**ICAEW**
REPRESENTATION 98/26

# THE INSOLVENCY SERVICE CONSULTATION: SECOND REVIEW OF THE INSOLVENCY (ENGLAND AND WALES) RULES 2016 AND THE INSOLVENCY (SCOTLAND) (COMPANY VOLUNTARY ARRANGEMENTS AND ADMINISTRATION) RULES 2018

Issued 06 October 2026

ICAEW welcomes the opportunity to respond to the Insolvency Service's second review of the Insolvency (England and Wales) Rules 2016 and the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018.

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For questions on this response, please contact the ICAEW's Corporate Reporting Team at ivana.schappach@icaew.com quoting REP 98/26.

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This response of 6 October 2026 is made by ICAEW's Corporate Reporting Team and the Regulation & Conduct Department and reflects consultation with ICAEW's Insolvency Committee and other expert groups within ICAEW. Our Insolvency Committee is a technical committee largely made up of insolvency practitioners working with large, medium and small practices and it represents the views of ICAEW licence holders.

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Any reference to the Rules in our response is to the Insolvency (England and Wales) Rules 2016, unless expressly stated otherwise.

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## KEY POINTS

1. Care needs to be taken when looking to reduce regulatory burdens that participants in the insolvency process are not disadvantaged or lose protections. Many of those involved in insolvencies are sophisticated and well aware of their rights or have the funds available to purchase the expertise necessary by employing specialists. Others may only interact with an insolvency process on a single occasion and/or are vulnerable due to their financial position or other factors. It is these participants that government policy should seek to protect and their needs should not be negatively affected by a focus on reducing regulatory burdens. The need to retain necessary protections is therefore paramount.
2. If this review results in further changes to the Rules, we hope that any change will be implemented through a consolidated updated version of the Rules rather than through separate statutory instruments from which users would then need to produce their own consolidated version. We would also suggest that any proposed changes are made at the same time and in a coordinated way. Frequent changes/tweaks to the Rules and any related SIPs can be as disruptive to deal with as any difficulties caused by the Rules themselves.

***Question 1: The first post- implementation review in 2022 found the Rules are necessary for the effective functioning of the insolvency framework, that the Rules met their objectives, and that the Rules as a whole work well. Is that view still true? Yes/No. If No, please explain your answer.***

3. While we agree that the Rules remain largely fit for purpose, from a regulatory perspective, we see recurring administrative burdens in practice that add cost without a corresponding benefit to creditors or debtors, particularly in low value or low engagement cases.
4. While we support the view that the Rules continue to provide the certainty and procedural structure needed for consistent case administration, that said, several specific provisions have not kept pace with modern digital working practices.
5. The drafting of the Insolvency Act 1986 and the Rules results in maze-like complexity at times. This is illustrated in our analysis of the decision-making process for CVLs outlined below. Even the use of relevant defined terms is challenging, e.g. rule 1.2(2) of the Rules provide a definition of 'physical meetings' which is dependent upon reading s.246ZE (9) and section 379ZA (9) of the Act however both use the term "meeting" rather than the term "physical meeting" and the definition of "meeting" does not bear the ordinary meaning of the words "physical meeting" (i.e. where the participants are physically present together in the same place).

***Question 2: Are the objectives of the Rules the right ones for an effective insolvency regime? Yes/No. If No, please explain your answer?***

6. While we agree that the four stated objectives remain appropriate, we would suggest that proportionality i.e. ensuring the compliance burden of a given procedural step is matched to the value, complexity and creditor interest at stake in a case, deserves explicit recognition as a stand-alone objective going forward, given how many cases involve low or nil realisations relative to the fixed cost of a statutory procedure.

***Question 3: Do the Rules place a disproportionate burden on businesses with less than 50 employees? Yes/No. If yes, to what extent could the Rules be changed to address this? Please give details to explain your answer.***

7. Yes, requirements for Gazette notices, reports, investigations and administrative work apply with equal force to nil or low-asset cases, most commonly CVLs. We support a proportionate approach to the core administrative requirements by asset value or creditor members, provided any threshold is objectively determinable at the outset of a case and not open to manipulation

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and that consideration is given to retaining necessary protections for participants.

***Question 4: Are there any court applications required by the Rules where court involvement does not add a necessary protection? Please give details to explain your answer?***

8. Insolvency practitioners often report delays in obtaining hearing dates, particularly in the county courts. At the same time, insolvency practitioners recognise that in the context of the business of the courts, insolvency applications may not be the most pressing matters that the courts have to deal with. However, these delays unnecessarily prolong the administration of insolvent estates, can delay closure and increase costs. We would welcome a review of matters which require intervention by the court to see if court involvement continues to be necessary. However, any change should preserve the court's supervisory role wherever creditor or debtor rights are materially affected

***Question 5: Are there any Gazette notices required by the Rules that do not add value, and if so what if any changes to the Rules could address this?***

9. It is difficult to see the value in Gazette notices. We are not aware of any instances where a creditor or other key stakeholder has become aware of an insolvency appointment or a notice published during an appointment through the Gazette. Where all creditors are known and have already been notified, directly and electronically, a duplicate Gazette adds cost, reducing returns to creditors. Perhaps the Gazette should be retained as a safety net where there are suspected unknown or untraceable creditors.

***Question 6: If you are a creditor, what barriers do you face in how you use information from officeholders, and how might these be addressed?***

10. We do not respond as a creditor however barriers to creditor understanding and engagement possibly stems from the sheer volume of prescribed content rather than from any absence of information.
11. Progress reports (and proposals) have become incredibly lengthy which begs the question whether this in itself is a barrier to creditor understanding and engagement with the process. Viewed from the perspective of IPs, it seems that creditor interest is limited and falls away very quickly from the first notification. It is therefore debateable whether progress reports required by the Rules are always useful for creditors. Creditor needs vary however progress reports are primarily produced to satisfy regulatory compliance rather than aid creditor understanding and informed decision-making.
12. The cost of providing the information can also be disproportionate. The cost of producing these lengthy reports (which includes time spent drafting and then going through the firms' review processes) can be a significant time cost to firms.
13. Long, generic progress reports might not be useful for creditors in straightforward cases where no dividend is expected. We would welcome a review of the process. If creditors were interested in progress in such cases, they might be better served by having annual meetings reinstated especially considering that such meetings can now be held remotely. Creditors would then be able to raise questions, and progress reports could be tailored to address issues that are of concern to them rather than being generic in nature.

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***Question 7: To what extent could the Rules be amended to ensure stakeholders receive the information they want and/or need during insolvency proceedings?***

14. Progress reports (and proposals) have become incredibly lengthy (see response for question 6 above). Amending the Rules to permit a proportionate disclosure of information rather than requiring every piece of prescribed content to appear in every progress report would improve accessibility for less-engaged creditors while preserving full transparency for those who want the complete detail.

***Question 8: If you are a creditor, to what extent are IP fee estimates helpful in providing the information you need to understand, monitor and/or challenge IP fees?***

15. We have no comments in relation to this question.

***Question 9: To what extent could the Rules be improved by the better use of guidance?***

16. The Rules surrounding fees present a number of areas where there is a lack of clarity and where either guidance (or Rule amendment) would be helpful.
17. Where an officeholder's remuneration is fixed on a time costs basis, an officeholder who expects to exceed the fees estimate can obtain approval for any proposed increase in fees from the body who initially fixed the basis of remuneration, such as the creditors' committee, the creditors or the court, depending on the circumstances, without having to demonstrate a material and substantial change in circumstances. However, where the officeholder's fees are fixed on a fixed fee or percentage basis, and their costs are higher than envisaged, they can seek to vary the basis, but to do so under rule 18.29 there needs to be a material and substantial change in the circumstances taken into account when fixing the basis. There is no guidance and little by way of case law on what constitutes a material and substantial change.
18. An increase in an officeholder's costs may simply reflect the fact that certain tasks have taken longer to resolve, rather than there being a 'material and substantial change in circumstances'. For example, in a fixed-fee MVL, various administrative delays (not necessarily within the officeholder's control) can drive up an officeholder's costs without meeting the definition of a 'material and substantial change in circumstances'. The Rules, however, provide no middle ground where the reason for a change of basis request falls just short of this statutory threshold.
19. The interaction between rules 18.24, 18.25, and 18.29 is particularly confusing. Rule 18.24 allows an officeholder to request an increase in the rate or amount of remuneration (if insufficient) or a change in the basis of remuneration (if inappropriate). This can be done either by requesting creditors to approve the change (under rules 18.25 to 18.27) or by applying to court under rule 18.28. However, the interaction between these rules and 18.29, is confusing. The rules could be simplified, clarified and consolidated.
20. Rule 18.22 is also ambiguous in the way it is phrased. It states that in a compulsory liquidation or bankruptcy, an officeholder is 'entitled' to the Official Receiver's scale of fees after 18 months if creditors fail to fix the basis of remuneration. Does this mean that after 18 months, the officeholder is precluded from seeking creditor approval (i) for their fees and/ or (ii) for a different fee basis? It is not 100% clear.

***Question 10: Are there any remaining differences within or between the Rules which are unnecessary, unclear, or create avoidable complexity in practice? Yes/No. If yes, please explain your answer.***

21. There are a number of areas where either guidance or amendment would be helpful and where there is a lack of clarity. See our response to question 9.

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***Question 11: To what extent could other changes be made, to achieve the objectives of the Rules with a system that imposes less regulation?***

22. We would welcome a review of the rules, to ensure they do not create unnecessary burdens, are proportionate, while at the same time afford the necessary protections for those in involved.

***Question 12: To what extent could the Rules on deemed consent for the electronic delivery of documents be amended?***

23. The current requirement reflects an outdated assumption about communication methods. Currently, it appears that an officeholder can only use electronic delivery if someone has provided deemed consent to that - which is deemed where the company / entity and the intended recipient had customarily communicated by electronic means before the insolvency event. Is this requirement still appropriate in this day and age given electronic communication is possibly the primary method of communication for both businesses and individuals? We would welcome a review of this requirement. Perhaps it could be relaxed, or electronic delivery could become the default method of communication with stakeholders retaining the ability to request communication by alternative means.

***Question 13: To what extent could the Rules about creditor and liquidation committees be improved?***

24. As physical meetings are no longer the default forum for decisions by creditors, the opportunity for creditors to establish a committee on their own initiative and on a relatively informal basis has, in effect, been lost in relation to relevant procedures. The IP is now obliged to send creditors a notice inviting them to decide whether to establish a creditors' committee whenever seeking a decision from creditors in creditors' voluntary liquidations, when a members' voluntary liquidation is converted to a creditors' voluntary liquidation and in bankruptcies (rules 6.19 and 10.76). The end result is that it is harder for creditor committees to be formed, and we doubt that this is either efficient or helps with creditor engagement.
25. If the Rules do not improve engagement, given the low engagement rates and low uptake from creditors, it is worth questioning whether this statutory requirement should remain.

***Question 14: To what extent should the Rules on handling personal data in insolvency proceedings be amended?***

26. Currently, circulating the full Statement of Affairs (which includes the employee names, home addresses and sums due) directly to the general body of creditors is a mandatory statutory requirement. While the Rules protect employee privacy by requiring a redacted schedule for public filings at Companies House, no mechanism exists to supress these details in pre-appointment or initial creditor communications. This begs the question whether it is appropriate for an employee's address to be circulated to their former co-workers/the general body of creditors. Our feedback from firms is that this generates a lot of complaints. Perhaps consideration should be given as to whether there is another method of ensuring that employees can 'band together' if they need to, without having to have their personal data disclosed.

***Question 15: To what extent should England and Wales rules 3.20 to 3.22 be amended to reflect modern ways of working?***

27. We would agree that the creation, retention and taking to court of hard copy (printed emails) appears to be an outdated concept given modern ways of working and the introduction of e-

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filing. Rules 3.20 and 3.21 could be amended, such that all steps can be carried out electronically rather than having to subsequently deliver hard copies to the court.

***Question 16: To what extent should England and Wales rules 3.23 to 3.26 be amended to provide clarity on the exact time at which notices filed via E-Filing are deemed to be effective?***

28. Rules 3.23 – 3.26 –an additional paragraph could be added to the wording of the Notice of Appointment stating that 'the date and time of the administrators' appointment shall be the date and time endorsed by the court on this notice, namely when this notice and accompanying documents are filed at court and the requirements of paragraph [x] of Schedule B1 to the IA 86 are complied with'.

***Question 17: To what extent should the Rules on small debts be amended?***

29. We would support at a minimum an inflationary uprating of the £1,000 threshold.

***Question 18: To what extent could the small debt provisions be amended to improve how employee debts are handled?***

30. We would support changing the small debt provisions to include certain employee debts, subject to the four safeguards identified in the consultation.

***Question 19: What is the best way to set office-holder fees in a CVL when creditors do not vote to approve the fees?***

31. We would support R3's proposal for a statutory fixed fee for a standard (i.e. no asset) CVL.

***Question 20: To what extent should the removal and replacement of an officeholder provide grounds for revisiting the basis of remuneration?***

32. Grounds for revisiting remuneration where there is a material and substantial change in circumstances would be supported, but only where the incoming officeholder can demonstrate the current fee basis is unworkable and provided there is more guidance on the meaning of 'material and substantial change'.

***Question 21: To what extent should the timelines for decision-making processes in England and Wales rule 2.27 and Scotland rule 2.26 be amended?***

33. We have no comments in relation to this question.

***Question 22: To what extent should the timelines for decision-making processes in England and Wales rule 8.22 be amended?***

34. We have no comments in relation to this question.

***Question 23: To what extent should the timelines for decision-making processes in England and Wales rule 7.52 be amended?***

35. We consider the 5-business day nomination window for a replacement liquidator tight. Extending this to 10 or 14 business days would align it better with other notice periods in the Rules.

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***Question 24: To what extent should the timelines for decision-making processes in England and Wales rule 10.67 be amended?***

36. We consider the 5-business day nomination window for a replacement trustee tight. Extending this to 10 or 14 business days would align it better with other notice periods in the Rules.

***Question 25: How frequently do creditors choose to opt out of receiving correspondence?***

37. We have no comments in relation to this question.

***Question 27: What improvements could be made to the Rules on opting out?***

38. We are not aware of the rules on opting out causing issues on cases.

**Question 28: Are there any areas of the Rules that have been adversely impacted by inflation? Yes/No. If Yes, please explain your answer.**

39. Yes. The small debt limit.

**Question 29: To what extent have other legislative developments impacted on the effectiveness or utility of the Rules, or created unintended consequences?**

40. We have no comments in relation to this question.

**Question 30: Are there any other areas of the Rules that present practical difficulties following the rollout of E-Filing? Yes/No. If Yes, please explain your answer.**

41. We have no comments in relation to this question.

**Question 31: How might the Rules need to adapt to accommodate technological changes?**

42. Currently the Rules do not explicitly allow the director/ convening IP to use electronic delivery methods for convening a section 100 decision procedure (rr 6.14(2) and 1.45).
43. The feedback from the first consultation First Review of the Insolvency (England and Wales) Rules 2016 - GOV.UK noted '*One broad issue relates to the use of websites to deliver documents. Under the Rules, the officeholder in an insolvency can make use of a website following the issue of a notice to the documents' recipients. However, this is not always available to directors and insolvency practitioners acting prior to the commencement of the insolvency, nor to creditors who wish to communicate electronically in return. Observing that delivery of documents through websites by officeholders appears to have worked well, we will consider (subject to further exploration of any difficulties that may be involved and the safeguards that might be required) extending this option to others where they are engaging with insolvency processes involving multiple recipients, for possible inclusion in a future update to the Rules'.*
44. There is also the delivery issue regarding first- and second-class post. Rule 1.42 (2) says that first or second-class post may be used to deliver a document except where the rules require first class post to be used. In the last couple of years, a company called Post works has introduced a priority postage service which is neither first or second-class post Priority Postage: what it is and how it can help your business - Post works. While in theory that would be helpful for officeholders, and provide better service than the Royal Mail, it isn't something that the rules allow.

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45. Consideration should be given to whether the delivery via website rules should be extended to directors rather than just office holders in relation to the delivery of all documents. This would mean that Statement of Affairs in CVLs would not have to be posted but could be uploaded online. It would also save costs if the rules were such that officeholders were not required to write to creditors again by post, on a CVL appointment and could rely on the fact that they were provided with portal details, pre-appointment.

**Question 32: To what extent do you currently use AI in insolvency proceedings? Please give details to explain your answer.**

46. We have no comments in relation to this question.

**Question 33: If you are an officeholder, do you currently inform recipients whether AI has been used to undertake office-holder functions prescribed within the Rules? Please give details to explain your answer.**

47. We have no comments in relation to this question.

**Question 34: How might AI impact on the future useability of the Rules?**

48. AI has strong potential to reduce the cost and time of routine high-volume tasks such as proof of debt processing and correspondence drafting which could potentially improve return to creditors although any saving would be dependent on the cost of the AI (which while currently free) may not always remain so.

**Question 35: To what extent do the Rules provide an appropriate framework for dealing with digital assets?**

49. While an officeholder has a clear statutory duty to take control of digital assets, sell them or distribute them to creditors, this can be difficult in practice due to the anonymity of the digital asset holder. Determining the jurisdiction which applies to what is essentially a “borderless” asset can be challenging and even where they can be traced and recovered, their value can be extremely volatile.
50. The government could look at expanding definitions within the Rules and statute to include digital assets, and expanding officeholder powers to include access and information to digital wallets, API keys, Authenticator tools etc. The most important consideration for officeholders is probably being able to have the flexibility to apply the rules in relation to (for example) cross border cases, COMI considerations, asset tracing, recovery and recognition of proceedings. If it were to do this, there would need to be consistency with other areas of law and regulation such as financial regulation and taxation.
51. While we recognise the need for the Rules to be workable in a modern and often rapidly changing business environment, given the nature of the five-year review cycle for the Rules, we would question whether legislative change is the appropriate route to keep pace with this area. Even a standard may take too long to develop. Guidance may be a more suitable vehicle. By way of example, ICAEW along with the other bodies which issue Professional Conduct in Relation to Taxation (PCRT) recently issued guidance covering the application of PCRT to the ethical use of artificial intelligence tools.

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**Question 36: To what extent would the Rules, as currently written, be appropriate should cryptocurrencies be considered currency rather than assets?**

52. The government could look at amending the Rules to explicitly recognise cryptocurrencies as a form of currency rather than property, amend the process for valuation of claims in relation to cryptocurrencies (which would need to be updated to account for the unique volatility of crypto currencies along with rules on their distributions) and look at expanding definitions and powers to include cryptocurrencies as currency rather than asset. If it were to do this, there would need to be consistency with other areas of law and regulation such as financial regulation and taxation. Again, we would question whether legislative change is the appropriate route to keep pace with this area at this current time. Guidance may be a more suitable vehicle.

**Question 37: To what extent could the Rules be amended to better support officeholders when recovering digital assets?**

53. See response to questions 35 and 36 above.

**Question 38: To what extent could the Rules be amended to better support officeholders when dealing with insolvent digital traders?**

54. See response to questions 35 and 36 above.

**Question 39: To what extent could further changes to the Rules bring real-world benefits to stakeholders?**

55. We comment here on the Rules that we think problematic, regardless of when the rule was introduced or the legislative initiative from which it derives. If something is not working well in practice, then we would urge the government to put it right, whether that requires a change in policy or a change in drafting of primary or secondary legislation and while we appreciate that amending the Rules is potentially administratively challenging, if the regime is not flexible enough to address practical concerns that arise, consideration should be given to moving away from such a prescriptive rules-based regime.

**Manolete Partners Plc v Hayward and Barrett Holdings Ltd**

56. The government will no doubt be aware of the judgment in the above case where the judge held (with regret) that any party wishing to bring a company claim (whether that party is the office holder or an assignee) will have to issue a part 7 claim even in circumstances where there are related office holder claims in the same insolvency; in which case two sets of proceedings are required. We believe that amendments to the Rules required to remedy this undesirable outcome should be made.

**CVLS**

57. A CVL is one of the most effective procedures for winding up affairs of many companies. We believe that the procedure is fit for purpose by objective and design. We believe therefore that government should make it as simple as possible for creditors (the key stakeholders in a CVL) to have their say and that the process is as efficient as possible. One of creditors' most significant powers is the ability to choose the Liquidator.
58. Under the old procedure, the creditors voted for the Liquidator's appointment at a physical meeting convened under Section 98. The meeting was held within 14 days of the shareholders' resolution, putting the company into liquidation. A director of the company chaired the meeting, and creditors could ask about the reasons for the company's failure. If a creditor did not want to

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personally attend, they could submit a proxy form to nominate and vote for their preferred liquidator. The S.98 meeting was an excellent tool for creditor engagement because it was easy for them to understand and participate. Remote attendance was not a feature of S.98 meetings (but was not expressly forbidden).

59. We believe that there should be an option to hold a meeting. (e.g. by amendment of Section 246ZE of the Act), but in a modernised way, so that individual creditors can choose whether to attend the meeting remotely or physically. This would engage creditors from all walks of life including, for example, people with childcare responsibilities that might have prevented them from attending a physical S.98 meeting. As with other similar remote meetings, it would be necessary to ensure that participation and voting is fairly managed, but we believe that could be dealt with relatively easily (e.g. by regulatory guidance).

**Miscellaneous**

60. The relevant Rules should be updated in line with Re Pindar Scarborough Ltd (in administration) 2024 EWHC 908 (Ch), Boughey & Anor v Toogood International Transport and Agricultural Services Ltd (Re Insolvency Act 1986) [2024] EWHC 1425 (Ch) and Insolvency Service guidelines, specifically in relation to situations where a class of creditor has been paid in full or a committee disbanded.
61. Clarity should be provided on (i) the definition of 'secured creditors' in a legal or financial document (such as a restructuring plan, insolvency proceedings) and (ii) the types of secured creditors who have the right to approve certain items (like fees). Perhaps creditors who only hold limited security rights (like hypothecations or liens) should be excluded, and the definition narrowed to only cover creditors holding a specific major type of security such as valid and registered floating charges.
62. The current Rules appear to require officeholders to provide a detailed fee estimate to all creditors and while this ensures transparency, it frequently leads to unnecessary costs, especially in cases where unsecured creditors have no financial stake because the available funds will only cover secured or preferential debts. The Rules could be amended/clarified so that an officeholder is only required to provide a fee estimate to the party with a financial interest in the case and who are required to provide their approval.
63. Under the current Rules, if an officeholder initially expected a distribution to ordinary unsecured creditors and had them (or a creditors' committee) fix the remuneration basis, the officeholder cannot automatically switch to seeking fee approval solely from secured and preferential creditors, should the position change. The officeholder must seek the approval from the class of creditor who originally approved their remuneration. However, as the unsecured creditors no longer have an economic interest in the case, they are less likely to engage or vote. There should be a mechanism in the Rules to allow the officeholder to pivot to another class of creditor in cases such as these (and potentially this should not just be limited to fee approvals).
64. There are currently procedural inconsistencies between the parties responsible for approving fees, discharge from liability or extension. Consideration should be given whether these could be aligned.
65. Sometimes a request for a hard copy of a document is made very close to a statutory deadline, which can create a tight window to meet those statutory deadlines. We would welcome a review on the effect of last-minute hard copy requests on deadlines and decisions dates, and clarification of the Rules if they are deemed ambiguous or amendment of them if they are deemed unfair in such scenarios.

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