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MODERNISATION OF THE INSOLVENCY RULES

Comments by the Association of Business Recovery Professionals ('R3') in response to the consultation document issued by The Insolvency Service in September 2013

1. Introduction

1.1 The Association of Business Recovery Professionals ('R3') represents insolvency practitioners authorised to practise in all jurisdictions of the UK. R3's membership comprises licensed insolvency practitioners, lawyers and other professionals involved in the insolvency and turnaround industries. Over 97% of authorised insolvency practitioners are members of R3.

1.2 Our response is structured as follows:

- General observations and drafting points
- Policy-related issues – The Red Tape Challenge and the Enterprise and Regulatory Reform Act
- Answers to the specific questions posed in the consultation document
- Detailed comments on the individual Rules

2. General observations and drafting points

2.1 We fully support the aim of making the Rules clearer and easier to follow and removing inconsistencies. However, as they currently stand the draft Rules do not achieve this objective. Our review has led us to the conclusion that to issue the Rules now in their current form would be premature, for three main reasons.

2.2 First, it is apparent that in certain areas the Insolvency Act itself contains provisions that ought preferably to be in the Rules, and that in order to achieve the desired degree of clarity and consistency both the Act and the Rules require amendment. For this reason we do not believe that the best result will be achieved by amending the Rules in isolation. As the draft Rules in any case anticipate amendments to the Act in order to implement some of the Red Tape Challenge proposals, we suggest that the opportunity is taken to conduct a wider review of the Act at the same time.

2.3 Secondly, although the overall structure is logical and an improvement on the existing Rules, and we agree with the use of common parts as a means of removing inconsistencies, we feel the opportunity has been missed to achieve greater alignment and consistency across a number of provisions which apply in more or less similar form to different proceedings. As a result, inconsistencies and prolixity remain. If implemented in their current form, the revised Rules would almost certainly require subsequent amendments, which would defeat the object of the exercise.

2.4 Thirdly, the decision to set out the required content of documents throughout the Rules rather than prescribing statutory forms, and the complexity of the defined terms provisions, have resulted in a document that is both much longer, and less manageable, than it needs to be. We comment further on these two aspects of the draft in paragraphs 2.7 and 2.8 below.

2.5 We would prefer the Insolvency Service to take whatever time is necessary to conduct a thorough review of the legislation as a whole, , to remedy the defects in the drafting of the Rules, and to re-think the decision on prescribed forms, rather than pursue a hasty and potentially counter-productive revision.

2.6 We recognise that the document which has been issued for consultation is a working draft. In a spirit of helpfulness our detailed comments point out a number of typographical errors (although by no means all). We would, however, not wish the arguably trivial nature of some of our detailed observations to detract from the majority of the comments which pick up matters of substantial importance be they (1) points of drafting which need to addressed if the new Rules are to achieve their objectives (2) the continuation of ambiguities and difficulties carried forward from the current rules or (3) a missed opportunity to revise policy.

2.7 Provision of information where there is no prescribed form –
We believe that the decision to set out the required contents of documents in the Rules rather than being prescribed by a statutory form is likely to lead to a proliferation of formats for the provision of information, which will lead to confusion. This will be a particular concern for businesses (small and large), which will need to educate their staff on what they need to look out for when receiving information from IPs. We understand the need to future-proof the Rules and allow for electronic transmission of information, but we would encourage the use of forms wherever possible, prescribed in the proposed separate statutory instrument. The exception to this is witness statements, which should be individually and carefully drafted in every case, and not reduced to a standardised form which might encourage a box-ticking approach.

2.8 The defined terms provisions
The revised Rules have introduced a proliferation of defined terms, to such an extent that in the body of the Rules generally it is easy to lose sight of whether or not a word has a defined meaning, requiring frequent referrals back to Part 1. Further, there are instances of a term which has a defined meaning appearing in the text with a different meaning (see for example our comment on rules 7.3(2) and 10.1(2)). This is a potential source of confusion, and is likely to make the Rules difficult to follow even for specialist practitioners. We would expect that lay persons or non-specialists who may only need to refer to the Rules occasionally will find this even more of a problem. It would be helpful if some convention, such as the use of capital letters or italics, could be adopted to make clear where a term has a defined meaning. It would also be useful if the electronic version of the text posted on the Legislation website could incorporate hyperlinks from the defined terms back to their definitions wherever they appear.

2.9 In view of the complexity of the Rules, we hope that the final published version of the Rules will incorporate a table of contents, in the same way as the original print of the Insolvency Rules 1986, to provide an overview of the structure of the Rules, and to help users to orientate themselves and find their way to the relevant provisions.

2.10 Although not specifically addressed in the consultation document, one important factor that needs to be borne in mind is the cost to the insolvency profession (practitioners, restructuring specialists and legal advisers) of adapting to the new Rules. Any new legislation, especially when it is as complex and comprehensive as this, will involve substantial short term costs in familiarisation and making necessary systems and procedural changes. This applies equally to small firms and to large, and arguably proportionately a greater burden on the smaller firms. Also, for this reason, a long familiarisation period should be allowed for before the new Rules are brought into effect.

3. Policy-related issues - The Red Tape Challenge and the Enterprise and Regulatory Reform Act

3.1 The Red Tape Challenge

The draft Rules anticipate some of the proposals set out in the Red Tape Challenge consultation document issued in July 2013. Some of these we disagree with, such as the abolition of the requirement for section 98 and paragraph 51 meetings, and allowing creditors to opt out of receiving information (our disagreement here reflects our belief that this risks reducing rather than improving creditor engagement). In these cases, although we remain opposed to the proposals in principle, we have nevertheless sought in our comments to recommend changes that would mitigate their effect.

3.2 Enterprise and Regulatory Reform Act 2013 – Bankruptcy applications

3.2.1 We comment in detail below on the draft rules giving effect to the new bankruptcy application procedure. However, although not purely a matter for the Rules, we think this is a useful opportunity to set out our thoughts on how the new system might work most effectively.

3.2.2 General observations

The new bankruptcy application regime raises a number of issues and potential risks which will require safeguards to be built into the system. Clearly it is important that debtors should be aware of the serious consequences of bankruptcy, and that these should not follow from rash or ill-considered applications. At the same time, it should be possible to obtain early protection against actions by creditors in cases of urgency. It is also important for the courts to be aware of the application. We therefore suggest that the following should be the principal features of the new regime.

3.2.3 Advice

At present the draft Rules only require the debtor to state whether he has taken advice before completing the application. This seems to be of little value. There is no way of knowing whether the debtor is telling the truth, and even if he states that he has not taken advice it is not clear that it will make any difference to the action taken by the adjudicator. We believe that there needs to be a mechanism to require the debtor to take advice as part of the application process. For on-line applications this could take the form of a video about debt advice and the solutions available which the applicant has to watch before he can move on to the next stage of the application. This would provide at least some reassurance to the adjudicator that the debtor has received some form of meaningful advice. Consideration would have to be given to how a similar result could be achieved in paper-based applications, a facility which we believe should be available to all debtors – see our comments on Rule 10.40 below.

3.2.4 Payment by instalments

We understand that the Insolvency Service is considering letting debtors pay their bankruptcy fees by instalments, which we support. However, draft rule 10.38(j) suggests that the fee has to be paid up front before the application can be made. We believe that in order to make the procedure as accessible as possible, debtors should also be able to pay their fees by instalments during the course of the process so that they can benefit from debt relief and protection from their creditors whilst they make the payments. To ensure that debtors complete their payment obligations discharge should be suspended until the instalments have been paid in full.

3.2.5 Identity verification

We understand that as part of the process of digitising the redundancy payments operation, an on-line identity verification tool is being developed which will enable an applicant’s identity to be verified by inputting data which is tested against information provided by various organisations which have agreed to take part. We suggest the same process is used during the bankruptcy application process in order to provide the added reassurance that identities are thoroughly verified.

3.2.6 Confirmation, cooling off and protection from creditors

We suggest that once the application has been electronically submitted it should generate an automated email message incorporating a link to which the applicant has to connect to validate the application. On validation of the application, an interim moratorium against creditor action should begin and the statutory process should be deemed to start. There should then be a cooling-off period of seven days during which the applicant could notify the adjudicator that he wishes to withdraw from the process, at which point the moratorium would cease to have effect. Otherwise the moratorium should remain in effect until the making of the bankruptcy order.

3.2.7 Court files

It would be useful if there was a way for the courts to be made aware of the bankruptcy proceedings and the status of the debtor’s application, perhaps by way of an electronic feed of information to the court’s computer system. This would enable the court to deal appropriately with any pending matters such as charging order applications. The best way would be for the court file to be built organically from the official receiver’s file and for a court number to be automatically generated.

3.2.8 Appeal against adjudicator's decision and provision of further information

Under the present system, an appeal against a court's decision to refuse a bankruptcy order would be heard by a different judge. The same principle should apply under the new system, and a review of an adjudicator's decision to refuse a bankruptcy order should be heard by a different adjudicator. If the second adjudicator also refuses to make an order the debtor would still have the ability to appeal to the court as a last resort.

Under the current system there are often cases in which the court will ask the debtor to provide more information about COMI, residence and other matters in order to establish whether the debtor satisfies the bankruptcy eligibility criteria. Eliciting the necessary information is a two-way process, and can be quite a complex exercise. Whilst the adjudicator could ask the debtor for further information, the way the rules are drafted the debtor will not be able to provide any information of his own accord, even if it could be helpful to the adjudicator. We believe that the debtor should also be able to provide relevant additional information at the review stage.

3.2.9 Dispositions of property - section 284

When the new procedure comes into effect, the provisions of section 284 will run from the date of the making of the bankruptcy application (section 284(3) as amended by the Enterprise and Regulatory Reform Act 2013 section 71(3) and Schedule 19 para15). If our proposal is adopted, this would mean that section 284 would apply for the period of the moratorium between the date of confirmation of the application and the making of the bankruptcy order. It would therefore operate in the same way as currently between the date of the petition and the date of the order. We envisage that if the debtor decides to withdraw from the process during the cooling-off period, then no statutory process will have been engaged and the section 284 provisions would simply fall away.

3.2.10 Our comments on the individual draft Rules are set out in our comments on Part 10 below.

4. Answers to the questions posed in the consultation document

Q1. **Do you agree that replacing the current instruments with a single set of rules will make the legislation:**

- **less confusing?**
- **easier to use?**

In principle a single set of rules should make the legislation less confusing and easier to use. However, as we have noted above, the draft does not achieve this objective in its current form.

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

No; whilst many are clearer there are several new defined terms which add to uncertainty and inconsistency. See, for example, our comments on the meaning of 'deliver' in relation to rules1.1(3), 15.2 and15.10, 'non-EC proceedings' and 'insolvent estate' in our comments on rule 1.1(3), and Schedule 3 generally. See also our comments in paragraph 2.8 above about the proliferation of defined terms and the need for adopting some convention to identify when a term occurring in the body of the Rules has a defined meaning.

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

Yes. For example:

- 'corporate representative' (see comments on 1.4(2)(b));
- 'insolvent winding up' (see comments on 1.53(1)(b), 15.2(8)(b), 15.4(1)(c), 15.22 and 16.21(1));
- 'paid in full' (see comments on 15.5(2), 15.30(1)(a)(i) and (1)(b)(i);
- 'available on [the] website' (see comment on 1.46);
- The definition of 'debt' could also usefully be clarified (see comment on 1.2 and Schedule 3).
- 'proposer' (possibly – see comment at 2.1(b)).

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

The use of standard contents does not of itself achieve consistency. For example, notices published in the Gazette which contain the same information can look very different. Chapter 8 of Part 1 recognises that the Rules and Act use an array of terms to describe the manner in which documents are given to persons and when they are deemed to have been received by them. It appears to seek to provide a more consistent approach to the manner in which documents can be given to persons and the provisions and time periods which will apply so that such documents are deemed to have been received by them. We have expressed, in other sections of this response, our concerns regarding the proposed 'opting out' provisions. Apart from these, we consider the intention to distinguish clearly between documents that must be 'served', sent to the registrar of companies or otherwise given to persons, marks an improvement from the current rules. However the use of the word 'deliver' as a defined term to encompass all of 'delivered, filed, forwarded, given, sent or submitted' (i.e. the words which would be used in everyday language) makes the drafting of various sections cumbersome. It would be preferable for those terms still to be used, but as defined terms, to show that the deemed receipt provisions of Chapter 8 apply to them, or at the very least, for 'delivery', when used as a defined term, to be clearly identifiable as such in the body of the text (as we recommend should be the case for all defined terms). Moreover, our detailed comments regarding the draft rules in Chapter 8 suggest that further work needs to be done to ensure that the Act and Rules' delivery and service provisions are clear.

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

It may be, but the process could usefully have been carried further in the draft Rules. For example, see our comments on rules 14.24 and 14.25 regarding mutual dealings and set-off in administrations and liquidations.

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

The top-level split into the different types of liquidation is helpful, but some of the detailed provisions below that are confusing. See, for example, our comments on Chapter 2 of Part 5 and Chapter 5 of Part 6 concerning liquidators' appointments in MVLs and CVLs. See also our comments on distributions in MVLs, which are currently dealt with by rule 4.182A, but under the draft rules are subject to a bewildering array of different sub-rules.

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

We agree that the structure of the draft Rules is more logical than the current Rules. However, to be fully effective the Rules should achieve as much consistency as possible between provisions dealing with essentially the same matters in different procedures.

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

Not as currently drafted. In places, the attempt to 'modernise' language has led to lack of clarity. For example, the attempt to avoid the use of gender-specific personal and possessive pronouns has led to awkward drafting. We have noted some examples in our detailed comments.

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

No. The language used in the current (and indeed earlier) legislation is not arcane and is perfectly easy to understand. The primary purpose of the language used should be to achieve legislative precision, not to pursue linguistic fashions. With the existing Act and Rules nearly 30 years old, any ambiguity that existed has largely been cleared up through the courts.

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

Yes. See for example our comments on the use of the word 'deliver' instead of 'send', 'the liquidator's' in place of 'his' in rule 6.29(1)(b), 'the firm' in place of 'his firm' in rule 17.14(6), or the awkward formulations referred to in the answer to Question 8 above.

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

Not entirely. The opportunity to align some of the rules across procedures has been missed. For example, see our comments in answer to Question 6 above regarding consistency between the provisions relating to MVLs and CVLs.

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

See the suggestions in our detailed comments on the individual rules.

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

For the reasons set out in paragraph 2.7 above, we would like to see prescribed forms retained as far as possible. Even electronically delivered information needs to be in a prescribed form so that it can be readily identified. Electronic delivery does not preclude the use of standard forms, which can easily be electronically produced and transmitted.

Q14. **Do you find the write–out of the contents requirements in the draft rules to be helpful?**

No. See comments above regarding forms. As noted in paragraph 2.4 above, the write-out adds substantially to the length of the document.

Q15. **What problems do you encounter with the delivery of documents by post?**

In rural areas, the post may not be scheduled to be delivered before 12.00 noon. We have therefore suggested that the deadline time for receiving votes be moved to 16.00. See our comments on 8.22(2), 15.2(6)(a) and 15.4(1)(a) and (b).

Q16. **Do you agree with the estimated savings outlined?**

We do not have the evidence on which to base an answer to this question.

Q17. **Are you aware of any other savings or benefits associated with removing the requirement for first class postal delivery?**

None, other than cost savings.

Q18. **Do you agree that the technical changes listed [in paragraph 42 of the document] should be made? If not, please identify which change(s) you do not think should be made and explain why.**

We agree with all the proposed changes, subject to the proviso that some guidance is needed in relation to the rules relating to the conversion of debts in foreign currency in order to avoid potential disputes and litigation about the rate used. See our comments on rule 14.26(1).
As far as we can tell, the new Rules 14.24(5) and 14.25(5) deal adequately with the Court of Appeal decision in *Re Kaupthing Singer and Friedlander*.

Q19. **Do you agree that contributories should not be able to form part of liquidation committees? If not, what value do contributories bring to a committee?**

Yes.

Q20. **Do you have any other suggestions or comments on the structure or content of the rules?**

See our comments in paragraphs 2.1 to 2.9 above, and our detailed comments on the individual rules set out below.

Detailed comments on the individual Rules

In the following sections of this document references in the left-hand column are to Rule numbers.

Introductory provisions

2 Schedule 1 does not appear to be complete, omitting instruments from 1987 to 2002.

Part 1 – Interpretation, time and rules about documents

The heading 'PART 1 … Interpretation and time' which appears on the first page of the draft should presumably be deleted. It looks like an erroneous duplication of the heading which appears at the top of the fourth page.

1.1	There is no 1.1 (1)
1.1(2)	'…a petition or application is being proposed or made.' Should that be 'presented or made', or perhaps 'proposed, presented or made'?
1.1(3)	In the body of the Rules generally, it is easy to lose sight of when a word is a defined term. It would be helpful if some convention, such as the use of capital letters or italics, could be adopted to make this clear. 'deliver' and 'delivery' – The use of these terms to cover various modes of transmission of documents is unhelpful and confusing because they have different meanings depending on the circumstances. The words 'send', 'file', 'submit' and 'forward' have clear and well understood meanings, and their use is preferable where the context is appropriate and there is no possibility of ambiguity. However, as set out in our response to Question 4, it is helpful to ensure that the same methods of delivery and the same periods for deemed receipt apply to all such modes of giving documents to persons. Consequently whether separate terms (delivered, filed, forwarded, given, sent etc.) or the one term, 'delivered' is used, they must be clearly tied to Chapter 8 and readily identifiable as such, so that the modes of delivery/giving etc. are clearly understood to apply to all such terms as well as the deemed receipt provisions. 'document' – Is the definition intended to include illustrations, graphs and spreadsheets? 'insolvent estate' – Is this unnecessarily complicated in referring in its three limbs respectively to 'assets', 'property' and 'estate'? Does it run into difficulty with the rulings that antecedent transactions and their proceeds are not 'company assets' (*Oasis Merchandising*), or presumably 'property of the debtor'? Generally this highlights the inconsistency in terminology in the Insolvency Act itself with 'assets', 'property' and 'estate' used to describe apparently exactly the same thing. Could the Insolvency Service consider a wider amendment to the Insolvency Act to increase clarity and consistency?

	‘non-EC proceedings’ – We assume that this is intended to include circumstances such as those in the case of *HSBC Bank plc v Tambrook Jersey Limited* [2013] EWCA Civ 576, but perhaps it is also meant to cover receiverships and MVLs. It would be helpful for this term, and its purpose to be further explained.
	‘‘permission’ of the court is to be read as referring to ‘leave of the court’…’ This appears too restrictive as the Act does in places itself use ‘permission’ (e.g. schedule B1). Should this be ‘including’ rather than ‘referring to’?
1.1(4)	The drafting here is rather unsatisfactory, as there is reference to a (natural) ‘person’ in the first line, then a reference to ‘that person’ in paragraph (a). The second ‘person’ is obviously meant to refer to the insolvent entity, and should perhaps be replaced by ‘that company, debtor or bankrupt’.
	In paragraph (b)(iii) ‘the’ is missing.
1.1(5)	This only makes sense if the fee basis is time, and not if it is a percentage or a set fee.
1.2/Schedule 3	It is not clear what Schedule 3 is intended to achieve. For example, it seems unnecessary to include the definition of ‘business day’ in Schedule 3 as it is already defined in the same way in Rule 1.1(3). To the extent that the schedule is needed at all, why is the meaning of the relevant defined term not just clarified in Rule 1.1?
1.3(3)(b)	Can the list be replaced by a generic description so as not to have to update if locations change?
1.4(2)(b)	‘corporate representative’ – Does this merit a definition in Rule1.1(2) to link it to section 434B of the Insolvency Act and section 323 of the Companies Act, where the person is simply called a representative? We appreciate the need to make it apparent that this is not the same as the representative mentioned in Rule 1.4(4)(a), but are not sure that the unexplained addition of the word ‘corporate’ quite achieves that.
1.4(5)(b)(iii)	The grammar does not quite work from the lead in: a document which (b) contains a statement to the effect that a creditor (i) appoints, (ii) directs, (iii) makes provision. The creditor does (i) and (ii), the document does (iii).
1.4(5)(b)(iii)(bb)	It is not apparent that ‘the chair’ is a valid completion in a winding up by the court or bankruptcy. It needs to get across that ‘the chair’ is valid for any proceedings, but with the alternative formulation of ‘the official receiver’ also acceptable in those case types.
1.4(5)(b)(iii)(ee)	We suggest that this should be ‘relationship or authority’, not ‘and’. If the finance director of Creditor Ltd signs the form one would not expect any further disclosure of an authority.

1.5 Time periods and deadlines are an important part of the Rules and should be clearly set out and easy to understand. The current Rules are deficient in this regard and the new rules provide an opportunity to improve matters. Incorporating provisions of the Civil Procedure Rules (CPR) by reference only and without setting them out in full or replicating their current form with a similar or identical rule, is unhelpful for practitioners and makes the legislation potentially inaccessible for lay persons.

As with the current rules, the new draft rules do not seek to apply the CPR to time periods expressed in the Act. Not taking the opportunity now to amend this leaves some periods in the Act hard to calculate: for example in paragraph 26 of Schedule B1, a person who proposes to make an appointment shall give at least five business days' written notice to a qualifying floating charge holder. As this is in the Act and not the Rules, it is difficult to understand whether each day of notice must be a clear day/full 24 hour-period or not.

Similarly the current rule 2.24 provides that the statutory declaration on the notice of appointment 'shall be made not more than 5 business days before the notice if filed with the court'. This is a period of time in days and consequently CPR2.8 would suggest that it should be read to mean five clear days. However if that is the case, it means that the statutory declaration could be more than what most people would consider to be 'five business days old' and that appears contrary to the intention of the rule.

Time periods are too important to be difficult (or impossible) to understand. The new rules should be drafted to ensure that every expression of time is readily calculated, including situations where phrases such as 'not less than', 'not more than', 'before' and 'within' are employed.

CPR 2.8 addresses periods of time specified in days and the new draft rule 1.5 addresses time periods expressed in periods of months. However the draft rules also refer to time in periods of weeks. For example draft rule 2.5(2) provides for a statement of affairs to be 'made up to a date not earlier than two weeks before the date of the proposal'. If a proposal is dated Thursday 27th February, what is the last date to which the statement may be 'made up' - Wednesday 12th, Thursday 13th or Friday 14th February?

Similarly, how is 'not more than two months' to be calculated for the purposes of rule 2.5(3)? The time limit provisions for months in draft rule 1.5 do not appear to cover 'not more than'. For example, if the statement of affairs were to be made up to 30 December 2013, to comply with this draft rule, what would be the last day on which the proposal could be dated: 28th February (as the end of the month for the purposes of 1.5(2)(b)(ii)(b) or 27th February - so that it is not more than a full two months before the expiry date (being the end of the month) or maybe even 1 or 2 March 2014 because rule 1.5 does not apply to 'not more than' situations and so, when they arise, one should calculate the

	equivalent number of days?
1.8	See our comments on 10.14(3) regarding authentication by the court.
1.9	contact details – Should this be ‘electronic address’ rather than ‘email address’ to improve future-proofing, and to achieve consistency throughout (e.g. Rule1.42(2)(c) says ‘electronic address’, Rule1.45(1)(b) says ‘email address’).
1.9	proceedings – Does this require mention of the adjudicator?
1.10	‘requires’, not ‘require’
1.11(3)	Would this not belong more comfortably as a 1.10(2) rather than here?
1.12	It is not clear what ‘also’ in the first line relates back to.
1.12(a)	An unregistered company’s principal place of business will already have been required to identify the company, so strictly this need only say ‘In the case of a registered company, its registered office’.
1.12(b)	Should this say ‘its principal trading address’ rather than ‘any principal trading address’?
1.12(c)	What about changes of name of an unregistered company?
1.13(b)	Should this say ‘the bankrupt’s principal trading address’ rather than ‘any’?
1.13(f)(i)	‘and’ required at end.
1.14(2)	Should this be extended also to mention orders of the adjudicator (which do get a mention in 1.14(3))?
1.14(2)/(3)	We can see that these continue the policy of current Rules12A.37(2)/(3), but have difficulty with the concept of the Gazette notice being conclusive evidence of the date of the order if the order itself can be produced and in fact shows a different date; indeed there is then a requirement to correct the error. Are 1.14(2)/(3) actually required at all, or can the Rule stop at 1.14(1), simply that the Gazette notice is evidence?
1.11(1)/1.15(3)	Why the different formulation ‘if relevant’/‘if placed by an office holder’?
1.16	Is the registered office a deliberate omission from the list?
1.18	Is this really necessary?
1.25 and 1.33	Typo – ‘a matters’

1.34	This should say: ‘other than an application for an administration order’. (Applications for administration orders are dealt with by Rule 3.4.)
1.36	Opting out – In our response to the Red Tape challenge consultation document we expressed concern that provisions allowing for creditors to opt out of receiving information would place a considerable administrative burden on office holders as it would mean arranging for differential treatment of individual creditors. The draft Rule confirms us in this view. There is no provision for any time-limit for creditors to notify the office holder that they wish to opt out: they can opt out or back in at any time. This means that the office holder will need to keep a running record in real time so that he can see who has opted out, who has not opted out, and who has opted back in, at any stage in the proceedings. There can be logistical and administrative challenges for some practitioner’s systems that could make having an opt-out provision unduly costly or prone to error. This could create a risk that an innocent administrative error could result in the wrong people receiving information, or those who are entitled to it not receiving it at all, leading to creditors becoming unintentionally disenfranchised on matters such as the administrator’s proposals or fee approval. For this reason we would prefer to see the opting out provisions abandoned entirely. If it is decided to retain them, then they should be optional at the discretion of the office holder, and the draft Rule 1.36 should be amended so that it is no longer mandatory.
1.39, 1.40 and 1.42	What is the impact on presumed delivery where the address is incorrect?
1.46	There is no need for the heading to refer to section numbers. Would this revision be a good opportunity to define what ‘available on [the] website’ means? Is it free or restricted access? Is it available without time restriction?
1.48(4)(b)	Needs an ‘or’ at the end.
1.50	Should there be a reference in the rule to the exceptions currently mentioned in the Note?
1.52	Is there a reason for (1) saying ‘a creditor, a member of a company or a contributory of a company’ and (2) saying ‘a creditor, or member or contributory of a company’? Could not/should not the same formulation appear each time?
1.53(1)(b)	We are not sure of the reason for using the term ‘insolvent winding up’. Is this defined anywhere? Why not just ‘creditors’ voluntary winding up’? See further our comments on 15.2(8)(b), 15.4(1)(c), 15.22 and 16.21(1)
1.53(2)	We suggest that this should specify ‘a list of the names and addresses of the creditors and the amounts of their respective debts’. Sub-rule (4), allowing the omission of the name and address in a particular circumstance suggests that the addresses are routinely required, but it

would be helpful to make this clear in the first place.

1.53(4)/(5) These are currently one sub-rule 12A.54(4). The split into two is not quite satisfactory as (5) is not specifically linked back to (4), although common sense makes it reasonably obvious. However there is no need for the split. The wording of (5) is quite satisfactory if it is simply moved up to be a continuation of (4).

Part 2 – Company voluntary arrangements

2.2(1)(b) The 'proposer' is not defined and may comprise more than one person – e,g, the directors or joint administrators. This term therefore lends itself to being defined, but again emphasises that it would be helpful to have some convention for identifying defined terms, particularly when they are words in everyday use. See further comment on 2.7.
The attempt to provide 'plain English' here has resulted in a rule which is less clear than the current rule. It is not clear whether the proposer is meant to be explaining why he, as opposed to somebody else, is making the proposal. The intention is presumably that the proposer should briefly explain why, in his opinion, a voluntary arrangement is desirable (as currently in Rule 1.3).

2.2(1)(d) The proposal has to be authenticated by the proposer. According to 1.8(2), for hard copies, this seems to require a signature and where the person is signing on behalf of a 'body of persons', he must state his position in relation to that body. This goes more to the definition of 'authenticate' but presumably joint administrators represent a 'body of persons' so the signature of one is sufficient for both. Could there be problems where a paragraph 100 statement has been made limiting the administrators' powers so that only one of them can deal with the proposed CVA? Presumably in that rare situation it would be sufficient for the administrator to explain it in the proposal.

2,2(3)(b) A nominee cannot make a proposal – see comment on 2.7 below.

2.3(1)(b) What is meant by 'extent of the charge'? Currently, Rule 1.3(2)(a)(ii) simply requires the proposals to state 'the extent to which assets are charged in favour of creditors'. The amendment suggests that more is required than simply stating which assets are charged as this could be read to suggest that it is necessary to state the monetary value of the charge by comparison with the value of each asset or group of assets – i.e. to show whether there is a surplus, or just whether all of each asset is charged.

2.3(1)(g) As the Act does not properly contemplate the help which the directors usually receive from the nominee in drafting the proposal, could (g) include a suggestion that if some of those fees represent time spent in helping to draft the proposals, they should state that is the case?

2.3(1)(i) 'How the fees and expenses of the supervisor will be paid'. We appreciate that this is probably intended simply as a modernisation of current 1.3(2)(h), but the revised wording does not seem to require sufficient information; it could be read as meaning ‘out of which assets the fees and expenses ... will be paid’. The current wording ‘the manner in which … the supervisor … is to be remunerated…’ seems to require an explanation of the amount or basis and is accordingly preferable.

2.3(1)(s) ‘how funds held for the purpose of payment to creditors, and not so paid on the termination of the CVA, will be dealt with’ – This replicates the existing rule but as such, fails to take advantage of this opportunity to ensure that proposals more clearly set out how those funds should be held during the course of the arrangement as well as just at the end – i.e. whether they are to be held on trust and what happens to the trust on failure (the preceding (r) merely talks about the mechanics of banking or investment).

To reflect the reality of the nominee having been instrumental in drafting the proposal, and for this to be more clear for creditors, it would seem sensible for the nominee’s name, address and qualifications also to be included in the proposal. At the moment (as in the current Rules) they only require details of his remuneration.

2.3(3)(b) Why would an administrator or liquidator make a section 176A(5) application when section176A(4) allows the proposal itself to disapply the requirement for a prescribed part? Or is this meant to be a disclosure of the administrator’s/liquidator’s intentions in the event that the CVA is not approved?

2.3(4) If the prejudicial information is, as it most likely, the value of the net property as a whole, then it is not possible to provide an estimate of the prescribed part, so the wording of ‘a statement [concerning the exclusion] accompanies the estimate’ is not apposite (an issue that also arises under the current 1.3(2)(ca)/1.3(4)).

2.4(2)&(3) (2) The [*nominee’s*] notice must state the date the nominee received the proposal
(3) The period of 28 days referred to in section 2(2) begins on the date the nominee received the proposal

For clarity and to avoid any issue concerning deemed receipt, it might therefore be sensible for (3) to provide that the 28 day period should run from the date stated by the nominee, in (2) as the date on which he received the proposal.

2.4(4) This is confusing as, if the company is being wound up, only the liquidator is empowered to make a proposal. It may most easily be remedied by including, as recommended above, a definition of ‘the proposer’ which will include a liquidator. If that is the case, would the intention of this draft rule be to ensure that the liquidator in a compulsory winding up sends a copy of the proposal to the official receiver? If so, plain English does not appear to have been achieved here.

2.5(1)(b)	'particulars of the claim and of how and when the security was created' – What is meant by 'particulars of the claim'? The current Rule refers to 'particulars of the claim **and its amount**, and how and when the security was created'. Is it intended that the (approximate) amount outstanding should still be stated, or is it sufficient for it to provide a summary of the original loan or facility in respect of which the security was granted?
2.5(1)(c)&(d)	Why is it necessary for addresses to be provided? Does this properly tie in with the new Companies Act rules regarding non-disclosure of address for filing at Companies House? Although the draft rules provide for interested parties to be able to apply to court for a direction that specified information be omitted, this should not be necessary if they are only omitting information which need not, elsewhere, be registered or revealed.
2.5(1)(h)	We are not clear what is envisaged by this. Such particulars may be narrative rather than the numerical information which is required for a statement of affairs. See also 2.7 which seems to confirm this point.
2.5(2)	Statement of affairs must be made up to a date not earlier than two weeks before the date of the proposal. Draft rule 1.5 makes no provision for time periods expressed in weeks. How, precisely, is this period of time calculated? 'not earlier than' is not defined in the Rules, draft Rules or Civil Procedure Rules. If the proposal is dated 21st January, absent permission from the nominee under (3), would a statement made up to 6th January comply with 2.5(2)?
2.5(3)	Similarly, how exactly is 'not more than two months' to be calculated for the purposes of 2.5(3). The time limit provisions for months in 1.5 does not appear to cover 'not more than'. For example, if the statement of affairs were to be made up to 30 December 2013, to comply with this draft rule, would the proposal have to be dated 27th/28th February or maybe even 1 or 2 March 2014? On time periods generally, see our comments on draft rule 1.5.
2.7	The nominee can never be the proposer. The same person may be making the proposal, but acting in a different capacity. A definition of the proposer would be helpful and all references to the nominee either being or not being the proposer should be removed.
2.7(2)(a)	'threatened with insolvency' – this appears to be a new phrase. What does it mean? More importantly, the new draft rules appear to be introducing a requirement for insolvency (or at least, suggesting that the company must be insolvent) before the directors of a company can propose a CVA. The Act does not currently require a company to be insolvent before its directors can propose a CVA.
2.7(3)	'…in what circumstances…'. We are unclear what is envisaged by this.
2.7(3)(a)	What is the meaning of 'become insolvent'? Does it mean entered an insolvency process under the Act?

2.7(3)(b)	Is ‘adjudged bankrupt’ still a suitable description for both adjudication and court order? ‘entered into an arrangement with creditors’ – this should either be a defined term or refer here more accurately to the formal procedures which it is intended to cover.
2.8(3)	Does the court not also return the related copy of the statement of affairs?
2.8(4)	At what time or stage in the proceedings does the nominee have to deliver a copy of the report to the company? Does the copy which the nominee sends to the company have to bear the court seal?
2.9(2)	‘…the person intending to make the proposal…’ i.e. ‘…the proposer…’?
2.10	The same computations of time issues apply as with non-moratorium-led CVAs.
2.13(3)	What is the cross reference to rule 8(3)(b)? Is this meant to be to rule 2.12(3)(b)?
2.13(4)(b)	Might this be better merged into 2.13(5) to say that ‘The documents filed with the court under paragraph 7(1) of that Schedule must be filed not later than 10 business days after … and be accompanied by…’. This fits with the documents being filed as a single batch, whereas the proposed (4)(b) might be thought to suggest that the nominee’s statement could be filed separately.
2.14	Why is it considered necessary for the directors to deliver a copy of the proposal to the company?
2.14(6)	Within what time scale must the nominee deliver this notice to enforcement officers and distraining parties? Presumably the reference to distrained will be replaced to reflect the correct way of describing a party that has exercised commercial rent arrears recovery. The latter point also applies to 3.8, 3.22(3)(b) and 3.27(3)(d).
2.15(4)	This is a lift of current 1.41(2), but does the court have the power to extend the moratorium? What is meant by ‘renewing or continuing’?
2.17(1)(b)	‘goods under a hire purchase agreement’. Does this not need to be restored to the current ‘goods in the possession of the company under a hire purchase agreement’ (current 1.43(1)) to make sense?
2.17(3)/(4)	These are a lift of current 1.43(3)/(4), but could they not usefully be rolled into one and indeed reversed as we would expect to give notice by sending the second copy of the sealed order?
2.18	‘a notice’, or ‘the notices’

2.21	'…must deliver a notice that application will be made to the nominee at least five business days beforehand.' Why this awkward reversal of the construction of current 1.47. Surely much better as '…must deliver to the nominee at least five business days beforehand, a notice that application will be made.'
2.22(1)	This requires a meeting of the company. In 2.24(4), 2.25(b), 2.33 this becomes a members' meeting, but is a company meeting again in 2.29 and 2.44(1)(b).
2.22(2)(c)(iii)	If the company is in administration or liquidation, then there cannot be a Schedule A1 moratorium, so the words 'and no moratorium is in force' are not required.
2.23(1) and 2.25	Why the distinction of 'all creditors', but 'all persons who are, to the best of the nominee's belief, members'? In general it will be easier to have a complete list of members than of creditors.
2.23(3)	This does not deal with the situation where the nominee is the administrator or liquidator. Or is it envisaged that the vote is taken under the administration/liquidation rules in those cases – if so, is that appropriate as the office-holder is acting as nominee rather than as administrator/liquidator?
2.32(3)	Is this required at all? If so, perhaps 'The value of a member's votes is…' rather than 'The value of a member for voting purposes is..'?
2.33(2)	Is this 'express provision to the contrary' intended to mean that the articles deal expressly with the approval of a CVA, or does it pick up a provision along the lines that the A shareholders have the ability to over-rule the B shareholders? Has current 1.18 actually caused a problem? Can 2.32 and 2.33 more simply say something to the effect that the members vote on the basis that this is an ordinary resolution and that votes by correspondence are to be counted as though cast at a meeting?
2.34(1) and 2.35(4)	These are contradictory as regards secured creditors. The current scheme is that a wholly secured creditor is entitled to vote, although the vote is counted as nil value. This is essential in order to bind that creditor if it later transpires that the security is not sufficient.
2.34(2)	Should this address the decision in *Roberts v Pinnacle Entertainment* [2003] EWHC 2394 (Ch) to the effect that the creditor can vote if the chair knows the value of the vote from the debtor's statement of affairs rather than by direct communication from the creditor? This could either be clarified or changed according to the policy intention.
2.35(1)	2.35(1) (a)/(b) contradict (c)/(d). Which pair is wanted?
2.35(3)/2.36 / 2.38(4)/2.39	The formula of 'the nominee, an appointed person, or the chair' only becomes clear as to the intention at the fourth mention when 2.39(1) explains that the first two refer to correspondence and the last to a

	meeting. But since the chair has to be the nominee or an appointed person is there any merit in mentioning the chair? If all three are to be left in, the clarification would be helpful at first mention. In 2.38(4), the chair is not mentioned, so there is in any event an inconsistency.
2.37(1)	This probably needs ‘Subject to paragraph (2)…’
2.37(5)(a)	But what is a ‘qualifying vote’? Read with 2.34 this suggests that the creditor needs to attend the meeting and to have submitted his claim, so those who attend but abstain are included in this calculation, but those who ignore the process entirely are not. That is Dear IP’s interpretation of current 1.19(4), but it differs from the current equivalent in administration (current 2.43(2), although that appears to have been removed from the new rules) and it appears that this formulation has not removed the current doubt.
2.37(6)	Typo ‘…in accordance with under these Rules’
2.38(3)	‘…to review a decision taken by correspondence or to summon another meeting’. Would this not be more symmetrical as ‘to conduct a further vote by correspondence or to summon another meeting’?
2.43	Where proxies are to be retained, is it clear for what period? Six years? Should it be made clear that this includes all supporting information accompanying the proxy?
2.46(1)	‘proxy’ should be ‘proxy-holder’
2.47(4)(c)	Should be ‘given notice’ rather than ‘given a notice’?
2.48(2)(b)	Is this in addition to the total of one hour allowed by 2.31?
2.49(3)	This formulation of timescales is an improvement on the current 12A.24 both as to the making of the request and the supply of the information. However, given that the complaint of exclusion cannot arise until the exclusion has occurred, the three days are in fact always going to be measured from the date of the request for the indication, so the words ‘the day the exclusion is claimed to have occurred, or on which’ are not required.
2.50(1)	Presumably this re-presentation of current 12A.25(1) is intended as a simplification of language, but the reverse appears to have been achieved. The natural flow has been replaced by an awkward construction, which hinders immediate comprehension.
2.52(2)	Should this specify that the consent and confirmation need to be delivered before the deadline?
2.53	Is this trying to compress too much into too few words? Does it not require different treatment according to whether the court has said, on the one hand, that the members’ ‘Yes’ is to replace the creditors’ ‘No’, or on

the other hand that the members' 'No' is to replace the creditors' 'Yes'? If the court has ruled for a 'No' result is there any longer a supervisor to whom a sealed copy can be delivered? Even if that means the person who had apparently become supervisor on the strength of the creditors' vote, does that person now have authority to deliver notice to the creditors, or is that where the proposer is meant to step in and deliver this notice?

2.56(5)	Period of annual report to end 'with the anniversary of commencement of the CVA'. This matches the current wording (1.26A(4)), but should it not be the day before the anniversary, or even better use the wording for liquidations etc report for the 'period of 1 year commencing on the [date of approval]'?
2.59(4)	We think 'must' should be 'shall' in this context. It is a statement that vacation does not, as a matter of law, occur until the obligations have been complied with, rather than a direction to the supervisor not to do some undefined action.
2.60	One of the Red Tape Challenge proposals put forward by the Insolvency Service is to remove the requirement to maintain time records where remuneration is not sought on a time cost basis. If that proposal is adopted, then this rule will need to be amended to reflect the new provisions. The same comment applies to rule 8.61.
2.60(3)(b)(ii)	'is' should be replaced with 'has been'

Part 3 – Administration (Schedule B1)

3.3	We suggest that rule is not required. The person appointing has no means of checking other than asking the IP. The formal function of the committee has existed since 1986, but in reality serves no purpose. Monitoring an IP as regards the existence and adequacy of security should be for the regulator. Rule 3.3(3) is required, but should be somewhere applicable to all types of appointment.
Chapter 2	The removal of the requirement of existing Rule 2.3(5)(b) to provide details of prior professional relationship appears odd. This is a public document and helps ensure transparency and objectivity, and is in line with the wider SIP16 obligations. Arguably this principle of disclosure should be extended to other insolvency procedures.
3.8	Presumably the reference to distrained will be replaced to reflect the correct way of describing a party that has exercised commercial rent arrears recovery. See also 2.14(6), 3.22(3)(b) and 3.27(3)(d).
3.9	While the consequences may vary according to the split suggested by this rule, should not the court at least be made aware of any known proceedings anywhere in the world in any of these situations?

3.16(1)(c)(vii)(bb)/(dd) and 3.20(1)(c)(vi)(bb)/(dd)	Are these actually required?
3.19(8)(d)	This should not be required. There is no related restriction of the use of the out of hours procedure, no definition of 'damaging' and as it is merely a filing, no review of the quality or validity of the reasons, not that a reason can be 'invalid' and no consequence if someone did think the quality or validity of the reasons to be inadequate. Removal of this requirement will remove a pointless piece of red tape.
3.19(12)	Why not just write the full words into (3) and (7) respectively?
3.22(3)	This appears to overcome the *Minmar* problem.
3.22(3)(b)	Presumably the reference to distrained will be replaced to reflect the correct way of describing a party that has exercised commercial rent arrears recovery. See also 2.14(6), 3.8 and 3.27(3)(d).
3.24	Should there be a reference here to date (and time) of appointment of the administrators?
3.27(3)(d)	Presumably the reference to distrained will be replaced to reflect the correct way of describing a party that has exercised commercial rent arrears recovery. See also 2.14(6), 3.8 and 3.22(3)(b).
3.29(1)(c)(ii)	Does this description of the statement of affairs deal adequately with the prescribed part not being available to chargeholder deficiencies? There remains an issue as to whether a prescribed part has to be identified even though the floating charge holder is paid in full, where this would impact on the funds against which other chargeholders can prove for their deficiencies, but this is probably not something that can be dealt with by the Rules.
3.32/3.33	These are lifted from current 2.31 and 2.32, but are 3.32(3) to (8) actually required, in contrast to the simplicity and absence of detail in 3.33(2)?
3.34(1)(i)	This omits the situation where approval will be deemed. In any event this is a matter for a covering letter enclosing a notice of meeting or a voting form along with the statement of proposals.
3.34(3)/(4)	Would these be better presented as a single paragraph?
3.34(5)	We appreciate that this is seeking to make the point that approval of the statement of proposals is not approval of the basis of remuneration or payment of pre-administration costs. However, almost all of the content of the statement of proposals listed in 3.34(1) and (2) is disclosure rather than 'proposals' as such. Is not the current formulation as regards pre-

	administration costs in 2.33(2B)(h) (and indeed lifted into 3.35(h) a clearer approach?
3.35	It remains unclear whether these disclosures are required if the pre-administration costs have all been paid pre-administration, or although not all paid, the administrator (or other IP) does not now seek their payment in the administration. Even more fundamentally is this prescriptive rule really required at all? We suggest that it be deleted and amend 3.34(5)(b) to end 'in respect of which approval for payment as an administration expense will be sought under rule 3.50.' If approval is to be sought it is to be expected that the request will include appropriate detail to enable an informed decision to be made. The definition of pre-administration costs in current 2.33(2A) seems to have been omitted. We think this is required with the key words 'with a view to [the company's entering administration]' to define the scope of this, or perhaps 3.35(c) is thought to be adequate for this purpose (if 3.35 is to be retained).
3.36(1)(a)	Again why 'every creditor', but 'every member of whose address he is aware'?
3.36(4)(a)	This follows current 2.33(7), but is there a policy reason why this advertisement (uniquely?) does not follow the formula of gazette and may advertise in such other manner as thought fit?
3.37	The interaction of this rule with the vote by correspondence rule (15.26) is not clear. The 10% by number provision is new. Creditors amounting to 10% or more by number may be a minority in value. In the extreme example of two creditors, one large and one small, the small creditor would amount to 50% by number and have disproportionate influence. This provision could accordingly be potentially disruptive.
3.40(2)	Should be 'administrator', not 'administrators'
3.49	No attempt has been made to clarify the concepts of (a) 'expenses properly incurred' or (g) 'necessary disbursements'. In the light of the difficulty of achieving something that is actually going to be helpful, and the recent relaxation of absolutism offered by *Nortel*/*Lehman*, that is probably for the best.
3.50(3)(b)	See the comments below on 17.15(3).
3.52(3)	This fails to recognise that in a 52(1)(b) administration, the progress report will only have been sent to the secured creditors and sometimes the preferential creditors. If that is so, then the remainder of the creditors also need to be sent the progress report along with the notice of extension. (This issue already exists in current 2.112(5)).
3.54(4)	We note that the date and time of sealing by the court no longer defines the end of the administration (as in current 2.113(3). This removes the clash with paragraph 80(3) which in itself is welcome. Unfortunately the

real problem lies in paragraph 80(3) which fails to define the moment of end of the administration with the precision required. It also remains unclear whether the rule envisages that the notice sent to the registrar of companies should be a copy sealed by the court, a copy of the copy sealed by the court, or an original not bearing the court seal.

3.55(3)	The timescale of 5 business days clashes with the timescale of 7 business days in 7.7(2)(a) (continuing the existing discrepancy between current 2.114 and current 4.7(10))
3.56(1)(c)	Why does this exist separately? In a paragraph 14 case is the holder of the floating charge not the person who made the appointment and so within sub-paragraph (b)? This issue also applies in current 2.115(1).
3.57	The rules follow the current rules in not making clear the sequence of progress reports where the administrator applies to court for the administration to be ended. The application will have been accompanied by a progress report (3.55(1)(a)), but there will then be an interval of some days or even weeks before the court makes the order (or indeed declines to make the order – the outcome cannot be presumed), so it appears that a further progress report is required as a final progress report, overlapping the period of the report to the court (which will not have been circulated to creditors or sent to the registrar of companies). This is not a problem, but it would be helpful if the rules could spell out this sequence as the current rules cause confusion in practice.
3.58	This appears to revert to the unsatisfactory pre-2010 situation of an accounting gap between the administration final report, pre-dating the actual end of the administration, and the start of the liquidation. The plugging of the gap with a new requirement for a supplementary report 'if anything happens' is an awkward fix. All that is required is for the 2010 system to state that the copy notices need not be sent until the notice of conversion form has been registered. We understand that this reversion to the original is intended to eliminate a perceived double mailing, of the copy notice followed by the final progress report. It does not achieve that, as there will be a mailing of the administration closing documents followed almost immediately by a first letter from the liquidator. It actually creates a double mailing, as opposed to a single mailing if the liquidator or former administrator can kill all the birds with one stone by circulating simultaneously the notice of conversion, the final progress report running to the date of registration and the first letter in the liquidation advising that the conversion has actually happened, inviting proofs of debt etc.
3.68(1)(a)	There is no need to specify that the departing administrator deducts from the assets to be handed over any distributions already made. This oddity also exists in current 2.129.

Part 4 – Receivership

4.2	See comments on 3.3 above.
4.5(1)(b)(ii)	See comments on 3.29(1)(c)(ii) above.
4.8/4.9	These are lifted from current 3.6/3.7, but are 4.8(3) to (8) actually required, in contrast to the simplicity and absence of detail in 4.9(2)? This is the same comment as on 3.32/3.33 above.
4.11(5)/4.21(3)	See the comments on 2.3(4) above.
4.11(6)/4.21(2)(b)(i)	The formulation would more sensibly be 'If intends, state the fact and the reason' as this is an item where a nil return looks foolish.
4.14 (5)	Is there a time-limit for delivery by the administrative receiver of the court's sealed order under section 43(1) to the secured creditor? Under 4.14(3) the notice of the hearing has to be given 'as soon as reasonably practicable'.
4.15	The periodic accounting duty assumes that a receiver easing to act is the end of the process and does not allow that he may be replaced, or that a joint appointee may continue in office. This problem is inherent in section 38.
4.17(2)/(3)	The persons who may deliver (prompt) notice of the administrator's death have been narrowed. Given that many practitioners now operate through limited companies, the mention of a partner is too restrictive given that 'other persons' will have to wait 28 days. And why is the most obvious notifier, a joint appointee, not mentioned?
4.21(4)(b)	The cross reference should be to paragraph (1), not paragraph (2)(b).

Part 5 – Members' voluntary winding up

5.1.2	This provides a detailed listing of what is now required in the statement of assets and liabilities attached to the declaration of solvency as a replacement to form 4.70. We are not convinced that this approach is necessarily helpful, as it appears that it will add to the level of detail and checking required and is not particularly practical. What will Companies House, or the solicitor before whom the declaration is made, now require to see?
5.1(2)(e)	Why is 'the nearest pound sterling' specified for the liabilities, but not for the assets? Current form 4.70 has 'the nearest £' as the column heading for both assets and liabilities. Moreover, the various rules describing statements of affairs do not specify the currency, so why is this required for the MVL statement of assets and liabilities?

5.1(2)(e)(iii)	‘…costs…and other expenses…including interest…’. Section 189 interest is an application of a surplus and not a cost or expense.
5.1(2)(g)	‘…surplus after paying debts in full.’ This echoes the language of section 189 where ‘surplus after payment of the debts’ is before interest, where here it is after interest. Both this and (e)(iii) above would benefit from greater precision to achieve consistency of language, although both these infelicities are lifted from the current form 4.70.

Chapter 2 The liquidator – general comments

5.2, 5.3 and 5.4	If these rules are intended to standardise appointments, should they not be the same as those for CVLs, for example 6.16 mutatis mutandis for appointment by creditors, 6.18, 6.19? There are significant differences, for example in particular joint appointments and the basis on which liquidators are entitled to act.
5.2(2)(b)	If an IP is qualified under the act, by definition he/she has security.
5.2(4)(b)	See comment on 6.16(4)(b) below.
5.5	This includes references to members voting by correspondence, but Part 15 of the Rules does not apply to MVLs, so the procedure to obtain a resolution should be compliant with the company's articles / the Companies Act?
5.5(3)	The word ‘state’ should be deleted from the first line and added after (a) and (b).
5.5(4)(b)	The progress report ends on a date that lies in the future – see comments below on Rules 6.21(4), 10.78(4)(b) and 17.11.
5.5(4)	See comment on 6.21(4) below.
5.9(2)/(3)	See comment on 6.26(2)/(3) below.
5.11(1)(a)	See comment on 6.29(1)(a) below.
5.11(1)(b)	See comments on 6.29(1)(b) below.
5.12(1)(b)	The last word should be ‘or’, not ‘and’.

Chapter 3 – Disclaimer

There are a number of inconsistencies between this chapter and the equivalent chapter (chapter 6) of the CVL provisions. Would it make more sense to have just a single section for disclaimer which applies to all liquidators?

5.15(2)/6.34(2)/7.76(2)/10.106(2)	These mention ‘land or buildings’ which is lifted from the notes on the current disclaimer forms, but should that not be simply ‘land’?

5.15(5)	This rule reads ‘authenticated’, whereas rule 6.34(5) reads ‘authenticates’.
5.17	This rule includes the words ‘who is disclaiming the property’ after the first occurrence of ‘liquidator’, whereas rule 6.36 does not.
5.18/6.37	Again there are inconsistencies in the wording and layout of these two rules.
5.18	See comment below on 6.37, but additionally here in the context of an MVL the word ‘insolvency’ is inappropriate.
5.20	See comments on 6.39 below.
5.23(3)(k)/(5)	See comments on 6.42(3)(l)/(5) below.
5.24(3)	See comment on 6.43(3) below.
5.27(2)	The reference to ‘creditors’ should presumably be ‘members’. (This chapter seems to have been lifted straight from chapter 7 of the CVL provisions.)

Chapter 5 – The heading ‘Information to creditors and contributories’ should presumably be ‘Information to Members’?

5.28/6.13	Again, different language is used to the same end.
5.32	See comment on rule 6.10 below.
Distributions	Currently, distributions in MVLs are deal with by the single Rule 4.182A. Under the revised Rules the equivalent provisions are scattered among a number of rules, which makes them difficult to follow. The equivalent provisions seem to be: Rule 14.31 (1) & (4) Rule 14.32 (a), (b), (c), (d), (f)&(g) Rule 14.38(3)(c) Rule 14.41(1)(c)

Part 6 – Creditors’ voluntary winding up

6.3(2)(c)	Statement of affairs to be ‘verified by a statement of truth by the directors’ clashes with section 99(2A) which requires this verification by ‘some or all’ of the directors.
6.4	See comments on Rule 3.29(1)(c)(ii) above.
6.10	This rule assumes that the section 98 meeting will no longer be mandatory, a Red Tape Challenge suggestion with which we disagree as it is contrary to achieving creditor engagement. In any event, the rule as drafted is problematic in referring to 10% of creditors voting against the liquidator continuing in office, but does not set up a vote in the first place, nor does it provide a mechanism for alternative candidates to be identified

	or voted upon. The 10% voting against merely triggers a meeting, but it is nevertheless odd that 10% can have such influence if the other 90% positively engage and vote in favour. Should it not be 10% voting against **<u>and</u>** a majority of those voting? If the creditors do want a different liquidator, then the timescales are potentially becoming very long (up to 14 days after appointment by the company + at least 14 days deadline for voting against + at least 7 days to then convene the section 98 meeting). Meanwhile, depending on how it is proposed to amend section166 to deal with this situation, the liquidator is either able to do his worst, or is restricted to the limited section166(3) powers (absent a costly court application) which may damage the prospective outcome of the liquidation.
6.13	See comment on 5.28 above.
6.16, 6.18 and 6.19	See comments on 5.2, 5.3 and 5.4 above.
6.16(2)(b)	How is the chair of the meeting supposed to satisfy himself that the appointee has a bond? If he can rely on a simple representation of that fact by the appointee, then that is already achieved by the statement of qualification in 6.16(2)(a). If he cannot so rely, then a fresh red tape burden is being created.
6.16(4)(b)	Why are the liquidator's contact details being added to the certificate of appointment? The certificate will only ever be used when the liquidator himself produces it to an enquiring party, so the contact has already been achieved.
6.16(5)(b)/ 6.18(4)	'...the circumstances (if any) in which the joint liquidators must act together' does not match the wording of section 231(2). Is it intended to modernise section 231(2) in like manner?
6.16(7)	We suggest that this formality be abolished. In the great majority of cases, there is no creditors' committee, so this review does not take place in any event. If there is a committee and they wish to review the adequacy of the bond, they can make that request of their own initiative. As it stands this mandatory periodic review (current Rule12A.56) is an item of red tape that in practice serves no discernible purpose.
6.21(4)	This perpetuates the problem in current Rule 4.108(3) that a progress report is required ending on a date that lies in the future. This problem was introduced by the 2010 amendments. See comments on 5.5(4), 10.78(4)(b) and 17.11.
6.25 (3)	(3)(a) ends abruptly after 'or', with no paragraph (3)(b).
6.25(4)	While we support the idea of abolishing final meetings, the 10% vote against release carries the same difficulties as discussed under 6.10 above.
6.25(8)	The cross reference should be to 6.30, not 6.31.

6.26(2)/(3)	The persons who may deliver (prompt) notice of the liquidator’s death have been narrowed. Given that many practitioners now operate through limited companies, the mention of a partner is too restrictive given that ‘other persons’ will have to wait 28 days.
6.29(1)	Why the (1) as there is no (2)?
6.29(1)(a)	It is not necessary to say that the handover of assets will be after deduction of distributions already made (although the wording is carried over from current 4.148).
6.29(1)(b)	The word ‘administration’ could helpfully be changed to ‘winding up’ or ‘liquidation’. (The word has been carried over from existing 4.148). Changing ‘his’ to ‘the liquidator’s’ may be politically correct, but is awkward and loses clarity as to the fact that this is the former liquidator and not the successor.
6.30(1)(d)	‘liquidator’ should be ‘former liquidator’.
6.33	We hope that this rule will be rendered redundant by adoption of the Red Tape Challenge suggestion that all requirements for sanction of powers be abolished. If that does not happen, then there remains a major difficulty that a general meeting of creditors (or vote by correspondence) is not a suitable forum for the provision and discussion of detailed information that is likely to be confidential and in respect of which any leakage is likely to be prejudicial to the conduct of the matter in question. It is also a very expensive way of obtaining a specific sanction where the sum involved is not great. If sanctions are to be retained at all, then we suggest that this should only be where the creditors have shown sufficient interest to form a committee.
6.33(3)	If the rule is retained (see above), then the change of ‘shall’ to ‘will’ in the prohibition of late approval does not seem appropriate use of language. The rule should either retain the ‘shall’ of current 4.184(2), or substitute ‘may’.
6.34(5)	See comments on 5.15(5) above.
6.36	See comment on 5.17 above.
6.37	Although ‘…the liquidator’s records of the insolvency…’ is lifted from current 4.190A, should this not be ‘…the records of the winding up’ for consistency (see for example 6.16(6))?
6.38	The reference should be to rule 1.48, not 1.46.
6.39	This is based on current 4.192. It is not apparent what purpose it serves, or (4) what type of interest might actually prevent or impede disclaimer. The explicit provision in 6.39(3) prohibiting disclaimer for 14 days where (6.39(1)) there is some person who claims, or may claim to have an interest in the property (i.e. probably every case of disclaimer), will act as

	a severe impediment on this vital right of the liquidator. It is also unclear how this 14 day prohibition interacts with the 28 days allowed for disclaimer where a notice to elect is served under 6.38. This appears to be a carry-over from rule 75 of The Companies (Winding Up) Rules 1949 when it was necessary to identify interested parties so that they could potentially be joined into the court application for permission to disclaim. It is now at best redundant, and if in its draft new form imposes a 14 day moratorium on disclaimer, then it is a serious obstruction to the process.
6.42(3)(l)	The court's order will specify the special manager's remuneration and 6.42(5). The special manager's remuneration will be fixed from time to time by the court. Are these both intended, as it is not clear how they interrelate.
6.43(3)	Is it deliberate that whereas an office holder's bond is capped at £5 million per case and £25 million in aggregate, no such cap exists in relation to special managers (continuing a point that applies equally to current 4.207(3)).
6.47(4)(b)	Should be 'manager', not 'manger'.
6.47(4)(f)	'winding up' or 'liquidation' rather than 'administration'?

Part 7 – Winding up by the court

7.1(2)	The descriptive words in brackets after mention of section123(1)(a) and 222(1) make for a very long sentence, are unnecessary and in our view detract from comprehension. In relation to section 123(1)(a) why are there said to be two cases of unable to pay debts? Are there not three, namely (a), (b) and (e)?
7.3(1)(f)	Delete 'it must' from the middle of this as the 'must' is provided in the opening words of (1).
7.3(1)(g)	Grammar: '…give details of…must be given'.
7.3(2)	'authorised person' is being used in a sense that does not match the definition of this term in 1.1. This highlights the need for adopting some convention to identify when a term has a defined meaning (see our comments in paragraph 2.8 above).
7.4(3)	And email address (if any)?
7.6	The new rule does not require the company's registered address to be identified, which is inconsistent with the current form. It seems sensible to retain this requirement.

7.6(h)/(i)	'Objects' clauses have been consigned to history by company law, so we suggest that (h) be simplified merely to the nature of the business (if known) and (i) deleted.
7.6(l)	First line: the reference should be to a 'statement of truth'.
7.6(4) and (5)	The numbering here has gone wrong.
7.7(2)(a)	See the comment on 3.55(3) above regarding the clash of timescales.
7.8(4)/7.29(3)	Surely this detail is not required? Can it not just say 'by or on behalf of the petitioner'? If the detail is retained, it would improve clarity if (a) were to specify that it relates to an individual and (b) were to specify that it relates to a corporation (although 7.29(3)(b) is obscure and makes us uncertain as to the meaning of 7.8(4)(b)).
7.9(2)(a)	'receive' should be 'receiver'.
7.11(2):	cf. Part 12, Chapter 5, the new requirement to serve a winding-up petition personally (cf. rule 12.19) is likely to give rise to a large number of applications to the court for permission to serve the petition in an alternative manner, given the likelihood that in many cases there will be no appropriate officer of the company available to accept service. This will increase costs for the petitioning creditor. It also creates scope for mischief on the part of the company.
7.11(4)	The reference should be the 'Financial Conduct Authority'.
7.11(5)	'copy' should be inserted before 'must be delivered'.
7.12(2)	Delete from the opening words 'for a notice to be gazetted'?
7.12(6)	What is the reason for the difference in wording between rule 7.12(6) and rule 7.14(4) (the latter including the words 'if the court thinks just')?
7.16(5)	Consistency/modernisation: We assume that the reversion to the old-fashioned notation of 4 pm rather than the 16.00 hours of current 4.16(4) is an oversight. See also comment on 10.21(4) below.
7.17(3)	Consistency: Is 'handed to the court' different from 'filed with the court'?
7.17(4)	Given that such permission is likely to be granted at the hearing of the petition, subparagraph (4) should stipulate a time period within which the list should be amended and re-filed (if that is the intention of the provision). If the petitioner has already handed the list to the court, how is the petitioner then able to amend the list? As the court is itself giving this late permission should not the court make the amendment? (point also

	present in current 4.17(4)).
7.18(1)	Superfluous 'day' after 'five'.
7.19(1)(b)	The reference should be to rule 7.12.
7.19(1)(d)	Are the words 'of the prayer' required? They are not present in 10.29(1)(e).
7.20	There is a (1), but no (2).
7.20(1)(c), (d), (f)(ii) and (iii)	References to the 'creditor' or 'named creditor' should also be references to the 'contributory' or 'named contributory', as rule 7.19(2) also permits a contributory to be substituted for the petitioner.
7.22(1)(c)	The petitioner may also be a Member State liquidator, an administrator, the FCA, etc.
7.20(1)(d)	Will the substitute petitioner have 'applied', or merely have consented to be substituted?
7.20(1)(f)(iii)	Should this not specify the 'amended' petition, as do the subsequent three sub-sub-paragraphs?
7.20(1)(f)(iv)	Is it correct that a sealed copy of the amended petition is being filed?
7.22(1)(g)	The wording here is very clumsy. It could be improved to state: 'order that the costs of the petition incurred by those persons specified in the order be paid out of the assets of the company'.
7.25(4)	'as compliance' should be replaced by 'in compliance'.
7.28(1)(h)/(i)	'Objects' clauses have been consigned to history by company law, so we suggest that (h) be changed to the nature of the business and (i) deleted.
7.28(1)(n)	The reference should be to the 'statement of truth'.
7.30(2)	'receive' should be 'receiver'.
7.30(3)(b)(i):	The reference should be to rule 7.10.
7.31(1)	The reference should be to rule 7.10.
7.33(2)(d)	The word 'either' has been added (compared to current 4.25(2)), but this is incorrect as there are three alternatives.
7.33(4)	Is the omission of 'witness' before 'statement' deliberate? The omission does not assist comprehension.

7.34(1)/7.36(1)(f)(i)	Rule 7.34(1) specifies that the deposit must be paid before the order is made, so it makes no sense for the order to state that ‘upon the sum…being deposited…’. If this is required at all, it should state that the sum has been deposited. 7.36(1)(f)(i) also fails to recognise that the sum may be secured rather than deposited.
7.38	There appears to be no time limit for the delivery of the copies of the order.
7.40(2)(d)	The redesign of this (current 4.32) has gone wrong as there is no verb for (d). This can be resolved by designating this as (c)(iii). The wording of (d) has also gone awry as ‘it applies’ should be ‘they apply’, except that ‘[as these sections apply] to the official receiver’ is not suitable wording in any event.
7.41(1)(c)	Consistency: ‘…information about each one’. In 6.4 this is ‘…details about each shareholder’.
7.41(1)(e)(i)	Typo: ‘affixed’ should be ‘a fixed’
7.41(1)(f)	See comments on 3.29(1)(c)(ii) above.
7.50(1)(b)	See comments on 3.3 above.
7.50(3)(b)	See comments on 6.16(4)(b) above.
7.50(4)(b)	See comments on 10.71(4)(b) below.
7.50(8)	See comments on 6.16(7) above.
7.56	The attempt of this rule to prioritise expenses to date is inconsistent with the prioritisation by category in 7.110 (an issue also present in current 4.107 and 4.218).
7.57(3)	‘must state’ should be deleted and re-inserted at subparagraphs 3(a) and 3(b), to avoid inconsistency with subparagraph 3(c).
7.57(4)/(5)	See comments on 6.21(4)/(5) above.
7.57(5)	Superfluous ‘a’ before ‘meeting’.
7.59(4)	This appears to solve the current problem of overlap.
7.64	See comments on 6.26 above. Also the sub-paragraph numbering has gone wrong.
7.66(1)(c)	Grammar: ‘..grant the liquidator with a certificate…’.
7.68(1)	‘would’ should be ‘wound’.

7.68(3)(b)	‘that’ should be ‘than’.
7.68(7)	Line 3: ‘an appeal’ should be ‘any appeal’.
7.69(1)	Should be ‘the liquidator’s’? Or even better ‘on the application of the liquidator or of the official receiver’.
7.70(1)(a)	See comments on 6.29(1)(a) above.
7.70(1)(b)	See comments on 6.29(1)(b) above.
7.74	This rule will be rendered redundant by adoption of the Red Tape Challenge suggestion that all requirements for sanction of powers be abolished.
7.74(3)	See comment on 6.33(3) above.
7.75(2)	‘…without avoidable delay…’. This is a third party and not the office holder, but for consistency, should this be ‘…as soon as reasonably practicable…’?
7.79	See comment on 6.37 above.
7.81	See comment on 6.39 above. This threatens a serious disruption to the prompt operation of disclaimer.
7.91 to 7.96	Is all this procedure really required? Cannot the Act itself be amended simply to say that ‘The liquidator (voluntary or compulsory) is empowered to demand and recover sums which a contributory is liable to contribute’ (or words to that effect), thereby simplifying sections 150, 160 and 165 and eliminating these six rules? If there is any dispute as to liability (amount or at all), then reference is had to sections 74 to 83.
7.92	Is this requirement for sanction also to be withdrawn under the Red Tape Challenge?
7.93(4)(h)	Is the reference to ‘price per share’ correct? It is inconsistent with rules 7.94(1)(f) and 7.95(2)(c) which both refer to ‘amount per share’.
7.95(2)(g)	Should the reference be to the ‘notice’, rather than the ‘order’? Further, is the reference to ‘interest at the rate’ meant to read ‘interest at the rate specified in the notice’?
7.96(2)(i)	‘date’ should be inserted before ‘the payment’.
7.98(3)(k)/7.98(5)	See comments on 6.42(3)(l)/6.42(5) above.
7.99(3)	See comments on 6.43(3) above.

7.103(5)	'in' (preceding 'the report') should be deleted.
7.103(6)	The words 'whose examination is sought' should be inserted after 'the person'.
7.104(2)(a)	The words 'where the official receiver thinks fit' are inconsistent with the mandatory requirement in subparagraph (2)(a).
7.104(4)	The reference should be to paragraph (2).
7.105(6)	For clarity, the amount of the debt or shareholding (stated in subparagraphs 3(g) and 5(h)) should be specified.
7.105(7)	The reference to 'requisitionists' is not consistent with the reference to 'the creditors or contributories who requested the examination' in rule 7.105(10). Change 'requisitionists' to be 'requisitioners', or 'those requesting the examination'?
7.107(4)	The wording could be improved as follows: 'The court will have such record made of the examination as it thinks proper'.
7.107(6)	'the' should be inserted before 'opinion'. The test being phrased as 'the court is of the opinion that the continuance of the hearing would be <u>calculated</u> to prejudice a fair trial' seems to us to be difficult. It would be better to remove the words 'be calculated to' altogether, and/or replace them with 'be likely to'. See comments on 10.103(6) below.
7.110(2)	The grammatical construction of 6.47(2) is simpler and to be preferred.
7.110(4)(c)	The reference should be to subparagraph (d).
7.110(4)(n)	See comment on 6.47(4)(f) above.
7.110(4)(p)	The reference to schedule 6 should be to schedule 7.
7.116	It is not clear whether this is intended to be a (beneficial) potential promotion to category (a) priority, or whether it is intended to be an (adverse) potential disallowance entirely. (This doubt also exists under current 4.219).
7.117	Suggest 'are payable' rather than 'must be payable'. The change from 'shall' in current r4.21A to 'must' is not appropriate in this instance.
7.119/7.120	We suggest that these rules are unnecessary. See the note in Sealy & Milman regarding current 4.221/4.222 to the effect that the Act provides the liquidator with the power to return capital. There is no apparent reason to involve the court in a routine case; if there are complications in a particular case, the liquidator can use the general power to apply for directions.

7.122 This is a lift of current 4.225, but does it not need to distinguish between a successful and an unsuccessful appeal, or at least state in its opening words that it applies only in the event of a successful appeal?

Part 8 – Individual voluntary arrangements

8.1 ‘supervisor’ – The proposed Supervisor of an IVA is the Nominee.

8.2 (a) Why ‘briefly’? Delete.

8.2 (4) Why has ‘so far as within the debtor’s knowledge’ been added? It is unnecessary. The statement of truth covers the point.

8.2 (4)(d) The greater precision of the existing wording ‘the terms on which it is to be made available for inclusion’, is preferable to ‘the terms on which it will be available for inclusion’.

8.2(4)(i) Should this include also disclosure of any amounts paid to the nominee either as nominee or otherwise in relation to the debtor's affairs (amount and source)?

8.2(4)(k) ‘How the fees and expenses of the supervisor will be paid’. We appreciate that this is probably intended simply as a modernisation of current 5.3(2)(j), but the revised wording does not seem to require sufficient information; it could be read as meaning ‘out of which assets the fees and expenses ... will be paid’. The current wording ‘the manner in which … the supervisor … is to be remunerated…’ seems to require an explanation of the amount or basis and is accordingly preferable.

8.2(4)(o) ‘How long the IVA is expected to last’ invites a subjective judgement; by contrast ‘the proposed duration of the voluntary arrangement’ is objective and as such preferable in a piece of legislation.

8.2 (4)(p) The amount of dividend is not described by the word ‘timing’. Suggest (p) is given the description ‘Outcome’.

8.3 It is necessary for the debtor to deliver to the nominee the proposal and to seek the nominee’s consent. This ought to be provided for since the nominee may not have been involved with the proposal hitherto. Existing rule 5.4 deals with these points. The new rule is deficient.

8.6 Suggest add ‘further information about’ after ‘debtor to provide’ and then delete ‘more information about’, ‘information about’ and ‘any further information relating to’.

8.6(1)(a) Why ‘threatened with insolvency’? The pre-condition for proposing an IVA is that the debtor is an undischarged bankrupt or is able to present his own petition (or in future to make a bankruptcy application to the Adjudicator).

8.6(1)(c) Typo ‘…which have at any time made by the debtor…’

8.7 (1)(b)	'Information about' is not equivalent to 'particulars of'. The former is vague and could be satisfied by a statement that there is recovery process. The existing wording is preferable.
8.15(e) Typo	'…for the purpose of enabling of the creditors…'
8.16 (3)(b)	Suggest replace 'that that person is qualified' with 'that person's qualification'.
8.18(2)	Suggest (2) becomes (1) and reads 'The Nominee must deliver a copy of the report under section 256A(3) to the creditors and the debtor'.
8.19 (2)	What is 'the first day on which the nominee gave notice of the result'? Is it the date of the chairman's report, the date of delivering the chairman's report or something else? It is not clear.
8.19(3)	Should not the 28 day time limit apply to the non-notified creditor with effect from when they found out about the meeting to reflect section 262(3)(b)?
8.19 (6)	Given that the chapter is about IVAs is the first sub-clause necessary?
8.21(2)(b)(i)	This has been over-condensed. The notice needs to identify the court to which any application relating to the proposal or the IVA should be made. This is not achieved by the current wording (although it is noted that 8.8 will itself be rewritten in the light of the bankruptcy applications procedure).
8.21(2)(c)	Compliance can only be achieved by providing verbatim copies of 8.30, 8.31 and 8.34. Any other attempt to 'state the effect' cannot fail to change the meaning. So why not simply require the provision of copies? (This issue also arises under current 5.17(3)).
8.22	As a matter of principle there should always be a meeting. While in practice most IVA meetings are rarely attended by creditors they should be given the opportunity to do so. In most cases there will be no additional cost because the meeting will be held in the office of the convenor. When a room is hired it is a relatively minor expense. It should also be noted that the Act requires a meeting.
8.22(2)	We suggest that the deadline should be16.00 rather than 12 noon. See comments on 15.2(6)(a) and 15.4(1)(a) and (b).
8.28 (2)	Delete 'However'
8.29	One hour seems arbitrary. We not some other period? We suggest that two hours is a more helpful limit. See comments on 15.25.
8.30(1)/8.31(4)	These are contradictory as regards secured creditors. See further our comments on 8.31(4) below.

8.30(2)	Should this address the decision in *Roberts v Pinnacle Entertainment* [2003] EWHC 2394 (Ch) to the effect that the creditor can vote if the chair knows the value of the vote from the debtor's statement of affairs rather than by direct communication from the creditor? This could either be clarified or changed according to the policy intention.
8.31(3)	'Decide' would allow the chair to make a unilateral and arbitrary decision. 'Agrees' implies debate and a basis for a value greater than £1.
8.31(4)	No. This suggests a fundamental misunderstanding of how secured creditors are bound by IVAs in respect of any unsecured element of their debts. Under existing rules they vote but their vote is left out of account (rule 5.23(3)(b)). Critically they are entitled to vote and are therefore bound.
8.32(1)	'and whether votes may be cast' is unnecessary. If a creditor is entitled to vote it follows that he may vote.
8.33	This is largely in the same terms as 2.37 and the same doubts apply as to intention and/or achievement, but confusion is further enhanced by the appearance of an 8.33(7) which does not feature in 2.37.
8.33(3)	A resolution cannot be passed at a meeting unless a creditor votes in favour – a meeting can be held without a vote being cast. Why is this provision necessary?
8.33(5)	Typo – 'and' should be 'an'.
8.33(7)	This does not make sense – it appears to be circular proposition. Suggest amend (4) to refer to claims. Then explain how claims are determined.
8.33(4)	This is not clear and is open to interpretation – should the chair count those creditors who have not submitted a claim in the arrangement or just those who have?
8.34(1)	Should be 'or' not 'and'.
8.34(2)(a)	At what date is the giving of the notice effective? Is it the date of the notice or the date of deemed receipt by the creditor?
8.34(3)	'…to review a decision taken by correspondence or to summon another meeting…'. Would this not be more symmetrical as 'to conduct a further vote by correspondence or to summon another meeting'?
8.34(4)	Should this also specify 'the chair'?
8.35(3)(b) 8.35(6)(b)	Insert 'of' before 'the meeting'
8.37(1) and 8.42(1)	'proxy' should be 'proxy-holder'.

8.38	See comments on 15.40 below.
8.43(2)(a)	How many creditors are needed to force the nominee to specify a venue for the meeting?
8.43(3) 8.43(4)(b)(c)	How do these notice periods fit with the requirement of rules 8.22(2) and 8.23(3)? Consider the following example: Nominee receives proposal and statement of affairs on Monday 1 April. The notice is sent that day. Allowing for the rules of posting 14 clear days will be up on 17 April which (in this example) is a Wednesday. Seven business days later (Friday 26 April) the Nominee receives a request for a venue. The earliest date that meeting can be held will be 13 May. This problem disappears if there is always a meeting to approve/reject the IVA.
8.43(4)(c)	This formulation of 'delivered' is inconsistent with the 'given notice' wording in 2.47(4)(c) and 15.46(4)(c).
8.44(2)(b)	See comments on 2.48(2)(b) above.
8.45(3)	See comments on 2.49(3) above.
8.46(1)	See comments on 2.50(1) above.
8.47(1)	(a) 'Resolve' would be a better word than 'decide' (b) Is it intended that there should be a separate resolution? The words 'at the same time as approving the IVA' (new words) do not have this effect but it is difficult to see why they have been introduced. Why not amend the rule to: 'where two or more Supervisors are appointed the proposal must state whether acts to be done in connection with the IVA may be done by any one of them, or must be done by all of them'. It is always open to the creditors to modify the proposal.
8.47(2)	Should this specify that the consent and confirmation need to be delivered before the deadline?
8.49(5)	This suggests that the original supervisor, if not the same person as the nominee, appointed person or chair, needs to send a separate notification of his appointment (an issue also present in current 5.29, but not intended, as the report of the nominee, appointed person or chair includes this information).
8.50 (2) 8.50 (3)	The words 'for the order' are unnecessary
8.50(4)(a)	Suggest delete 'by correspondence or at a creditors' meeting' as being unnecessary.
8.50(5)	Delete, and add the Secretary of State to rule 8.50(2).

8.50(6)	Why is this necessary? The Secretary of State already has the Order, which presumably would include the date of expiry. If it is necessary should not the parties in 8.50(2) also receive notice?
8.51(5)	See comments on 2.56(5) above.
8.54(4)	See comments on 2.59(4) above.
8.57(1)(n)	‘vacated’ rather than ‘cancelled’ so that this notice matches the terms of the order?
8.58(1)	Typo ‘…deliver to a notice of annulment…to them’.
8.59(3)(e)	Although lifted from current 5.60(3A)(e), as this rule necessarily relates to an annulment following approval of an IVA cannot the wording be provided rather than leaving it to the official receiver to invent the wording?
8.60	Is this necessary? Are not provisions regarding the trustee elsewhere in the draft rules?
8.61	The same comments apply to this rule as to rule 2.60.

Part 9 –Debt relief orders

9.1	‘Family proceedings’ and ‘fines’ have been swapped over from the existing rule but the two acts to which they refer are in the same order. Suggest the existing rule is retained unaltered. ‘Loan’ – the replacement of ‘pursuant to’ with ‘under’ is of no great moment until one reaches a further ‘made under’ in (a). Since ‘pursuant to’ is wholly comprehensible suggest it is retained.
9.2(7)	Suggest amend to ‘Where at the application date any debt was accruing, the amount of the debt…’
9.4(1)	‘after being asked by the debtor to do so’ is unnecessary. Delete.
9.6(7)	Suggest after ‘sources’ add in ‘referred to in paragraph 6’. This is consistent with paragraph 5.
9.9(1)(a)(ii)	Would it be preferable to refer only to the ‘prescribed amount’? (Existing rule does refer to the £1,000 - R5A.10(4)(a).
9.10(a)	Suggest delete ‘information’ and amend opening clause to ‘A debt relief order must include the following information:’.

Part 10 – Bankruptcy

10.1(2)	The term ‘authorised person’ is used here (and in some other places in various Parts) in a sense that does not tie in with the fact that this is a defined term denoting a person authorised under section 389A (rule 1.1). This is another example which highlights the need for adopting some

	convention to identify when a term has a defined meaning (see our comments in paragraph 2.8 above).
10.2(3) (and elsewhere in the petition process)	And email address (if any)?
10.3	The option to advertise the statutory demand has been dropped, but is this sensible? What is wrong with advertising?
10.4(6)	Would this be better included within (5) to make clear that it only relates to a case where service is not personal?
10.5(4)	This requires 'Subject to paragraph (5),…' before reaching the imperative. Current 6.4(2) starts with 'Subject to paragraph (2A),…'. If the omission of these qualifying words is thought to simplify the language and aid comprehension, we would beg to differ.
10.5(5)(c)	Is it intentional that (i) refers to the date and the court in contrast to 10.1(1)(e) which requires 'details'? How does (ii) operate, given that 10.1 and 10.2 do not require this information to be included in the statutory demand?
10.6	There is likely to be a period of a few days between the application to set aside being made and its dismissal by the court under 10.6.1. How is the creditor to become aware of the delay to his ability to present a petition in these circumstances?
10.6(1)	Delete 'for it' (not new but unnecessary)
10.6(3)	Amend to 'Unless the application is dismissed because no sufficient cause is shown, the court…' Alternatively amend to 'Unless the application is dismissed under paragraph 1….'
10.7(1)	This demonstrates the drawback of adapting 'simple language'. One word, 'thereon', has been replaced by 'on a creditors' petition'. The word 'thereon' is entirely comprehensible.
10.9(1)(a)	The proposed new wording is inelegant. Why not delete 'about the debtor' and amend (a) to 'the debtor's identity' (delete 'information' in any event – what does the word add?) or amend (a) to 'name and residential address'? Alternatively, begin 'In addition to identifying the debtor the petition must state….' and delete existing (a).
10.9(1)(g)	How does this disclosure tie in with the same (but more detailed) requirements of 10.8(d)/(e)? If the 10.8 version is to be retained, does this not need the 10.9 qualification regarding the petitioner's knowledge?
10.9(3)	Does not a time limit need to be applied to this (such as the 5 years in schedule 5)?

10.11(3)(a)	Suggest add ‘the address of the debtor’.
10.12(6)	This does not deal with the usual situation of an IVA being in force, but no court process having been engaged in that respect. It appears that a (c) is required along the lines ‘if neither (a) nor (b), then paragraphs (1) to (5)’. (This continues an apparent inadequacy of current 6.9A(6)).
10.14(3)	What does ‘authenticated’ mean here? If it means stamping by the court, then it does not fall within the definition of authentication in 1.8. Either 1.8 needs to be amended to include authentication by the court, or 10.14(3) needs to be amended to state in clear terms how the application to the Chief Land Registrar is to be authenticated in these particular circumstances.
10.14(2)(d)/10.35(1)(d)/10.41(1)(d)/10.50(1)(d)	‘name…of the other partners’ needs to be either ‘names…of the other partners’ or ‘name…of each of the other partners’.
10.14(4)/10.35(3)/10.41(4)/10.50(3)	There are inconsistencies regarding alternative names: ‘will’ v ‘must’ and the exception for ‘trading names’ v ‘trading names mentioned…’
10.13(4)(b)	Does this need to be qualified regarding the petitioner's knowledge (a point subsequently recognised in 10.15(2))?
10.15(3)	Does 10.13 need to specify the filing of an extra copy in this regard?
10.21(4)	We assume that the reversion to the old-fashioned notation of 4 pm rather than the 16.00 hours of current 6.23(3) is an oversight. See also comment on 7.16(5) above.
10.22(3)	Consistency: Is ‘handed to the court’ different from ‘filed with the court’?
10.22(4)	Given that such permission is likely to be granted at the hearing of the petition, subparagraph (4) should stipulate a time period within which the list should be amended and re-filed (if that is the intention of the provision). If the petitioner has already handed the list to the court, how is the petitioner then able to amend the list? (point also present in current 6.24(4))?
10.26(1)	‘Compounded for’ – modern language?
10.26(3)(f)	Is this mention of ‘withdrawal’ meant to appear here when the paragraph is specifically concerned with a dismissal?
10.26(3)(i)/(5)	‘vacated’ v ‘cancelled’. See comment on 8.57 above.
10.30(1)(d)	Will the substitute petitioner have ‘applied’, or merely have consented to be substituted?

10.30(1)(g)(iii)	Should this not specify the 'amended' petition, as do the subsequent four sub-sub-paragraphs?
10.30(1)(g)(iv)	Is it correct that a sealed copy of the amended petition is being filed?
10.31(6)(g) and (k)	'an order' rather than 'the order'?
10.31(6)(h)	Is this an order, or a statement of an automatic consequence by reason of (5)?
10.33(1)(e)(i)	Should be 'Regulation', not 'Regulations' and 'court' not 'Court', the latter also in (e)(ii) and (g).
10.33(1)(g)	Format – 'the official receiver's office hours' needs an identifying letter.
10.35(1)	Delete 'e'
10.36(2)	Should this not specify the register as being the register of writ and orders (although the same formulation is used by current 6.35(2))?
10.37(2)	A bankruptcy application is made in respect of a person not his or her debts. How about 'In this chapter "bankruptcy debts" means the debts which the debtor is unable to pay at the date of the application for a bankruptcy order'. Rule 10.38 might then be easier to follow.
10.38(1)(a)	In view of the definition of 'the debts' in 10.37(2), this can be simplified by deleting 'the debtor's'
10.38(1)(e)	See our comments above about the need to take debt advice before completing the application process.
10.38(1)(g)/(h)	Suggest that schedules 5 and 6 are combined.
10.38(1)(i)	'and up to date' is unnecessary. If it is accurate at the date of the application it must be 'up to date'.
10.38(1)(j)	This suggests that the prescribed fee and deposit must be paid in full up front. However, as we point out in paragraph 3.2.4 above, we believe that debtors should be able to make the payments by instalments, subject to suggested safeguards. We understand that the Insolvency Service is considering this option.
10.39	Otiose - see point on Rule 10.38(1)(g)/(h).
10.40	The application must be made in electronic form, except in cases of malfunction or error in the operation of the electronic system. We believe that this is too restricted, and that debtors should also have the option of making a paper-based application. Not all debtors will have access to the internet, or will feel comfortable making an application in a public place such as a library, or will feel they have adequate IT abilities. They should

	not on that account be prevented from obtaining the protection of a bankruptcy order.
10.42	As noted above, we assume that use will be made of the technology being developed as part of the digitisation of the redundancy payments system for the purpose of identity verification.
10.42(1)	Verification checks should always be made: change ‘may’ to ‘must’.
10.43 and 10.44	The 28 day determination period stated in 10.44 seems reasonable. We have outlined in paragraph 3.2.6 above a suggested process for incorporating an interim moratorium and a cooling-off period.
10.46(3)(b) and10.47	For the reasons given above, we believe that the review should be conducted by a different adjudicator.
10.47(2)	We believe it is wrong for the debtor to be precluded from providing additional information of his own accord where he feels it would be helpful.
10.48(5)(b)	i.e. the date of receipt by the adjudicator of the bankruptcy application?
10.49(1)	What if the debtor does not have electronic means to receive the order?
10.49(4)(d)	Is ‘the date of the bankruptcy application’ potentially different from the date of receipt of the application, the formulation used in e.g. 10.45(2)(b)?
10.50(1)	What about the bankrupt’s residential address? Could then amend to ‘the bankrupt’s identity’.
10.51	Should not a bankruptcy application disclose the existence of an IVA if there is one? Addition to rule 10.38? Schedule 5 does ask for IVAs in the last five years.
10.52(4)	It is not clear whether ‘under these Rules’ refers to the filing of documents or to the making of the bankruptcy order. Is it meant to be restricted to documents arising under Part 10, or would for example proofs of debt be included? What if documents are not filed electronically?
10.52(5)	The rule does not provide for the court to have access to the bankruptcy file, although the court has power to make directions in relation to the files under paragraph (9), so presumably it does. If so, perhaps the rule should say so. Alternatively, if the file is a court file, which would be preferable, should it not be clearly stated in the rule? In our view it is important for the court to have a file and a court number, otherwise there is a danger that it will be unable to deal with matters arising in the course of the bankruptcy. Furthermore, external parties will not know in which court to issue applications in relation to the bankruptcy, and there is a danger that a new court file might be opened on the same matter. We have suggested above that the court file could be built automatically from the official receiver’s file.

10.52(6)	What does this mean?
10.52(7)	'…may be exercised on a person's behalf…' rather than '…that person's behalf'?
10.56(1)(e)(i)	Suggest 'his or her debts' is preferable; 'the debtor is unable to pay the debtor's debts' is not the same thing. 'The debtor' could be another debtor. The use of possessive pronouns is far clearer and represents natural language. Alternatively delete 'the' and replace it with 'that' to give 'the debtor is unable to pay that debtor's debts'. Inelegant drafting but clear. This point applies all over these draft rules, for example rule.10.58(5).
10.60(1)	'Must' is inappropriate in the light of the discretion to release the bankrupt from the duty to submit a statement of affairs. Suggest 'must deliver….. bankrupt's statement of affairs unless the official receiver exercises the power to release the bankrupt from the duty to submit a statement of affairs'.
10.63(1) & (2)	Is the word 'proper' helpful? Would 'complying with the requirements of these rules' be clearer?
10.71(2)(b)	As noted elsewhere, if the chairman can rely on the insolvency practitioner's representation, then the point is covered by (a). If not, then it is not apparent how the chair can sensibly be expected to satisfy himself.
10.71(4)(b)	The closing words of this are plainly wrong. It is doubtless intended to reflect section 292(3).
10.71(8)	This requirement should be removed as serving no practical purpose.
10.71(9)	This is oddly described. The security is required by the Act as embellished by the Insolvency Practitioners Regulations 2005, rather than by 10.71(2)(b).
10.73(4)(a)	There is no (b), but presumably should be (or at least more words) so as to fully reflect section 292(3).
10.76	In order to achieve consistency with a Secretary of State appointment (and useful communication), this should be rewritten to require the trustee to notify the creditors of the appointment (see section 296(4)).
10.77	The attempt of this rule to prioritise expenses to date is inconsistent with the prioritisation by category in 10.156 (an issue also present in current 6.125 and 6.138).
10.78(3)(b)	What is the point of (b) – is this not covered by (a) and (c)?

10.78(4)(b)	This continues the problem in current 6.126(2) that a progress report is required ending on a date that lies in the future. This problem was introduced by the 2010 amendments. See comments on 5.5(4)(b), 6.21(4) and 17.11.
10.78(4)	There remains a problem of overlap. The new trustee's appointment takes effect at the meeting when the chairman certifies it. This may be up to 5 days before the resignation takes effect, or is the chair meant to delay certification until that day? If that delay is intended, then it should be directed, or even better the rules should specify that in this situation the appointment takes effect at the same time as the resignation.
10.78(6)	Is this intended to mean that the new trustee annotates his notice of appointment with a mention of the resignation, rather than delivering two documents, the appointment and the resignation? If so, it needs to be expressed much more clearly.
10.84(3)	Does this also need to say that if the bankruptcy was on the debtor's application, the certificate need to be sent to the official receiver and placed on the bankruptcy file?
10.85(2)(3)	The persons who may deliver (prompt) notice of the trustee's death have been narrowed. Given that many practitioners now operate through limited companies, the mention of a partner is too restrictive given that 'other persons' will have to wait 28 days. And why is the most obvious notifier, a joint appointee, not mentioned?
10.87(1)	'must' repeated in error.
10.90	Stylistically suggest after '21 days before' change to 'intending to vacate office'
10.91(a)	As noted elsewhere for other procedures, there really is no need to specify the deduction of distributions made.
10.95(3)	This paragraph should make no reference to the 'appointee' or the 'proposed appointee'; it is about the content of the court order so delete 'the proposed appointee' from (d) and amend (f) to 'order the appointment of the special manager'
10.95(3)(k)	Should this not be the basis of remuneration? Does this not clash in any event with (5)?
10.96(3)	See comment on 6.43(3) as to whether there should be a cap on the security.
10.100(5)	Given that the advertisement is discretionary, use 'may' rather than 'must'?
10.100(7)	Rather than 'requisitionist' (lifted from current 6.173(5)), we suggest 'requisitioner' or 'requisitioning creditor'.

10.101(6)	Delete ‘However’
10.101(7)	Suggest replace ‘requisitionist’ with ‘requisitioner’ or ‘requisitioning creditor’
10.103(6)	What is added by the words ‘be calculated to’? This implies a conscious attempt to prejudice a fair trial, when the rule surely does not require any such intention. (These words also appear in current 4.215(6) and 6.175(6), and new 7.107(6)).
10.107(3)	Typo ‘personas’
10.111(1)	The words ‘requiring a decision as to disclaimer, the applicant must provide’ appear to be in error. Delete ‘and must provide’ after ‘the application to the trustee’ and ‘the applicant’ before ‘must provide proof of delivery’ and insert ‘and’ before ‘must provide proof of delivery’
10.112	Disclaimer. See the comments on 6.39 above.
10.112(4)	Change ‘of impede’ to ‘or impede’
10.118(e)	Is this really necessary?
10.118(k)	What is added by the words ‘at the address specified in paragraph (d)’? This is probably a remnant from the days when the bankrupt would attend on the trustee with a cash payment. Omitting those words would still permit cash payment if that is the method. Alternatively, the ‘how and where’ of 10.124(3)(e) is a more helpful formulation.
10.120(3)(i)	‘…take payment in accordance with the payments schedule detailed in this order out of the bankrupt's income…’ is a confusing construction of the description of the order (current Form 6.67). We suggest that this can be improved by substituting ‘…take out of the bankrupt's income the sums specified in the payments schedule detailed in this order…’. Also again ‘’‘’‘at the address…’ as in 10.118 above.
10.121(2)/10.124(4 /10.125(7)	The fee of 50p is absurd. Either abolish it, make it £5, or perhaps 5% of the payment.
10.122(10)(e)/(f)	These appear to duplicate information already required by (d). Or if the first ‘specified’ appears in error (compare 10.125(5)(d)), then it is only (f) that is a duplication.
10.123(2)	Adding the word ‘draft’ (not present in current 6.193A(2)) adds nothing to practicality, but now confuses the issue as to whether (3) requires a further document that is not a draft.
10.125(5)(f)	This appears to duplicate information already required by (d).
10.126(1)	Is it possible to name the official to whom the order is to be addressed? HMRC are usually reluctant to give names.

10.126(1)/(3)	Is the 'HM' (current 6.194(1)) before 'Revenue and Customs' deliberately dropped? By contrast in (3) it is expanded from the current 'HM' to 'Her Majesty's'. Also in (3) 'at' is missing before 'least'.
10.127(2)(a)	'HM' dropped.
10.132(1)(a)	In splitting the current 6.199(1)(a) into a further level of subdivision the grammar has gone wrong.
10.138(2)	'may' missing from the opening words (see current 6.205(2)).
10.138(2)(b)	If the 'bankrupt' is in fact merely subject to bankruptcy restrictions, then presumably this rule is not intended to over-ride the requirement of section 310(1A) that the bankrupt must be undischarged for an income payments order to be made. Is it in any event ultra-vires as there is no application by the trustee as required by section 310(1A)? (The same issues exist in relation to current 6.205(2)(b)).
10.139(3)	Typo: '…is, under the Act and these Rules, must be satisfied…'
10.139(6)	Why is section 282(1)(b) now dealt with before section 282(1)(a)? And why has the trustee '(if other)' (current 6.206(4)) become '(if other/different)'?
10.141(1)	There is an unwanted 'I' in the middle of this.
10.144(4)(i)(i)	This appears unnecessarily complicated compared to the formulation on current form 6.71.
10.144(4)(i)(ii)	Is it necessary in all cases that the petition be dismissed if the annulment is under section 282(1)(a)? The current form 6.71 can be varied if this is not appropriate. It does not appear that this rule offers that flexibility.
10.144(4)(i)(iii)/ (5)(b)	'vacated' v 'cancelled'. Should not the same word be used?
10.147(1)	This appears to duplicate 10.144(4)(i)(iii).
10.147(5)	Typo: '…the references …is…'
10.148(5)(a)	Should be 'final account' (singular)
10.148(5)(b)	This security was not put up by the trustee and if the sum is not claimed by the creditor it will be repaid to the provider. If it is claimed, any discussion as to the value of the claim is between the debtor and the claimant. It is not apparent why the timing of the trustee's release may be affected by this (a puzzle that also exists under current 6.214(4)(b)).

10.149(2)	The change of ‘his’ to ‘the’ has disconnected the evidence from the applicant. This can be resolved by changing the opening words to ‘The applicant must file…’.
10.149(4)	‘Copies of the official receiver's report under this rule…’. But this rule doesn’t require the official receiver to produce a report. Does it mean his evidence? (The same oddity exists in current 6.215(4)).
10.149(9)(b)	The words ‘who will be the official receiver or the trustee’ are not required.
10.149(9)(f)	Does this actually add anything to (e)?
10.149(9)(g)	‘or’ is missing from ‘period specified in the order or until [conditions fulfilled].’
10.149(9)(h)	Should be ‘or’, not ‘and’.
10.150(12)(e)	This wording appears unnecessarily complicated.
10.151(1)/(2)	This split of current 6.220(1) into two has made nonsense of whether the bankrupt has to apply for a certificate of discharge, or whether the court issues it in every case.
10.151(6)	Typo: ‘the a notice’
10.151(7)(b)	Chapter 8 of Part 12 does not appear to have a Section 3. Also closing bracket missing.
10.152(3)	What if the former bankrupt does not have electronic means?
10.155	Why has this been added? It is not far too wide in scope in inviting third parties to assert that their private costs are expenses of the bankruptcy?
10.156(a)(i)	‘he’ has been incorrectly changed to ‘the bankrupt’. The ‘he’ in this instance is the official receiver or the trustee.
10.156(c)	The cross reference to (d)(i) should be to (d).
10.156(n)	The cross reference to (p) should be to (q).
10.156(p)	The cross reference to Schedule 6 should be Schedule 7.
10.159/10.160	Although appearing in the heading to current 6.227, the term ‘later trustee’ is not defined and carefully does not appear in the text of the current rules. It is unnecessary to introduce it to these new rules, but if that is to be done it needs to be defined and then the elaboration ‘for the purposes of the later bankruptcy’ can be dropped. As drafted ‘the later trustee for the purposes of the later bankruptcy’ is decidedly inelegant.

10.161	Why has this detail of a criminal bankruptcy petition been included as no fresh petitions can now be presented?
10.163	Typo: '…they provides…'
10.173	It is not clear what purpose this notice serves (current form 6.83). Section 283A is designed to prevent the trustee from seeking to deal with the dwelling house many years in the future. The bankrupt (or spouse etc occupier) are not surprised if the trustee progresses matters reasonably quickly. The practical effect of form 6.83 seems to be to encourage a belief that obstructive behaviour continued for three years could rescue the house from the bankruptcy. There are also unanswered questions as to the effect of a form 6.83 mistakenly delivered in respect of a property that subsequently transpires not to be within section 283A. We suggest that this requirement be withdrawn.
10.174(2)/(3)(b) /10.175(1)	The mention of section 261(8) of the Enterprise Act 2002 is no longer required.
10.177	This is presumably an attempt to give meat to section 283A(6)(a), but it does not appear to achieve anything useful or to be necessary as the court can simply use the wide-ranging section 283A(6)(b).

Part 11 – Bankruptcy restrictions and debt relief restrictions orders and undertakings and insolvency registers

11.1(b)	'restrictions' omitted from 'interim debt relief restrictions order'
11.14(2)(e) / 11.16(2)(d)	Should there be a time limit regarding other names (e.g. 5 years as in schedule 5)?
11.17(b)	This continues the policy of current 6A.5(b), but we think that 3 months after discharge is far too early to remove a bankruptcy from the register. Other than in the simplest cases the administration of the estate takes much longer than this and assets can be put at risk if the public record of the bankruptcy disappears so quickly. The rapid disappearance of the bankruptcy also sits oddly with an IVA remaining on record for the usual 5 years of income contributions. This acts as a disincentive to the use of IVAs. We suggest a period of 5 years from discharge, which, added to the year of bankruptcy, both matches the 'usual' limitation period and will for the most part be for a little longer than an IVA.
11.19	Delete 'Where'
11.20	Should this not also record former names?
11.21	This continues the formulation of 6A.7, but should this not have a 28 day or 3 month timescale? Simply saying 'after' could be interpreted as 'immediately', opening the Secretary of State to complaint if there is a

delay, or could be open ended.

Part 12 – Court procedure and practice

12.1	It is not clear that 12.1 serves any purpose, as the headings of the other chapters are self-explanatory. Further, there is a confusion of terminology here. Rule 12.1(a) refers to chapter 2 applying to, 'all civil proceedings under the Act and Rules.' 12.2 says, however that it applies to, 'all insolvency proceedings'. Rule 12.1(i) refers to Chapter 10 applying 'in all cases', but 12.51 in Chapter 10 refers only to insolvency proceedings. There should be a consistent reference to 'insolvency proceedings' applying, by virtue of its being a defined term, and it is they that should be referred to in 12.1(a) in place of 'all civil proceedings'. Alternatively delete 12.1
12.5	The paragraphs are incorrectly labelled as (d), (e), (f).
12.7(2)/(3)(a)	'official receiver' should be plural (as in current 7.14(2)/(3)(a))?
12.10(2)	This relies on the court in fact forwarding the documents to the adjudicator or official receiver as appropriate. This creates a fresh administrative obstacle, but given that the person making the filing may not reasonably be expected to be concerned as to the origin of the bankruptcy (petition or application), we do not see a way round this.
12.11(2)	This presently refers to a solicitor. Why should it not refer to a duly authorised representative? This would bring it into line with 12.10(5).
12.16(2)(b)(iii)	Typo: There is an unwanted closing bracket.
12.17	Note that this does not include a notice of intention to appoint since that will not be a court document for these purposes. There could be issues concerning serving out of the jurisdiction.
12.18 to 12.21	Format: There is only one heading to cover all four of these rules.
12.20(1)(c)	The draft hasn't made up its mind whether 'creditor's'' is singular or plural. Is the word actually needed at all?
12.21(2)(d)	'identify the applicant or petitioner' – 'the' missing.
12.21(2)(e)(i)	Grammar: 'the court to which … the petition was filed…'.
12.24(d)	Is this still required?
12.26(1)	Why has a mention of 'hard-copy' been introduced here, when there is no mention of any alternative?
12.27(c)	It should be a sealed copy of the application that is served. The same applies to 12.30(1) and 12.34.

12.33(2)(d)	Is this intended to refer to an office holder in another capacity holding simultaneous office, or is it intended to include a joint appointee (same issue present in current 7.3A(2)(d))?
12.35(2)	There is confusion here as to whether what should be served is a sealed copy of the order. Mention is made of sealed copies being served whereas reference is made simply to the obligation to deliver notice of the order. This needs to be clarified.
12.35(5) and 12.38(5)	Reference should be to a sealed copy of the order, in order to achieve consistency.
12.39(2)(b)	Should this also mention section 251N (or if so, can the mention of the sections be removed altogether)?
12.39(6)	Why 'against the respondent' (although the words also exist in current 9.4(7))?
12.41(3)(a)	The provisions relating to costs of private examinations should take into account the fact that section 236 can also apply in administration, administrative receivership and provisional liquidation.
12.72	What is meant here is the imposition of a 21 day period from the date of the decision against which the appellant wishes to appeal. It should be '…21 days after the date of the decision of the Court that is the subject of the appellant's intention to appeal.'
12.73	This should be 28 days after <u>the date of</u> delivery of the decision.

Part 13 – Official receivers

13.1	This is a lift of current 10.1, but does it actually mean anything?

Part 14 – Claims by and distributions to creditors

General observations

We are aware that some of this material appears in the Act in relation to bankruptcy. Ideally the Act should be updated in tandem with the Rules. If that is not possible, then we recognise that there is a policy decision as to whether to replicate old-fashioned inelegant construction in order to retain consistency, or whether nevertheless to modernise and improve the corporate material.

14.0	Why does this Part begin with zero?
14.1(5)	This is a lift of current 13.12(5), but does not make sense when read into the definition of relevant date.

14.2(1)	We suggest removing ‘in insolvency proceedings’ as 14.0 deals with the application of the Part and clashes with the definition of ‘insolvency proceedings’ in 1.1.
14.2(4)(b)	This is a lift of current 12.3(2A)(c), and it is doubtless intending to reflect that postponed debts in a bankruptcy are dealt with by the Act and not by the Rules, but does it make sense to say that where ‘the Act or any other enactment’ postpones a debt in a bankruptcy that debt is also postponed ‘in an administration or winding up’? Is it not either that the debt is of a nature that is incapable of arising in a company situation (e.g. claim between spouses) or ‘the Act or other enactment’ has deliberately only applied the postponement to bankruptcy?
14.3(1)	See comment on ‘insolvency proceedings’ in 14.2(1) above.
14.4(1)(i)	The document will not ‘accompany’ the proof even if called for, as it will generally only be after the office holder has received the proof that he will identify the need to call for the document under paragraph (2).
14.9(2)	‘the creditor who delivered the proof in question’ v 14.2(3) ‘the creditor who made the proof’. Consistency point - delivered or made?
14.16	The consultation **(**Q18**)** suggests that this is to be removed, which we consider to be appropriate.
14.17(b)	This retains an issue from the current rules 2.83(2), 4.88(2) and 6.109(2), by referring to a surrender ‘for the general benefit of creditors’. However, the two situations where a secured creditor may in practice choose to surrender security are (1) to participate in the prescribed part (corporate), or (2) to participate in dividends arising from an office holder action (preference etc). In each of these situations, the surrender is actually to the **disbenefit** of creditors generally. In *Re PALS SC Realisations 2007 Ltd* [2010] EWHC 2850 (Ch), a prescribed part case, the court ruled that the creditor could surrender and participate, but the case appears to have focused on the timing of the surrender and not on the point that it was not for the general benefit of creditors. The unresolved question is whether the mention of benefit is there for a purpose, or whether the draftsman of the predecessor rules long ago, didn't conceive that a surrender could be other than for the general benefit of creditors and these words are merely descriptive verbiage of no legal consequence. We therefore suggest that these words be removed.
14.18	This combines current 2.90, 4.95 and 6.115, but we do not understand the policy reason why the same restriction applies to the chargeholder as appointor of an administrator where they are acting as a secured creditor, when by contrast in the other situations the creditor is relying on a partially unsecured status. Further why is the restriction applicable in a winding up by the court, but not in voluntary liquidation? We suspect that this latter is a chance inconsistency carried through successive generations of the legislation. In the interests of simplification / modernisation / cost saving why does the court have to be involved? Should not the agreement

of the (licensed) office holder be sufficient?

14.19 Again this combines current rules, but (3) notes that it is effectively inconsistent with article 5 of the EC Regulation. The rule probably exists to discourage deliberate malpractice, but we suggest that it is now simply not needed. The reality is that the current predecessors of 14.18 and 14.19 between them make secured creditors very reluctant to participate in meetings or votes in respect of their estimated unsecured deficiencies.

14.22 The opportunity should be taken to make express that this substitution of value takes place regardless of the restriction otherwise applicable under 14.18 (again an issue that is present in the current rules).

14.24 and 14.25 It is not clear why these paragraphs need to be separately drafted, as much of the content is common.

14.25(5) The cross reference should be to 14.45 (not 14.46) and why the inconsistency of (8)(c) and 8(b)(iv)?

14.26(1) The move to allow the office-holder to choose an exchange rate is to be welcomed, but some guidelines are needed in order to avoid disputes or possible litigation – this might be, for example, a UK clearing bank's published rates at close of business on the date of insolvency, or information published on the Bank of England website.

14.26(2) The requirement for the office-holder to apply to court for directions seems to have a very low bar – the meaning of 'any objection' is not clear.

14.28(3)–(6) These reflect current rules and also section 323 in respect of bankruptcy, but we think they are not required. Paragraph (1) provides that if the debt is interest bearing, then the interest up to the relevant date is provable. What do these paragraphs add to that?

14.28(7) This reproduces the scheme of current rule 2.88 and so continues the problem that it fails to mesh with section189. It may be section 189 that needs rewriting, but the problem is that if the company moves from administration to liquidation, then interest is provable on interest bearing debts up to the date of administration, but post insolvency interest following payment in full starts from the date of liquidation; there is a gap during the administration.

14.31 The construction remains a little obscure in describing the requirements for individual notice to creditors who have not proved and a once-only advertisement. There is a risk of (3) being interpreted as saying that something is to be sent to all creditors (whether proved or not, although that does not really make sense in the light of (1)), and (4) then elaborates that said notice is also advertised. A separate issue lurks in the words in brackets in (3), which point to the possibility of an early notice inviting claims, which should not include a last date for proving, but it is really not clear when or why this would be done nor does 14.32 deal with the contents of an early notice. We suggest that the early notice option be

	removed, so that a once-only advertisement linked to the first dividend is specified. It would be good if this opportunity could be taken to make the scheme clear beyond all possible doubt.
14.31(2)	We do not understand the reason for this. It seems a pointless bit of red tape.
14.33	As with current 11.4, this does not allow for the real-world situation that further time may be needed to clarify or agree complex claims received at this late stage, but without a formal rejection and subsequent application to court. Could the rule here also be amended to allow the office-holder to cancel a dividend if new information comes to light that makes it impracticable or inappropriate to do so (for example new litigation that might make the dividend declarable zero?) There is provision to this effect in the Investment Bank Special Administration (England and Wales) Rules 2011.
14.34(1)	'…declare the dividend to one or more classes of creditors of which the office-holder gave notice.' What was wrong with current 11.5(1) '…declare the dividend of which he gave notice.'?
14.35(1)(b)	Delete 'in relation to the bankrupt, or, in a winding up or an administration, in relation to the company'?
14.36(2)	Is this really required?
14.36(3)	We note and support the suggestion (Q18) that this be removed.
14.37(b)	Typo '…the expenses of the conducting the insolvency proceedings'
14.38	Does this rule actually add anything useful that does not also appear elsewhere?
14.39(1)	This is a lift from current 11.3, but the five business days for dealing with proofs is a pointless requirement and may be impossible if clarification, discussion or evidence is required. The office-holder should have discretion as to how he manages this within the constraint of paying the dividend within two months.
14.40	Some modernisation may be in order here. Distant creditors do not now have to contend with international postal services. In any event, there is no specific flexing of the last date for proving in this regard, but there is a general discretion to deal with late proofs whatever the reason for the lateness. We suggest that (a) can simply be withdrawn.
14.41(1)(a)/(b)	Should these not refer to the last date for proving rather the date of declaration or payment of the dividend?
14.45	This lifts current 11.13, which itself was entirely recast in 2005. We note that the part year is no longer to be calculated according to months, but

	(presumably) days. We have no issue with that, but find other features of the rule bizarre and would have hoped that this opportunity might have been taken for a rethink. The reduction of the proof takes place where a dividend is declared before the debt fell due, but the reduction is then backdated to the relevant date. So, for example, where liquidation occurs 1 July 2020 and the debt is payable on 1 July 2021, a dividend of 99.9p in the £ declared on 2 July 2020 or alternatively of 1p in the £ declared on 30 June 2021 would cause an identical 5% reduction in the proof, but either of those dividends declared on 2 July 2021 causes no reduction. If a reduction has been applied, but creditors are eventually (or immediately) paid in full, there is no stated entitlement after all to recover the unpaid element of the claim. How does this interact with statutory interest which refers to ‘payment of the debts proved’, when there is demonstrably an element of a proved debt that has not been paid? The provision in brackets in (2) is baffling as a proof is not reduced by reason of an earlier dividend, or is there some significance in the use here of ‘distribution’ rather than ‘dividend’ as elsewhere in the rule?

Part 15 – Making decisions: correspondence and meetings (including proxies and corporate representation)

15.1	The words ‘except where these Rules provide otherwise’ are otiose, because where the Rules provide otherwise it is explicitly stated in the rules concerned.
15.1(1) and 15.1(2)	15.1(1) ‘This Part applies to making decisions…’, 15.1(2) ‘This Part also applies to decision making and meetings…’. Why the different construction/scope?
15.1(3)	What is the purpose of this?
15.2	Given the content of 15.2(1), 15.2(2) seems unnecessary.
15.2(3)	As the word ‘deliver’ in 15.2(3) is not highlighted to show that it is a defined term and must be read in the light of Chapter 8 of Part 1, it initially appears that a resolution would be ineffective if there was a failure to ‘deliver’ a notice to a creditor or a contributory. This is one of many examples where, unless very clearly identified in the text, defined terms could lead to greater confusion than clarity.
15.2(4)	Delete ‘contain’.
15.2(5)	Why is there a reference to CVAs?
15.2(5)	‘voting’ is not defined and it is the timing of the receipt of the vote that matters. Suggest ‘The notice must contain a date by which votes must be

	received by the office holder. The date is at the discretion of the office holder but must be not less...’
15.2(6)(a)	We suggest the deadline time be moved to 16.00 as in rural areas (where an IP may in future be based with greater reliance on electronic communication) the post may not be scheduled to be delivered before 12.00 noon.
15.2(6)(b)	Delete ‘to vote on the resolution’ after ‘statement of entitlement’. Is this provision necessary given the content of 15.2(4)(c)?
15.2(6) and (7)	Would not ‘statement of claim’ or ‘written detail of the creditor’s claim’ (as in 15.2(4)(c)) be preferable to ‘statement of entitlement’? Then amend (8) to: ‘A statement of claim is a statement whether a proof of debt or otherwise, setting out the details of a creditor’s claim in any of the proceedings listed in rule15.1.’
15.2(8)	What about administrations?
15.2(8)(b)	‘insolvent or compulsory winding up’ is an inconsistent choice of words in the light of 15.1 referring to ‘creditors’ voluntary winding up’ and ‘winding up by the court’. See also our comments on 1.53(1)(b), 15.4(1)(c), 15.22 and 16.21(1).
15.2(9)	Would it not be desirable to give the office holder discretion to admit a vote where he or she knows that a claim exists but the creditor has omitted to make a claim? An obvious example of this is an employee’s claim.
15.2(10)	Should not this provision be in neutral terms? Amend to ‘For the resolution to be considered, the office holder must receive at least one vote before 12 noon [or 16.00 hours, as we propose] on the date by which votes must be received’.
15.2(11)	It is unclear in these proposed amendments how a creditors meeting called by a 10% minority will work. There does not appear to be any requirement for the IP to notify the creditors that if 10% require a meeting they can call it and how they do so.
15.2(11)	Delete ‘debtor’ as this part does not apply to IVAs. If ‘deliver’ really means ‘send’ (and particularly if second class post is adopted) is five business days really sufficient?
15.2(4)(a)	Is the office holder supposed to provide a space on the notice ‘for or against’? Suggest amend to ‘set out the resolutions to be voted on and provide for the recipient to vote for or against the resolution’.
15.4(1)(a)	Is ‘proofs’ too narrow a term given that this rule applies, inter alia, to administrations and administrative receivership? (15.7(1)(e), 15.8(2), 15.23 say ‘claims or proofs’).

15.4 (1)(a) and (b)	As in relation to 15.2(6) above is 16.00 a more appropriate time in the light of postal delivery schedules, although here the purpose of the deadline is to give time before the meeting to consider doubtful claims, which is not the purpose of the 15.2(6) deadline?
15.4(1)(c)	Again we have ‘insolvent or compulsory winding up’ (as also in several other places – see our comments on 1.53(1)(b), 15.2(8)(b), 15.22 and 16.21(1)).
15.4(1)(c)	Sections 173(2) and 174(2) relate respectively to release in voluntary winding up and winding up by the court, not to ‘release of the liquidator and provisional liquidator’ as stated.
15.5(1)	Why is this required as the minimum notice is set out in the table under (2)?
15.5(2)	In administration why are those who have subsequently been paid in full excluded? This contradicts the idea that administration is a class action on behalf of those who were creditors at the date of the administration order or of entering administration. Alternatively if it is intended to abandon the idea that creditors at the relevant date have duties and responsibilities in the process why is the same provision not applied to other insolvency proceedings set out in the table? There appears to be significant inconsistency in the way that creditors are defined and treated in the different types of proceedings. This appears to be saying that a creditor who has been paid in full will not be sent notices of meetings in the administration, but if the company then goes into liquidation, notices will resume. That surely cannot be intended? What does ‘paid in full’ mean? In any type of case a creditor may be paid in full either because of a 100p in the £ dividend, or because that particular creditor was able to extract a ransom payment, or recovered their debt by way of reservation of title etc. Is a distinction intended between these two methods of payment in full? See our comments on 15.30(1)(a)(i) and (1)(b)(i). Stylistically would not ‘all the creditors and the official receiver’ be preferable to ‘official receiver (in addition to all the creditors)’?
15.5(3)	Would it not be sensible to amend sections 95 and 98 so that the meeting provisions are all in the rules? See also rules 15.7 and 8.
15.6(3)(b)	See comments on ‘proofs’ and the deadline in relation to 15.4 above.
15.6(3)(c)	Does this not need to include the fact of the order that notice be given by advertisement only as well as its date?
15.7(2)(b)	Might it not be a Rule rather than a section of the Act that is relied upon?

15.8(1)	The first reference should be 95(2A), not 95(A). At the end of this paragraph, the duties under section 98(2) are alternatives, so that should be '…information etc. or place…', not 'and'.
15.10	The scope of this rule needs to be widened to include non-receipt of notices relating to the passing of resolutions by correspondence. The distinction between 'delivered' and 'received' is a fine one. 'Delivered' however, appears to include 'given' (Part 1 chapter 8) which must involve receipt. The distinction only applies in Part 15 because of what is meant by 'delivered' in that chapter. While this may be effective it is obscure; would not the use of the word 'sent' be preferable in this chapter? Delete either 'everyone' or 'all those'.
15.11	Does this conflict with the exclusion in 15.5(2)?
15.12	There is inconsistency in this rule as to the detail of the cross references, starting with 'section 136(5)(a) or 293(1)', but dropping some or all of the sub-description later.
15.12(3)	Why is a resolution to establish a creditors' committee included as business for a meeting of contributories?
15.13(1)	Typo '…applies in the a creditors' voluntary winding up'
15.14(3)	The creditor has a 'claim' in (a)(i), but a 'debt' in (b).
15.14(5)	Surely per cent no longer has a full stop to indicate the abbreviation from the correct Latin? More importantly, should this requirement be made expressly subject to a right of the liquidator to apply to the court not to call a meeting where the request appears to be mischievous although achieving the arithmetical threshold (see *Managa Properties Ltd v Brittain* [2009] EWHC 157 (Ch) for some discussion of this)? A parallel improvement of section 298(4) of the Act would then also be desirable.
15.14(8)	The cross reference should be to 'paragraph (2) of rule 15.15' (not (3)).
15.15	We welcome the creation of a deadline for payment of the deposit and 21 days seems reasonable. There is an issue in relation to the expenses of summoning and holding the meeting. The major cost in practice is the time of the officeholder and staff, but how is this to be assessed if the basis of remuneration is percentages, or a set fee, or indeed if no basis has yet been fixed? Officeholders may also be tempted to stifle a legitimate request by quoting a large sum, which the requisitioner may not have the means to challenge in court. Might this be resolved by legislating for an additional set fee of [£,1,000] plus any applicable VAT, plus external expenses such as advertising, postage and room hire?

15.16(1)(b)	If the quorum of one creditor is not achieved, there must be nil attendance, or at least nil entitled to vote, so how can a section 48(2) meeting be competent to act? Why is this required in any event? If the section 48(2) meeting is duly convened, but there is nil attendance, is that not simply the end of it?
15.17	Are the words '…or a meeting to remove the liquidator or trustee…' required? This is merely an example of a meeting of creditors. The section 98 meeting is chaired by a director, but the company causes the meeting to be summoned, so this needs to be retained as an exception.
15.19	This rule demonstrates the difficulty of combining many rules which are similar but not quite the same. Why not say: 'the chair ... adjourn for not more than 14 days any meeting of creditors or contributories in respect of the proceedings set out in 15.1(1) except (a) where the adjournment is with a view......as the case may be; and (b) subject to any direction of the court.'
15.19(3)(b)	Is this intended to be with a view to obtaining the attendance of the bankrupt, or in any case?
15.21	Given the content of rule 15.17 the proviso is unnecessary. Suggest delete 'If the chair....trustee's removal'.
15.22	Why should not this provision apply to all the proceedings listed in Rule15.1? Presumably an 'insolvent winding up' is a CVL and a 'compulsory winding up' is a 'winding up by the court'. These terms are in rule.15.1 and it would be sensible to be consistent. The same point applies elsewhere – see our comments on 1.53(1)(b), 15.2(8)(b), 15.4(1)(c) and 16.21(1).
15.23	16.00 rather than 12.00 noon? (see comment on 15.4(1)(a) and (b) above)
15.24(2)	Does this unintentionally allow a section 48(2) meeting to be adjourned for more than 14 days? Presumably the purpose of this rule is to prevent the creditors forcing an adjournment in this case. Could the point not be more helpfully included in 15.19?
15.25	Is one hour sufficient? If the meeting is of any size or there is a compelling need for refreshment and comfort such a limit looks rather inadequate. Two hours might be preferable. See comments on 8.29. It would be clearer if 1 was written 'one'.
15.26 (undrafted)	Is this not covered by 15.2?
15.27(1)	Could the reference be simply to a claim or a proof as it is elsewhere (e.g. in 15.23)?

	Will it not also be a 'proof' rather than 'details' in an administration if a meeting is held for any reason after the court has authorised payment of a dividend?
15.27(1)(b)(i)	16.00 rather than 12.00 noon? (see comment on 15.4(1)(a) and (b) above)
15.27(1)(c)	'or' to be deleted at the end of this.
15.29(1)	Is the member state liquidator able to 'cast a vote' or does he in fact <u>seek</u> to vote (as indicated in 15.29(2)(b))? The existing rule implies the former ('only the creditor's vote shall be counted') but is that correct? Why the use of the two different terms?
15.29(2)(a)	Is the word 'other' necessary? It is in the existing legislation. Why not make 'in an administration, creditors voluntary........or bankruptcy' a general provision reading 'This rule applies to administration .....etc'?
15.30	Part payments reduce creditors' voting rights in administration and receivership but not in liquidation or bankruptcy, reflecting the current provisions. It may be unlikely that such payments are made in liquidation or bankruptcy, but it is not impossible, so why is there a distinction?
15.30(1)(a)(i) and (1)(b)(i)	A distinction needs to be made between payments made to a creditor by way of dividend, and payments made for any other reason, such as ransom payments recovery by way of reservation of title, or payments made in the course of trading.
15.30(3)	This makes a meal of the secured creditor's voting rights and the 'except' in (a)(ii) and (b) casts doubt on whether the intention is to follow, or to deviate from, the decision in *Calor Gas v Piercy*. This is much more neatly dealt with in CVA rule 2.35(4)/(5) . We suggest that that formulation be copied (plus the 52(1)(b) exception) – although as mentioned previously that formulation is not itself appropriate for CVAs .
15.31(1)	Why should not this provision be applicable in liquidation and bankruptcy? Should it not also be made subject to the normal rules regarding subsequent payments and/or set-off?
15.33	Should not this rule be in Chapter 2?
15.34	The current 2.43(2) (safeguarding against approval of an administrator's statement of proposals by connected creditors) has disappeared, although the concept is retained for voluntary arrangements. We have no strong view on this, but is the omission deliberate?
15.35(2)/(3)/(4)	These all need extension to votes by correspondence.
15.35(3)	The 21 day time limit for an appeal against a decision was introduced in 2010 and is welcome to create certainty, but should it not run from when notice of the outcome is given?

15.37(3)(a)	And the names of the members? But what meeting is there of 'both members and creditors'?
15.39(1)	This 'clarifies' current 8.2(1) to say that it is the name or description of a person as proxy (should be 'proxy-holder') that cannot be pre-filled, which certainly makes sense. However, we understood that this rule was introduced in 1986 to prevent the name of an insolvency practitioner being pre-filled in 'for the appointment of ______ as liquidator'. Be that as it may, the current formulation of the restriction is unhelpful where candidates have been identified for membership of a committee, or a replacement joint liquidator is to be identified where a resignation of a joint occurs. We think the formulation here needs to be that where candidate names are pre-filled, there must also be a blank option that can be completed as an alternative.
15.40	Would it be helpful if this rule referred to Rule15.43?
15.40(1)/(3)	Surely in the event of a late arrival a proxy can still be delivered in the course of a meeting?
15.40(2)	There may be no fresh obligation on the participant, but the chair at the resumption plainly needs the proxies, which would be delivered by the previous chair if different. Can (2) simply be cut off at the comma and then run into (3)?
15.43(1)	A trivial drafting inconsistency, but the exception appears here in (1) as 'unless', but in CVA 2.45 as '(2) However,…'.
15.45(1)	'proxy' should be 'proxy-holder'.
15.47(2)	See comments on CVA 2.48(2)(b) above.
15.48	See comments on CVA 2.49 above. Also, in addition to the necessary differences, there are minor drafting inconsistencies with CVA 2.49.
15.49(1)	See comments on 2.50(1) above.

Part 16 – Creditors' committees

16.2	This provision is in the existing rule, but what does it mean? Is it possible to expand this rule to state that the committee acts in a fiduciary capacity and that its proceedings are confidential except so far as the office holder sees fit to publish them for the purposes of the insolvency proceedings? We understand that this is the position in common law, but it might be helpful to have these points codified.
16.4	Delete (a) before the rule number.
16.4(2)	An explanation would be beneficial of the interaction of 'additional' with Rule16.3 requiring a membership of at least 3 but not more than 5. If there

	are 5 creditors voted onto the committee, presumably this means the result is a committee of 6 (so 16.3(2) needs to say ‘subject to 16.4(2)’ as well as 16.5 and 16.6)? What if only 2 creditors are willing to serve? Does 16.4(2) mean that the requirement of 3 members is in fact achieved, automatically, only with the active agreement of the FCA/scheme manager, or not at all?
16.6	Our understanding is that the current liquidation-only version of this rule (4.171A) is to eject the creditor members while the contributory members carried on. If so, then either 16.6 is not required (as contributory members will not be possible), or it should be extended also to administration and bankruptcy (with a broadening of the reference to section189). Retention interacts with 16.9(c). We suggest that the policy should be that having paid in full plus interest the office holder should be able to retain the committee pending the issue of the certificate to deal with any final business (for example remuneration). 16.9(d)(i) should then refer to a creditor who ceases to be a creditor other than in the circumstances described in 16.6 (for example a leasing creditor who recovers goods) and the three month time extension should be removed.
16.7	Is it possible for this rule to clarify whether it can be used where a committee of 3 or 4 was appointed in the first place and another creditor now wants to join? It is not clear whether the headroom is a ‘vacancy’, or whether a ‘vacancy’ is to be read as meaning that a previous member has ceased membership.
16.7(2)(b)	Does the minimum include ‘additional members’?
16.7(5)	‘the appointment’ repeated in error.
16.9(b)	What happens if there are only three members of the committee? The committee would be inquorate and therefore defunct. Is this the intention?
16.9(d)(i)	See comments on 16.6 above.
16.11(2)(d), 16.12(2)(e), 16.30 (3)(b) and16.31(2)(d).	Suggest ‘identify <u>any</u> company....’
16.11(2)(e) and 16.12(2)(f)	Suggest ‘...address of <u>any</u> member..’
16.11(3)	‘..names and addresses of the persons elected..’. We suggest that this should say ‘…information required by sub-paragraphs (2)(d) and (2)(e)…’
16.12(1)	Add ‘due’ before ‘constitution’ in the opening words?
16.12(2)(h)	This assumes that the member who has left the committee was an individual and not a company.

16.13(6)	Why should a ‘remote’ meeting need 7 business days’ notice? Why is there no provision to waive notice for a remote meeting? It may be that an urgent issue can be more easily dealt with by a remote meeting.
16.16(3)	This follows the current rules, but why is this applicable only to a proxy and not also to an authorisation of a section 434B representative? Typo. Insert ‘is’ before ‘to be treated’.
16.18(3)	Typo. Insert ‘to’ between ‘indicate agreement’ and ‘or dissent from each one separately’.
16.18(5)	Can the rule clarify what is meant by a majority of the committee if one (or more) of the members is unable to participate in the vote by reason of Rule 16.24(4) or other conflict of interest?
16.20(3)(a)(ii).	Is this necessary giving the content of (3)(b)?
16.20(3)(b).	Given that ‘venue’ is defined to include the place, suggest delete ‘(including specification of a place)’ as unnecessary.
16.21(1)	Opening words: ‘insolvent winding up’ or ‘creditors’ voluntary winding up’ – see comments on 1.53(1)(b), 15.2(8)(b), 15.4(1)(c), 15.22 and 16.21(1). Why should this rule have limited application? Why not apply it to administrations and administrative receiverships and delete Rule16.22?
16.21(7)	Can the words ‘from having access to the office-holder’s record of the proceedings, or’ be deleted? They appear to suggest that the committee has a right of access to the case files, which the court in *re W & A Glaser Ltd* (1994) had to explain was not the case. It is not apparent that these words actually add anything useful. (The offending words also appear in 16.32(3)).
16.22(5)	‘…or a nominee of the office- holder’ should be ‘…or an appointed person’?
16.23(1)	We do not understand how a committee member might incur travel expenses other than to attend a meeting. Can the words ‘or otherwise on the committee’s business’ be deleted?
16.23(2) and (3)	Why not align administrative receiverships and other proceedings? There is no obvious policy reason for different periods between meetings.
16.24 and 16.25	Would it not be possible to provide one universal rule for all proceedings?
16.24(1)	As with the equivalent current rules this continues not to catch a person who was a representative in the last 12 months (although a representative is usually far closer to the proceedings than the member whom they represent), nor an associate of someone who was a committee member or representative within the previous 12 months.

16.24(6)	Although lifted from the current rules, why is this required? Is not the discretion in (5) sufficient protection?
16.26	The wording of this rule is necessarily convoluted because defects in the appointment of committee members in bankruptcies are dealt with by section 377 of the Act. The rule could be simplified if the mention of the committee could be removed from section 377.
16.28 to 16.32	Can these rules be swept away by providing for continuation of the committee without formality (as happens upon a conversion from administration to CVL, although admittedly that is specified by the primary legislation)? Other than the routine red tape inherent in the reconstitution, these rules cause a practical problem if the committee members fail to respond, as no timescale is specified for the committee to be dissolved in the absence of at least three consents.

Part 17 – Progress reports and remuneration

17.1	This reproduces the current rules, but we would like to see this entire rule repealed. Surely regulated practitioners can be trusted to respond appropriately to a simple requirement to issue a progress report, without this micro-management. Professor Kempson recently noted the problem of reports becoming ever longer and ever less meaningful as the compliance boxes are diligently ticked. Failing this, see our further comments below.
17.1 and 17.7	Why not align the reporting requirement for OR and non-OR appointments? What is the policy reason for this distinction?
17.1 (2)(a)	Suggest amend to 'the court reference or the adjudicator's unique identification, as appropriate'. The court reference should show both name and number.
17.1 (2)(c)	Delete 'and' after 'appointment'.
17.1 (2)(k)	Suggest delete 'for the creditors' as unnecessarily restrictive.
17.2(3)	Is this intended to refer to a progress report produced in connection with a request or application for an extension of an administration? If so, it seems to miss the mark.
17.2 (4)	Suggest add 'where the provisions of that rule apply'.
17.4(2)	If the official receiver is liquidator or trustee for a period between the first and second office holders, is it intended that the first office holder's first report includes the official receiver's period in office (as this appears to say), or should it start from when the second office holder is appointed? If the former, what if the official receiver is in office for more than a year between the first office holder ceasing to act and the second being appointed? (This issue exists also in current 4.49B(5) / 6.78A(4)).

17.4 (4)	Would it be desirable for a copy of the progress report to be on the court file?
17.5(1)-(5)	This appears to overcome the difficulty in the current rules associated with a change of liquidator in the first year. However, we note that 17.5 refers to '<u>the</u> liquidator' ceasing to act, in contrast to 17.2(2) which refers to '<u>an</u> administrator' ceasing to act, and 17.4(2) which refers to '<u>a</u> liquidator or trustee' ceasing to act. The indefinite article is to be preferred as this is frequently applicable where one of joint appointees ceases to act. The definite article could imply that both the joint liquidators have to cease to act to engage the point. The clarification regarding 'further application of this paragraph when another [appointee] ceases to act' in 17.2(2) and 17.4(2) is missing from 17.5.
17.5 (6)	Delete 'However'.
17.5 (7) and (8)	Would it not be possible to combine these two paragraphs? See also comments above on 17.1.
17.6 (2)	Is there any reason why there should not be a standard 21 day period in all cases? Does this mention of a resignation meeting need to be removed?
17.6 (5)	Is there any reason why this provision should not apply to the OR?
17.7(2)(b)/(4)(b)	Should be '…observations about the statement or as to the affairs…'? 'as' missing.
17.7(10)	Is this really necessary?
17.8	The rules contain at every opportunity detailed reporting requirements concerning the prescribed part. Where a prescribed part is applicable, a report is likely to mention it in any event, but we suggest that the specific reporting requirements in this respect throughout the Rules could and should be withdrawn.
17.11	There needs to be a simplification of the final reporting process prior to the office holder's release. Eight weeks is a long time and if anything changes a new final report has to be sent and a further eight week period starts. This provision also presupposes that the ISA account has been brought down to a nil balance so that the final receipts and payments can be done and all VAT refunds have been reclaimed. What if in the intervening period ISA banking fees become payable? A draft final report would be more appropriate which highlights any expected changes in the position between the date of the draft and the office holder's vacation of office. See our comments in 5.5(4)(b), 6.21(4) and 10.78(4)(b).
17.11	Should not the final report in winding up (CVL or by the court) also be sent to members as they have had the progress reports? Alternatively if at the outset the liquidator forms the opinion that there will be no return to

the members, should they not be cut from the circulation of the progress reports?

17.12(2) This is an example of the superfluous reporting requirements relating to the prescribed part. If section 176A did enable a dividend that would not otherwise have occurred the report can hardly help but say so. If no such dividend was available, then what is the point of the 'nil return' that this seems to require?

17.14(6) 'the firm'. Is this an awkward attempt to avoid saying 'his firm'?

17.15(3) This is a repeat of the current rule (2.106(5A)) and consequently continues the problems that occur in practice.

It is not clear why primacy is still give to the committee in this situation, but this is probably academic as a committee is unlikely to be formed in such cases. The following points, however, are real practical problems.

Requiring the unanimous consent of secured creditors is problematic, as those who are 'out of the money' are likely simply not to reply, or may vote against out of malice. Defining who is 'in the money' would present difficulties in a shifting situation and anyway we recognise that there is no policy that the approving party should be the one that actually bears the cost at the margin. A compromise would be to require unanimity of those who reply within a defined timescale, perhaps 14 days.

Likewise apathy is frequently encountered among the preferential creditors. We think that approval should be deemed if no replies are received within a defined timescale, which does not appear to be the result under the current formulation.

There is also a gap in the scheme if the secured creditor(s) are paid in full before the basis can be or has in fact been fixed and there are no preferential creditors (for example in a pre-pack the deal may be structured so that the secured creditor(s) are immediately paid off direct by the purchaser who also acquires the employees under TUPE).

These comments also apply to 17.16(2) and 3.50(3)(b).

17.15 (3)
17.16 (2) Would it be helpful to draft this rule so that 'disregarding debts of any creditor …… withhold approval' applies to both 17.15 (3) and 17.16(2), as the case may be, (a) and (b) ?

17.15(6)/(9) We remain of the view that the Schedule 7 scale should apply as the default basis of remuneration for a CVL, as was the case from 1986 to 2010, without causing any known difficulty. A case where no resolution at all can be obtained from the creditors is almost certainly very small and it will be wholly uneconomic for the office-holder to apply to court, not least because of the onerous requirements of the relevant practice statement. The making of an application in this situation is not a sensible use of the court's scarce resources. In practice the office-holder will

	probably take the view that he simply has to conduct the case for no fee, which is at odds with the policy of 17.14(1).
17.15(7)	We remain of the view that the 18 month restriction on an application to court, introduced in 2010, is an unnecessary and unhelpful imposition. If the case is carried on long-term without the basis of remuneration having been fixed it is the office-holder who is at risk, not the creditors. We would ask for this sub-rule to be withdrawn.
17.16(1)	Can (a) and (b) be combined? We suspect that in an earlier draft (b) referred to the liquidation committee.
17.16(2)	See comments on 17.15(3) above.
17.17 (1)	Could not these provisions (a), (b) and (c) be combined?
17.18(2)(d)	Delete ‘liquidation or’
17.22	This is a lift of current 4.127B and retains the current uncertainties. We do not understand why this rule exists at all. In relation to fixed charge/mortgaged assets, the office-holder essentially has no right to deal with those assets except as agreed by the chargeholder or the court, so any remuneration should be privately agreed, but a rule is required to compel disclosure. In relation to a floating charge, do not (4.218A – E) deal sufficiently with the problem created by the House of Lords decision in re *Leyland Daf* (2004) to the effect that floating charge assets were not available for payment of liquidation expenses? If this rule is to be retained, it needs to be made clear that realising assets ‘for’ a secured creditor means negative equity. In the case of a floating charge, how exactly is this meant to work in relation to the preferential creditors and prescribed part? Is a committee/creditor approval under 17.14/17.15 required, as schedule 7 scale may simply be inappropriate (either too generous or too meagre). But if so, what is the point of 17.22(1)(c)? If the only party affected is the chargeholder, then presumably this rule creates a basic entitlement, but if the chargeholder is willing to allow more, or the office-holder is willing to work for less, that can be agreed, so again what is the point of the rule?
17.22 (2)	Why ‘must’ rather than ‘may’?
17.23	‘insolvent … winding up’ or ‘creditors’ voluntary liquidation’? Why does not this apply to administrations? This rule needs to extend to employees (or directors) of the office-holder’s firm now that most practices are conducted through LLPs or limited companies.

Part 18 – Persons at risk of violence

18.2	What about a debtor who proposes to enter into an IVA? There may be a court file and presumably it could be open to inspection.
18.2 and 18.3	Would it not be possible to combine these rules? Many of the terms are similar.
18.3	We note that the withholding of the address is to be decided by the court and not by the adjudicator. This is presumably because a discretionary decision is being requested and that properly belongs in the judicial sphere. How is the making of the application for withholding the address to be notified to the adjudicator and how are the timings of the parallel processes of the application for bankruptcy to the adjudication and the application to court for withholding of the address to be co-ordinated?

Part 19 – The EC Regulation

19.9(1)(a)	The cross references to rule 7.31A are to the current rules.
19.9(2)	Last line: ‘the Rules listed’ rather than ‘these Rules listed’?

Part 20 – Permission to act as a director etc. of a company with a prohibited name (section 216)

20.1	Can this preliminary rule not simply be deleted? The phrase ‘acts as a director etc’ will only need to be expanded in 20.3(3) and 20.4(1)(b) as more elegant references to section 216(3) have been retained elsewhere in this Part.
20.3(1)(a)	‘…company that has entered insolvent liquidation…’. Current 4.228(1)(a) says ‘gone into’, not ‘entered’. Section 247 defines ‘goes into liquidation’, a definition distinct from ‘commencement’ in section 129. ‘Entering liquidation’ is not a defined term. Oddly current 4.228(1)(b)(ii) uses ‘entered’, but 20.3(1)(b)(i) changes this to ‘went into’. Further instances occur in this rule, to be considered if consistency is to be achieved.
20.5	The current 4.230(a) and (b) are lifted into 20.5(b) and (c). There is a blank 20.5(a). Is something else to be put in, or is this an error?

Association of Business Recovery Professionals
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