;
 - d. in connection with and for the purpose of the transfer of *appointments* to other *insolvency practitioners*;
 - e. so far as is necessary for the proper performance of the duties of *ICAEW* under any legislation; or

where the *Licensing Committee* decides that it is appropriate to publish orders and decisions.

- 4.8 The *Licensing Committee* is responsible for determining whether applicants and/or *licence holders* authorised by *ICAEW* are fit and proper to act as *insolvency practitioners*. In carrying out its duties under these *regulations*, in addition to the information *ICAEW* as a *recognised professional body* is required to consider, the *Licensing Committee*, the *secretariat* or an *agent* may take into account such information as it thinks fit, including the following:
- a. any disciplinary findings, orders, pending investigations or any other information concerning or affecting the fit and proper status of any *licence holder* or applicant;
 - b. any information relating to any individual who is or will be employed by or associated with the *licence holder* in connection with *insolvency work*;
 - c. in the case of an applicant or *licence holder* who is in a partnership, any information relating to any of the *principals*;
 - d. in the case of an applicant or *licence holder* who is a member of a limited liability partnership, any information relating to any of the members of the limited liability partnership;
 - e. in the case of an applicant or *licence holder* who is in a partnership where the partner is a *body corporate*, any matter relating to any:
 - i). *director* or *controller* of that *body corporate*;
 - ii). *body corporate* in the same *group*;
 - iii). *director* or *controller* of bodies corporate in that *group*;
 - f. in the case of an applicant or *licence holder* who is in a *body corporate*, any matter relating to any:
 - i). *director* or *controller* of that *body corporate*;
 - ii). person having an interest in shares of that *body corporate*;
 - iii). other *body corporate* in the same *group* as the *body corporate*;
 - iv). *director* or *controller* of bodies corporate in that *group*.

- 4.9 Any previous disciplinary finding, conviction, decision, sentence or judgement (including criminal and civil court decisions) may be considered but will not be re-

opened before the *Licensing Committee*, the *Review Committee* or the *Appeal Committee*.

Notification to committees

- 4.10** Subject to Regulations 5.6 to 5.10, the *Licensing Committee* must inform the *Investigation Committee* about any fact or matter where, in the opinion of the *Licensing Committee*, any person may have become liable to disciplinary action under the *bye-laws* arising from a breach of these *regulations* or otherwise.
- 4.11** The *Investigation Committee* will inform the *Licensing Committee* about any fact or matter which appears to it to be relevant to the powers and duties of the *Licensing Committee* under these *regulations*.

Disciplinary action is a separate matter from any regulatory action, which may be taken by the Licensing Committee, and vice versa.

The Review Committee

- 4.12** Certain matters decided by the *Licensing Committee*, as described in Regulation 5.21, may be considered afresh by the *Review Committee*. The *Review Committee* may then carry out any of the responsibilities of the *Licensing Committee* under Regulation 4.3 and may make any order that the *Licensing Committee* can make. In carrying out its duties Regulation 4.3(o) applies to the *Review Committee* as it applies to the *Licensing Committee*.

Licence holders or applicants may ask the Review Committee to reconsider a Licensing Committee decision. This request must be made within a specified time period. Chapter 5 gives further details of how the review process works.

The Appeal Committee

- 4.13** Appeals against orders of the *Review Committee* will be decided by the *Appeal Committee*.

If a licence holder or applicant is dissatisfied with a decision of the Review Committee, he may apply for the case to be heard before the Appeal Committee. This request must be made within ten business days of the decision being given to the licence holder.

Unlike applications for a review, the Appeal Committee will only hear an appeal on one of a number of specified grounds. It will not reopen the case from the beginning. The specific grounds and detailed procedures are given in Chapter 5.

The procedures of the committees

- 4.14** Subject to the *Act*, the *bye-laws* and these *regulations*, the *Licensing Committee*, the *Review Committee* and the *Appeal Committee* may, in carrying out their duties under these *regulations*, decide on their own procedures.

Representation before committees

4.15 Only the following may attend a *meeting* of the *Licensing Committee*:

- a. members of the *Licensing Committee*;
- b. the secretary to the *Licensing Committee*;
- c. any member of the *secretariat* appointed by *ICAEW* to advise or to inform the *Licensing Committee* of its responsibilities, duties, powers or procedures, including the *bye-laws*, *regulations* or the law; and
- d. anyone else the *Licensing Committee* permits.

4.16 At meetings of the *Review Committee* and the *Appeal Committee* any of the *licence holder*, a representative or *agent* of *ICAEW* may attend and be legally represented. Witnesses may be present at the *Review Committee* and the *Appeal Committee* in accordance with the committees' procedures or *regulations*.

Regulatory action, restrictions and withdrawal of licence

This chapter explains how the Licensing Committee can take regulatory action against a licence holder, including withdrawal of authorisation if necessary.

Regulatory decisions come into effect as set out in regulations 5.17 and 5.18.

A licence holder may ask for a review of a decision made by the Licensing Committee provided that he does so within ten business days of the decision being sent to him.

Dispensation

5.1 A *licence holder* who cannot comply with any one or more of these *regulations* must tell the *Licensing Committee* in writing. This must be as soon as possible after the situation arises. The notification must say what has happened and the action which the *licence holder* proposes to take.

5.2 If the *Licensing Committee* considers that any steps being taken will remedy the non-compliance, it may grant dispensation from the requirements to comply with any of these *regulations*. The period will depend on how long the *Licensing Committee* considers the *licence holder* will need to remedy the non-compliance. The dispensation may be extended at the *Licensing Committee's* discretion but may not last for a total of more than 90 days without review by the *Licensing Committee*, starting from the date that the non-compliance first arose.

5.3 The *Licensing Committee* will not grant a dispensation under Regulation 5.2 unless the *licence holder* can satisfy the *Licensing Committee* that he remains a fit and proper person to act and that his continued *authorisation* during the dispensation period would not be prejudicial to the public interest.

Undertakings

5.4 If requested to do so, the *licence holder* shall provide an undertaking to the *Licensing Committee* or its *Agent* in such terms as it may decide.

An undertaking is an assurance (or a promise) that the licence holder will either follow or cease a particular course of action. Undertakings will frequently be given to an agent as a result of a monitoring visit. Failure to comply with an undertaking is likely to be considered incompatible with

the standards expected of an insolvency practitioner. The Licensing Committee may delegate the authority to request an undertaking to the secretariat or an agent under Regulation 4.4.

Restrictions and conditions

- 5.5** The *Licensing Committee* may impose such restrictions or conditions on the accepting of *appointments* or the conduct of *insolvency work* by the *licence holder* as it decides are appropriate if it considers that:
- a. the *licence holder* has ceased to meet any of the requirements of Regulation 2.1; and/or
 - b. the *licence holder* has failed to comply with the Insolvency Practitioners Regulations 2005 (as amended) or the Insolvency Practitioners Regulations (Northern Ireland) 1991 (as amended) relating to bonds of security; and/or
 - c. the *licence holder* has failed to comply with undertakings given to the *Licensing Committee* under Regulation 5.4; and/or
 - d. the *licence holder* has failed to submit within thirty days of the due date such returns or reports as are required under these *regulations*; and/or
 - e. the *licence holder* has failed to comply with these *regulations* and the restrictions and/or conditions are justified; and/or
 - f. being authorised or continuing *insolvency work* without restrictions or conditions could be prejudicial to the public interest.

- 5.5A** The *Licensing Committee* will impose such restrictions or conditions on the *licence holder's authorisation* as required by a *direct sanctions order* made by the High Court or a *direct sanctions direction* received from the Secretary of State.

Regulatory penalties

The Licensing Committee may, if satisfied that the public interest does not require it, decide that it is not appropriate to refer a failure to comply with these regulations to the Investigation Committee. Instead, with the agreement of the licence holder, the Licensing Committee may impose a regulatory penalty. The following regulations explain this process.

- 5.6** The *Licensing Committee* may propose a *regulatory penalty* to a *licence holder* subject to the following:
- a. the *licence holder* must have agreed that a breach of these *regulations* has been committed before the penalty is proposed;
 - b. the *Licensing Committee* will decide the amount of the proposed penalty and when it is to be paid. Details will be set out in the letter to the *licence holder* proposing the penalty;
 - c. if the *licence holder* wishes to accept the terms on which the penalty is proposed, he must notify *ICAEW* within ten *business days* of the date of service of the letter from *ICAEW* containing the proposal.
- 5.7** Any representations made by the *licence holder* will be considered by the *Licensing Committee*. It may then vary the amount or terms of the proposed penalty.
- 5.8** If the *licence holder* accepts the penalty under Regulation 5.6.(c) the *Licensing Committee*:
- a. will make an order, as soon as is practical; and
 - b. may publish the order in any way it decides.

- 5.9** Details of any penalty accepted and the order made will be kept by *ICAEW* and the *Licensing Committee* may, if it wishes, take that information into account in the future.
- 5.10** If a *licence holder* does not agree that the breach has been committed or does not agree to the terms of the penalty proposed, or fails to comply with the terms of the penalty, the *Licensing Committee* shall inform the *Investigation Committee* of the *licence holder's* potential liability to disciplinary action in accordance with Regulation 4.10.
- 5.11** There are no rights of review or appeal against a *regulatory penalty*.

Regulatory penalties maybe used for example, where:

- a licence holder has not complied with the requirements of the Act; or
- has consistently been late in replying to letters from the Licensing Committee or secretariat; or
- has failed to submit returns; or
- has not complied with any undertakings given to the Licensing Committee; or
- has taken fees without the requisite authority.

Once a regulatory penalty has been accepted, there will be no further regulatory or disciplinary action in respect of the breaches referred to in the penalty. The details of the regulatory penalty will however be put on the licence holder's record and may be taken into account in the future. A failure to comply with the terms of a regulatory penalty or to pay the amounts due under it will be reported to the Investigation Committee.

Withdrawal of authorisation

- 5.12** The *Licensing Committee* may withdraw a *licence holder's* authorisation if it finds that:
- a. the *licence holder* has breached or ceased to comply with any restriction or condition imposed under any of Regulations 2.5(c), 2.8(c), or 5.5; or
 - b. the *licence holder* has breached or ceased to comply with any of these *regulations* in any other respect or any order made thereunder and in the circumstances withdrawal is justified; or
 - c. the *licence holder* has failed to comply with any undertaking given under Regulation 5.4; or
 - d. the continued *authorisation* of the *licence holder* is likely to be prejudicial to the public interest; or
 - e. the *licence holder* has failed to submit within thirty days of the due date such returns or reports as are required under these *regulations*; or
 - f. the *licence holder* has ceased to meet the requirements of Regulations 2.1; or
 - g. the *licence holder* has failed to comply with the Insolvency Practitioners *Regulations* 2005 (as amended) or the Insolvency Practitioners *Regulations* (Northern Ireland) 1991 (as amended) relating to bonds of security; or
 - h. the *licence holder* has failed to comply with the *Professional Indemnity Insurance Regulations*; or
 - i. the *licence holder* has failed to pay any fees due under Regulation 2.9 before the expiry of thirty days from the service of a notice by *ICAEW* under Regulation 2.13; or
 - j. the *licence holder* has failed to pay the charge due under Regulation 2.12 before the expiry of thirty days from the service of a notice by *ICAEW* under Regulation 2.13; or

- k. the *licence holder* has failed to comply with any order as to costs made by the *Review Committee* or *Appeal Committee* by the date upon which the same are due.
- l. the High Court has made a *direct sanctions order* which declares that the *licence holder* is no longer authorised (whether fully or partially) to act as an *insolvency practitioner*.
- m. the Secretary of State has made a *direct sanctions direction* directing that the *licence holder* is no longer authorised (whether fully or partially) to act as an *insolvency practitioner*.

5.13 If a *licence holder* seeks a review under Regulation 5.21 of a decision of the *Licensing Committee* made under Regulation 5.12, the *Licensing Committee* may impose such restrictions and conditions on the accepting of *appointments* and the conduct of *insolvency work* by the *licence holder* as it decides are appropriate and/or in the public interest, until such time as any review or appeal procedures are concluded.

Urgent orders

5.14 The *Licensing Committee* may withdraw a *licence holder's authorisation* under Regulation 5.12 without prior notice to the *licence holder*. This may be done if the *Licensing Committee* considers that a delay in making such an order might be materially prejudicial to the public interest. An order made by the *Licensing Committee* under this regulation comes into effect when made and is not stayed by any application for review or appeal.

5.14A A *licence holder* has no right of review against a decision of the *Licensing Committee* to withdraw a *licence holder's authorisation* under Regulation 5.12.l or Regulation 5.12.m.

5.15 A *licence holder* whose *authorisation* is withdrawn under Regulation 5.14 will be allowed an opportunity, within ten *business days* of service of the order, to make oral or written representations to the *Licensing Committee*. Having considered any representations the *Licensing Committee* may:

- a. withdraw the order; or
- b. continue the order; or
- c. make such other order as it sees fit.

5.15A Regulation 5.15 does not apply where the *Licensing Committee* has withdrawn a *licence holder's authorisation* under Regulation 5.12.l or Regulation 5.12.m.

Regulation 5.14 allows the *Licensing Committee* to take immediate regulatory action if the need arises. The *Licensing Committee* is likely to do this if there are serious allegations of fraud or other criminal activity or if there is an actual or potential loss of client money or estate money. As well as making immediate representations, a *licence holder* may apply under regulation 5.21 for a review of an urgent order made under regulation 5.14. However, the order comes into force when it is made and is not suspended if a review or appeal is requested.

Implementation of orders

The following regulations explain when an order or decision comes into effect.

5.16 An order or decision made under the following *regulations* will come into effect as soon as notice is served upon the *licence holder*:

- a. Regulation 2.5 to refuse an application for a licence or to refuse to grant a licence subject to restrictions or conditions on the acceptance of *appointments* or the conduct of *insolvency work*;
- b. Regulation 2.8 to refuse to renew a licence or to grant a renewal subject to restrictions or conditions on the acceptance of *appointment* or the conduct of *insolvency work*;
- c. Regulation 5.5 to impose a restriction or condition on the acceptance of *appointments* or the conduct of *insolvency work*;
- d. Regulation 6.5 to withdraw a person's *insolvency affiliate* status.

5.17 An order made under Regulation 5.12 for the withdrawal of a licence will come into effect ten *business days* after notice of it is served on the *licence holder* or any later time that the committees specify, except where the *licence holder* applies for a review or appeal under 5.21.

5.18 If a *licence holder*:

- a. applies for a review under Regulation 5.21, the order of the *Licensing Committee* under Regulations 2.8, 5.5, 5.12 or 6.5 will not take effect and will be replaced by the order of the *Review Committee*;
- b. appeals under Regulation 5.24, to the *Appeal Committee*, the order of the *Review Committee* will not take effect and will be replaced by the order of the *Appeal Committee*.

However, in the public interest, the *Licensing Committee* may impose restrictions and conditions upon the accepting of *appointments* or the conduct of *insolvency work* by the *licence holder* until such time as the review and any appeal procedures are concluded. There is no right to apply for a review or appeal of such orders.

An application for a review or appeal will have the effect of staying the order of the Licensing Committee, unless the Licensing Committee specifically decides to impose restrictions.

If an application for a review or appeal is withdrawn, the order of the Licensing Committee or Review Committee (as appropriate) will be re-instated.

The serving of notice

5.19A A notice or any other document to be served under these *regulations* may be delivered by hand, or sent by fax or post, and

- a. if delivered by hand, it must be handed to the *licence holder* or applicant, and service will take effect immediately;
- b. if sent by fax, it must be sent to the latest fax number given by the *licence holder* or applicant, and service will take effect immediately;
- c. if sent by post, it must be sent by first class post to the latest address given by the *licence holder* or applicant, and service will take effect two *business days* after posting.

5.19B Any notice, certificate or other document required to be given, delivered or sent to *ICAEW* shall be sent to Insolvency Licensing, ICAEW, Metropolitan House, 321 Averbury Boulevard, Milton Keynes, MK9 2FZ.

Variation of orders

5.20 The *Licensing Committee* may, at any time, vary or revoke an order made by it under these *regulations*.

The review of regulatory decisions

The following regulation explains how a licence holder or applicant can apply for a review of an order of the Licensing Committee.

5.21 Within ten *business days* of the *Licensing Committee* serving an order on a *licence holder, insolvency affiliate* or applicant, the *licence holder, insolvency affiliate* or applicant may apply in writing to the *Review Committee* for a review of the order. This applies only to the following *regulations*:

- Regulations 2.5b & 6.4b refusal to grant *authorisation* or *insolvency affiliate* status;
- Regulation 2.5c grant of *authorisation* with conditions or restrictions;
- Regulation 2.8 refusal to grant the renewal of a licence or to impose restrictions or conditions on the renewal.
- Regulations 5.2 & 5.3 granting or refusing a dispensation from the *regulations*;
- Regulation 5.5 imposing restrictions or conditions, except where they have been imposed on a *licence holder* under Regulation 5.5A or Regulation 5.18;
- Regulation 2.12 amount of *targeted visit* fee;
- Regulations 5.12 withdrawing *authorisation* or *insolvency affiliate* status except where *authorisation* has been withdrawn under Regulation 5.12.l or 5.12.m;
- Regulation 5.14 an urgent order;
- Regulation 6.5 the withdrawal of affiliate status.

A licence holder, insolvency affiliate or applicant who is dissatisfied with a decision listed in Regulation 5.21 may apply for a review.

As stated under Regulation 5.18, an order by the Review Committee will not take effect if an appeal is lodged under Regulation 5.24. The Licensing Committee may, however, impose a restriction or condition on the licence holder's acceptance of appointments or the conduct of insolvency work until such time as the appeal process has concluded.

5.22 A meeting of the *Review Committee* will be arranged as soon as is practicable after a *licence holder, insolvency affiliate* or applicant has applied for a review under Regulation 5.21. The *Review Committee* will consider the matter afresh and may consider new material put forward by the *licence holder* or applicant or *ICAEW*. The *Review Committee* may make any order which the *Licensing Committee* could have made.

5.23 The *Review Committee* in its absolute discretion may order a *licence holder, insolvency affiliate* or applicant to pay some or all of the costs of the review.

The Review Committee has the same powers as the Licensing Committee when making orders against a licence holder, insolvency affiliate or applicant. It can impose the same or different orders. It may also award costs against a licence holder, insolvency affiliate or applicant.

Appeal

If a licence holder or applicant is dissatisfied with the decision of the Review Committee he can apply to the Appeal Committee.

- 5.24** Within ten *business days* after the *Review Committee* has served an order on a *licence holder*, applicant or *insolvency affiliate* under Regulation 5.22 the *licence holder*, applicant or *insolvency affiliate* may appeal to the *Appeal Committee* by writing to *ICAEW*. An appeal cannot be made if it is only against the costs ordered by the *Review Committee*. An appeal can only be made on one or more of the following grounds:
- a. that the *Review Committee*:
 - i). was wrong in law;
 - ii). wrongly interpreted any relevant regulation, bye-law associated guidance or legislation;
 - iii). did not comply with these *regulations* or procedures decided by the *Review Committee* under Regulation 4.14;
 - iv). that the *Review Committee* made an order which no tribunal, correctly applying the law to the facts before it and acting reasonably, would have made;
 - b. that there was evidence which the *Review Committee* had not considered and which:
 - i). could reasonably have led the *Review Committee* to make a different order; and
 - ii). could not have been put before the *Review Committee* even if those concerned had done their best to produce it.
- 5.25** As soon as practicable after notice of appeal has been received under Regulation 5.24, the *Appeal Committee* will consider the appeal and may:
- a. allow the appeal;
 - b. vary the order;
 - c. refer the matter back to the same panel of the *Review Committee* or a differently constituted panel of the *Review Committee* to be reconsidered;
 - d. dismiss the appeal;
 - e. order that some or all of the costs of the appeal shall be paid by the *licence holder*, *insolvency affiliate* or applicant.
- 5.26** If the *Appeal Committee* sends a matter back to the same panel of the *Review Committee* or a differently constituted panel of the *Review Committee* under Regulation 5.25, then Regulation 5.22 will apply when the *Review Committee* reconsiders. The meeting of a panel of the *Review Committee* to reconsider the matter will be arranged as soon as practicable.

The Appeal Committee may only consider an appeal on any of the grounds in Regulation 5.24. On appeal, the decision of the Review Committee is stayed until the Appeal Committee considers the matter.

The Appeal Committee has the power to accept or reject the appeal, or vary the order. It may ask the Review Committee to reconsider the order.

The Appeal Committee can also award costs against a licence holder, insolvency affiliate or applicant.

Insolvency affiliates

An individual may be authorised by a recognised professional body to be a licensed insolvency practitioner under the Act if that person, whether a member or not of that body, is bound by its regulations and guidance.

ICAEW is able to authorise members and insolvency affiliates of ICAEW. Under the Act, those who are granted insolvency affiliate status by ICAEW must be individuals. That status does not confer membership of ICAEW or entitle the individual to use the title 'Chartered Accountant'. However, it does mean that an insolvency affiliate is bound by the same rules and regulations as govern a full member of ICAEW.

Different requirements apply for affiliates and regulated non-members for investment business and audit purposes. Affiliate status in one regulated area does not give such status in another.

A key purpose of the Act is to make sure that only appropriately qualified persons are authorised as insolvency practitioners. Therefore, ICAEW, as a recognised professional body, must have rules to make sure that its insolvency practitioners are fit and proper persons to act and that they meet acceptable requirements as to education, practical training and experience.

Persons who are granted insolvency affiliate status may also be issued with an insolvency licence as evidence of their authorisation subject to the requirements of Chapter 2.

Application for affiliate status

- 6.1 *Insolvency affiliate status does not give the insolvency affiliate any rights other than those contained in these regulations. Insolvency affiliates must not assert that they have any other rights.***

- 6.2 *An individual applying for insolvency affiliate status must do so in the manner that the Licensing Committee decides. To carry out its responsibilities under these regulations, the Licensing Committee may make any enquiries necessary to assess the eligibility of the applicant.***

- 6.3 *An applicant must satisfy the Licensing Committee that he:***
 - a. *is a fit and proper person to be granted insolvency affiliate status;***
 - b. *has agreed to comply with these regulations;***
 - c. *has agreed to observe and uphold the ethical standards of ICAEW; and***
 - d. *has professional indemnity insurance or other appropriate arrangements as required by the Professional Indemnity Insurance Regulations icaew.com/pii***

- 6.4 *The Licensing Committee may:***
 - a. *grant the application; or***
 - b. *refuse the application.***

Application forms may be obtained from ICAEW. The form will require sufficient information for the Licensing Committee to be satisfied that the applicant meets the standards required by ICAEW. This will include, for example:

- confirmation from two members of ICAEW that the person is fit and proper; except in the case of a sole practice or where the affiliate's firm does not have a principal who is a member of ICAEW, at least one of those members would normally be a senior principal in the applicant's firm;
- a declaration that the applicant agrees to be bound by these regulations;
- undertakings that the applicant will comply with the Royal Charters, bye-laws, the *Code of Ethics* and these regulations.

The withdrawal of affiliate status

- 6.5** The *Licensing Committee* will withdraw a person's *insolvency affiliate* status if, in its opinion, the *insolvency affiliate*:
- a. no longer meets the requirements of Regulation 6.3; or
 - b. fails to pay on time any fines or costs ordered by any committee of *ICAEW*, or by order imposed by the *Accountancy & Actuarial Discipline Board*,
 - c. fails to pay any annual *insolvency affiliate* subscription within 30 days of the date of a notice to renew *insolvency affiliate* status; or
 - d. fails or ceases to comply with any of these *regulations* and, in the circumstance, withdrawal is justified;
 - e. becomes subject to a decision by the *Disciplinary Committee* that he should no longer be an *insolvency affiliate*.

If insolvency affiliate status is withdrawn under regulation 6.5 a person may apply for a review and an appeal of the decision. The process for applying for a review and appeal is set out in regulations 5.21 to 5.26. Insolvency affiliate status may also be withdrawn under the disciplinary bye-laws.

Fees

- 6.6** In addition to the fee for *authorisation*, *insolvency affiliates* are required to pay an *insolvency affiliate* fee each year on 1 January. The *Council* or any committee to which it delegates this power will decide the amount of the fee.

If an insolvency affiliate's application is unsuccessful, any fees charged will be refunded, less an amount reflecting the costs of administration. The fee payable for authorisation is required under regulation 2.10.

Disciplinary arrangements

- 6.7** The disciplinary procedures of *ICAEW* will apply to *insolvency affiliate* in the same way as they apply to a *member*.

ICAEW's Regulations, standards and guidance section online includes details of the bye-laws relating to disciplinary matters and the *Code of Ethics*.

Overseas applicants

- 6.8** Applicants not ordinarily resident in the United Kingdom (overseas applicants) will be required to satisfy the *Licensing Committee* on an individual basis that their education, qualifications, professional status and *insolvency experience* are sufficient to meet the criteria in Regulation 6.3.
- 6.9** When deciding whether an overseas applicant satisfies the requirements of Regulation 6.3, the *Licensing Committee* will have regard to any guidance on the criteria to be applied.

Index

Affiliate	cessation of authorisation	2.17
	continuing responsibilities	2.20 - 2.23
	disciplinary arrangements	6.7
	eligibility	2.1, 6.3
	fees	6.6
	Licensing Committee	4.3
	meaning of	1.8
	overseas applicants	6.8 - 6.9
	restrictions and conditions	5.5
	review of regulatory decisions	5.21
	withdrawal of status	6.5
Alternate	when appropriate	3.12
Appeal	Committee, meaning of	1.8
	Committee, previous disciplinary findings	4.9
	Committee, authority	4.13
	Committee, procedures	4.14, 5.24 - 5.26
	Committee, representation before	4.16
	regulatory penalty	5.11
	restrictions and conditions until procedure concluded	5.18
	withdrawal of authorisation, effect on	5.17
Application	for affiliate status	6.1 - 6.4
	for licence	2.4 - 2.5
	for renewal of licence	2.6 - 2.8
Cessation of authorisation	automatic	2.17
	request from licence holder for	2.18
	validity of appointment	2.19
Conditions	on licence	2.8, 2.19, 4.3, 5.5, 5.16, 5.18, 5.21
Continuing professional development		3.1 - 3.4
Definitions		1.8
Discipline	former licence holders	2.20
	previous finding	4.9
Disclosure of information		4.7 - 4.9
	status disclosure	3.14
Dispensation		4.3, 5.1 - 5.3
Eligibility	for affiliate status	6.3

	for a licence	2.1, 2.15
	overseas applicants	2.2 - 2.3
Estate monies		3.5A
Fees	costs of authorisation	2.9 - 2.12
	insolvency affiliates	6.6
	non-payment of	2.13, 5.12, 6.5
Fit and proper	insolvency affiliate	6.3
	licence holder	2.1, 2.7, 2.14, 3.4, 3.11, 4.8, 5.3
Implementation of orders		5.16 - 5.18
Insolvency experience	overseas insolvency affiliates	6.8
	licence holder, eligibility of	2.1
	meaning of	1.8
	overseas applicants, eligibility of	2.2
Insolvency Licensing Committee	composition	4.1 - 4.2
	delegation	4.4 - 4.5
	determining fit and proper status	4.8
	disclosure of information	4.7
	former licence holders	4.6
	meaning of	1.8
	notification to committees	4.10 - 4.11
	previous findings	4.9
	responsibilities of	4.3
Insolvency work	compliance with regulations	2.24
	meaning of	1.8
	professional integrity	3.5
	quality control	3.12-3.13
	restrictions and conditions	5.5
	undertakings	5.4
Interpretation		1.5 - 1.7
Investigation Committee	meaning of	1.8
	non-compliance with order of	2.17
	notification to committees	4.11
Monitoring visit	application for insolvency licence	2.4
	fees	2.12, 2.28
	Licensing Committee, responsibilities	4.3
	meaning of	1.8
	monitoring and enforcement	2.25 - 2.27
Notice	changes in circumstances	2.14-2.16

	serving of	5.19A-5.19B
Overseas practitioners	eligibility for licence	2.2 - 2.3
	insolvency affiliates	6.8 - 6.9
Practising Certificate	meaning of	1.8
	requirement for	2.1
Regulatory penalties		5.6 - 5.11
Representation	before committees	4.15 - 4.16
Restrictions	on licence	2.5, 2.29, 4.3, 5.5, 5.16, 5.21
Review Committee	costs of targeted visit	2.28
	meaning of	1.8
	of Licensing Committee's decision	2.5
	representation before	4.16
	previous disciplinary finding	4.9
	procedures	4.12, 4.14
	regulatory penalty	5.11
	restrictions and conditions until procedure concluded	5.13 - 5.14
Scope and status		1.1 - 1.2
Service of notice		5.19A - 5.19B
Targeted visit	cost of	2.12, 2.28
	Licensing Committee responsible for	4.2
	meaning of	1.8
	review of cost of	5.21
Telephone numbers		Introduction
Transitional arrangements		1.3 - 1.4
Undertakings	regulatory action	5.4
	to Licensing Committee	4.3
Urgent orders		5.14 - 5.15
Withdrawal of authorisation	by Licensing Committee	4.3, 4.5, 5.12 - 5.13
	insolvency affiliates	6.5
	review of decision	5.18, 5.21
	urgent order of	5.14 - 5.15