

# THE NATIONAL LAW REVIEW

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## UK Rules of Engagement for Creditors - New Insolvency Rules In Force 6 April 2017

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On 6 April 2017, the new **UK Insolvency Rules** come into force which will affect creditors' rights in most insolvency procedures. The changes are designed to ensure insolvency processes are as efficient and streamlined as possible in order to maximise returns to creditors by reducing costs whilst retaining safeguards to avoid abuse or injustice.



Whether you are faced with an insolvent customer, client, supplier, tenant or other debtor, you will need to know about the key changes to the rules. This article highlights the important changes affecting your rights as a creditor.

*Key changes:*

### No more creditors' meetings

Arguably, the most controversial change in the new rules is the abolition (in corporate insolvencies) of creditors' meetings. After 6 April 2017, meetings in person can only be held where requested by creditors representing 10% (in value or number) or by 10 individual creditors. Creditors will no longer be asked to attend meetings (or send others to attend on their behalf) but instead will be faced with a range of "decision-making procedures" - see below.

### Deemed consent procedure

The most radical change in the new rules is the concept of "deemed consent" as a tool for facilitating creditors' decisions. Deemed consent allows for notice of a decision to be given to creditors and, unless a minimum of 10% in value of creditors object, the decision is treated as having been approved. There are some key decisions which cannot be made using the deemed consent procedure (e.g. decisions relating to the remuneration of the insolvency practitioner, the approval of a Company or Individual Voluntary Arrangement or where otherwise prohibited in the legislation). The deemed consent procedure can be used for the appointment of liquidators - note that they will initially be chosen by the directors of the insolvent company and so if creditors want a say in who the liquidators should be, they need to object to the deemed consent procedure and request the question be decided by an alternative decision making procedure.

### Decision making procedures

As the substitute for physical meetings, the new rules provide for insolvency practitioners to conduct the affairs of the insolvent debtor using a prescribed range of "decision making procedures". These include the deemed consent procedure, decisions made by correspondence, electronic voting, virtual meetings and any other procedure which enables all entitled creditors to participate. Under the new rules, each notice to creditors must contain prescribed information relating to the decision sought with guidance notes instructing what decision making procedure is to be followed.

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## Communications with creditors and opting out

As part of the modernisation of the legislation, provision is made for communication with creditors to be by email where a creditor agrees or is deemed to have agreed by virtue of having previously communicated this way with the debtor. The use of websites by insolvency practitioners is also provided for in the new rules which will enable creditors to log in and have access to documents relating to the insolvency proceedings on a bespoke website. If a website is to be used, creditors will be sent access details in the initial correspondence sent out by the insolvency practitioner. After that first communication, all subsequent information will be uploaded to the website and it will be up to creditors to keep checking for new information. Creditors should ensure that their internal IT systems will not treat these emails as spam, so that they do not inadvertently miss out on receiving such communications.

If a creditor does not want to receive any communication on the insolvency (for example, where it seems clear there is unlikely to be any return to unsecured creditors), then it can elect to “*opt out*” of all communications. A creditor who opts out will still receive key communications such as notice of distributions and other prescribed notices. Further, a creditor can still vote even if it has opted out and can opt back in at any time.

## No more statutory forms

The rules abolish the use of statutory forms, such as the standard “*Proof of Debt*” form for creditors to notify the value of their claim. Instead of submitting a proof of debt, a creditor now need only notify the debt in writing (including by email) to the officeholder. As officeholders and others get to grips with the new rules, it is likely a set of “*standard*” documents will come into use.

## Claims under £1,000 deemed accepted

In a further move to increase efficiency and reduce costs, the new rules provide for officeholders to advise creditors whose claims are under £1,000 that they are deemed to be agreed without any further process. Where a creditor receives such a notice but their debt exceeds £1,000, they should respond promptly to correct the position.

## Summary

The new rules, which come into force on 6 April 2017, represent the biggest reform to insolvency legislation in 30 years. It will take insolvency practitioners some time to get to grips with the new procedures. The changes are intended to improve the position for creditors by reducing cost, improving returns and speeding up procedures by use of electronic communications. Creditors need to be aware of the changes if they want to be involved in an insolvency process, especially given that the initial communication is likely to come by email. The use of the *deemed consent* procedure is likely to be one of the most used new tools for decision making so creditors should be alive to this and act promptly if they have objections to the decisions being sought.

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