Queries on The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules (SI 2018/1082) ("I(S)CVAAR")	Response provided by The Insolvency Service
It was highlighted that rule 3.35(1)(f)(i) refers to "an order under rule 3.44 or 3.45" and it was asked whether the reference should be to "an order under rule 3.45 or 3.46"? This would reflect the wording of rule 3.35(1)(f)(i) of the Insolvency (England and Wales) Rules 2016 ("the 2016 rules").	The reference to rule 3.44 was incorrect and has been changed to "rule 3.45 or 3.46" by The Insolvency (Scotland) Rules 2018 (Miscellaneous Amendments) Rules 2019 (SI 2019/1059).
It was highlighted that rule 3.41(1)(a) refers to "the statement required by rule 3.35(10)(a)" and it was asked whether the reference should be to "the statement required by rule 3.35(10)(a) and (b)"? This would reflect the wording of rule 3.41(1)(a) of the 2016 rules.	Rule 3.41(1)(a) has been amended by SI 2019/1059 to "the company's creditors (accompanied by a copy of the statement of proposals, including the statements required by rule 3.35(10)(a) and (b)".
Rule 3.119 has no equivalent to rule 14.31(3) of the 2016 rules which provides that "the information required by paragraph (2)(a) may take the form of a list of small debts which the office-holder intends to treat as proved which includes that owed to the particular creditor to whom the notice is being delivered". In relation to liquidations, rule 7.35 of the Insolvency (Scotland) (Receivership and Winding up) Rules 2018 mirrors the drafting of rule 3.119. It was questioned whether there is the ability to provide a list of small debts in Scottish administration or liquidation proceedings.	It is correct that there is no direct equivalent to rule 14.31(3) of the E&W rules in the I(S)CVAAR. This is because there are policy differences in the treatment of small debts as between our rules and the E&W rules, such that provision of the nature of rule 14.31(3) makes sense in the context of the E&W rules, but isn't as appropriate in the Scottish rules. In England and Wales, notice under rule 14.31 on small debts doesn't take the form of a standalone notice, but instead the information in rule 14.31(2) is required to be included within the notice that is sent under rule 14.29 (a standard notice which doesn't require to be tailored to individual creditors). This explains the inclusion of rule 14.31(3) – it effectively allows the office-holder to draw up one list of small debts and add this information to the generic notice that will be sent to all creditors under rule 14.29. The provision is designed to allow the office-holder to draw up just one notice and to send that to all of the creditors, whether it's proposed to treat their debts as small or not – in short, the provision appears to reduce the amount of work the office-holder is required to do. The approach in Scotland is different because the process is structured around the accounting periods and the small debt process is quite separate from the process of adjudicating claims for dividend. Under the I(S)CVAAR, the notice sent to those creditors whose debts the administrator proposes to

	treat as small (i.e. the notice under rule 3.119) is a separate notice from that which is to be sent under rule 3.108 regarding adjudication. The 3.119 notice must be sent 12 weeks before the end of the accounting period, giving the creditor 4 weeks to dispute it and submit a statement of claim in the same way as all the other creditors, 8 weeks before the end of the accounting period. Then, 4 weeks before the end of the accounting period, the 3.108 notice requires to be sent. Given that the Scottish rules require separate notice of small debts to be sent to those individual creditors in the first place, rather than allowing for that information to be included in a different type of notice that goes to all creditors, it was considered unnecessary to spell out that a one size fits all approach is permissible. However, in our view we don't see that there's anything in the new rules that would prohibit sending one notice to all of the small debt holders under rule 3.119 that lists all of the small debts in one place as long as all the required information is given, and it doesn't breach any data protection requirements.
Administration rule 3.95(2) provides that within 2 weeks after the end of an accounting period the administrator may seek a determination of his remuneration from the committee, or if there is no committee, from the creditors. In a para 52(1)(b) case, Administration rule 3.96(6) provides that the determination falls to the secured creditors or secured creditors and preferential creditors. Administration rule 3.96(1) provides that such determination must be made within 6 weeks after the end of an accounting period. Administration rule 3.100(1) provides that dissatisfied creditors (meeting the 25% criteria) can apply to the court to challenge the administrator's remuneration not later than 8 weeks after the end of the accounting period. Where the determination is not made by the creditors, it has been questioned whether there is a rule which requires the administrator to notify creditors of the determination under 3.96(6) – as such it seems that creditors may simply not be aware of the position and thus unable to decide if they wish to make a challenge under rule 3.100(1).	Rule 3.100(1) provides an appeal route to the court where the remuneration and outlays have been fixed by the creditors' committee or the creditors. In circumstances where r.3.96(6) applies (decision made by each secured creditor / decision of the preferential creditors) we do not interpret the decision as having been made by "the creditors", and unsecured creditors would not have a right of appeal under rule 3.100(1) (as they have no economic interest in the decision).

Further, in practical terms, even if creditors were made aware of the determination at, or near the 6-week stage, the 14 days remaining to them may simply not be enough time in which to make a challenge (at least within the 8-week time frame envisaged by Administration rule 3.100(1).The timescales will be further reduced if a physical creditors' meeting is requested. It was suggested that the time period in Administration rule 3.100(1) would be fairer to creditors if there was a requirement for the administrator to deliver the outcome of the determination to creditors within x business days of its being made, and for creditors to then have, say, 4 weeks from delivery in which to apply to the court to challenge. Similar considerations apply in the equivalent Winding Up rule (where the approving body may well be the Court).	
Administration rule 3.35(9) has been interpreted that the administrator's proposals must contain a statement setting out the proposed basis of the administrators' remuneration, which creditors will then be requested to fix via a decision process. The basis can be either a percentage, time-cost, or set fee (fixed fee) (or a combination of them) per Administration rule 3.97. Administration rule 3.96 then provides that the creditors' committee or creditors must issue a determination fixing the amount of remuneration payable within 6 weeks after the end of an accounting period. It was queried that if the creditors fix the basis of remuneration on a fixed fee basis, then presumably they will do so for a quantum that will (subject to any increases that may subsequently be approved) cover the entirety of the administration. Thus, at the first accounting period, it was asked if the determination is for the full fixed fee amount as approved at the proposals stage? Or if it is intended that a portion of the fixed fee is determined at each accounting period stage? Or if it is the intention that at the proposals stage, the creditors simply approve a fixed fee basis but with no quantum – and that the actual quantum is then determined by the committee/creditors at each accounting	The rules provide flexibility as to the basis of remuneration and a combination of bases may be used. At the proposal stage the rules provide that the proposal must include a statement of the basis on which it is proposed that the administrator's remuneration should be determined. Where all or part of the remuneration is proposed to be a set amount although the rules do not require the proposed amount to be specified in the proposal, it is difficult to see how creditors are likely to approve such a proposal if the amount is not specified. We interpret "set amount" to be a single set amount for the work to be covered by that basis. The creditors (or the committee) would then fix the quantum of the set amount in accordance with rule 3.96 (one would assume this is likely to be at the end of the first accounting period). Once determined, the amount would not then need to be determined for subsequent accounting periods (unless of course the administrator subsequently considered the amount insufficient and appealed the determination under rule 3.99).

period? If that is so, it was queried when the totality of the fixed fee quantum is to be arrived at?	
A stakeholder questioned why the rules contain two provisions setting out the priority of expenses in Administration. It appears that one is an importation from the E&W Rules (3.51) while the other is derived from the Insolvency (Scotland) Rules 1986 (rule 4.67 ISR 1986).	There is some duplication contained in rules 3.51 and 3.116 but we do not consider that they lead to a different priority of distribution. This is because rule 3.116(1) provides that "Subject to rule 3.51 the expenses of the administration are payable out of the assets in the following order of priority". Therefore, the order of priority to be followed is that set out in rule 3.51 which closely follows the equivalent rule in the E&W Rules and sets out administration expenses in greater detail than in rule 3.116. Whilst the duplication may appear unhelpful, for the reasons given above we don't think it requires an urgent amendment to the Rules though it is something which we will consider when the Rules are amended at some future date.
Rule 3.21(1)(k) requires a notice of appointment lodged by the holder of a qualifying floating charge holder out of court hours to contain "a statement whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EU proceedings and the reasons for so stating and that a copy of the statement accompanies the notice of appointment". As currently drafted, it appears that Rule 3.21(1)(k) requires (a) the statement and reasons to be contained within the notice; and (b) for a separate statement containing the same information to accompany the notice. The equivalent provisions in Rules 3.16(2)(k), 3.17(1)(k), 3.23(1)(i), 3.24(1)(h) and 3.25(2)(i) do not make reference to a separate statement accompanying the relevant notice. The previously prescribed form for an out of hours appointment (Form 2.6B(Scot)) contained the equivalent statement within the body of the notice. The equivalent provision in the Insolvency (England and Wales) Rules (Rule 3.21(1)(i)) provides for "a statement whether the proceedings flowing from	The E&W Rules require the notice of an out of hours appointment to state that a statement for the reasons as to why the proceedings will be main, secondary, territorial or non-EU proceedings is in the appointer's possession. We took the decision that it would be more transparent and helpful to the court were that information to be sent to the court with the notice of appointment. We appreciate that the way in which rule.3.21(1)(k) is framed does add an element of duplication, though the frequency of out of hours appointments in Scotland are rare and this will be taken into account when considering whether an amendment to the rules is justified.

the appointment will be main, secondary, territorial or non-EU proceedings and that a statement of the reasons for stating this is in the appointer's possession". Although that rule does refer to a separate statement, there is no duplication i.e. the statement as to whether the proceedings are main, secondary etc. is to be contained within the notice of appointment and the statement of the reasons for so stating are to be detailed in a separate statement. Given the foregoing, a stakeholder questioned whether Rule 3.21(1)(k) reflects what is intended in the case of an out of hours appointment as they could not understand why, in that particular circumstance, a separate statement is required. Given that there will already be additional papers in an out of hours appointment (the fax transmission report and the statement of reasons for the out of hours appointment) the stakeholder thought it was preferable for all other relevant statements and information to be contained within the notice of appointment itself, where possible.	
A query was received in relation to rule 3.117 (5) (b) of the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 which enables the administrator to pay preferential debts at any time but only with the consent of the creditors' committee or, if there is no creditors' committee the court. A stakeholder suggested that the content of the rule conflicted with Sch B1 para 65 of the Act which provides that the administrator may make a distribution to preferential creditors and makes no reference to the consent of the creditors' committee or the court being required.	Rule 2.41 of the 1986 Rules applies Chapter 4 of the 1986 Rules with regard to claims in an administration as they do in a liquidation, subject to modifications contained within rule 2.41. Rule 4.68(5)(b) contains a rule identical (other than reference to "liquidator" rather than "administrator") to new rule 3.117(5)(b), and nothing within rule 2.41 modifies that subsection in relation to administration. It is the case that the requirement to get the consent of the committee or court has been present since at least May 2014, when rule 4.68 was substituted for the previous version by the Insolvency (Scotland) Amendment Rules 2014. . The new Rules are therefore a straight read across from the 1986 Rules.

Queries on The Insolvency (Scotland) (Receivership and Winding Up) Rules (2018/347)	Response provided by Accountant in Bankruptcy
Section 110 of the Insolvency Act 1986 (Acceptance of shares etc. as consideration for sale of company property) applies to voluntary liquidations (both MVL and CVL) in England, Wales and Scotland. Rule 18.11 of the Insolvency (England and Wales) Rules 2016 provides that details of a section 110 distribution must be included in a receipts and payments account included with an annual progress report or final account. A stakeholder indicated that they had been unable to find an equivalent Winding Up rule to rule 18.11. They queried if there isn't one, why there is no such requirement in Scotland? Their initial view is to include such details for Scottish cases in any event and questioned if there is any reason why they should not seek to do so?	The Insolvency (Scotland) (Receivership and Winding up) Rules 2018 were largely a modernisation and consolidation of the 1986 Scottish rules to produce legislation – we also aimed to achieve consistency with the Insolvency (England and Wales) Rules 2016 where possible or appropriate. However, this did not mean that every rule and process was replicated and as a general point we did not aim to introduce new rules that were not contained with the 1986 Rules. We did, of course, introduce some limited changes to policy, including those aimed at aligning accounting and reporting periods and providing less onerous arrangements to dispense with a remuneration claim at the end of an accounting period. There were some aspects which were not in the 1986 rules and deemed unnecessary to be replicated from the England and Wales rules into the new Scottish rules. One such rule was 18.11 of the England and Wales 2016 Rules. This particular rule had been considered and discussed. It was considered unnecessary to include this as it was not in the 1986 rules and on a practical basis may be applied as a general power of the liquidator. It was a deliberate decision to ensure that the contents of the receipts and payment were not prescriptive. Rule 7.4 of the new Scottish rules relates to progress reports but it does require a receipts and payments account to be included with the progress report, and rule 7.4 (1)(h) requires the progress report to include "any other information of relevance to the creditors." Information relating to the acceptance of shares etc. as consideration for sale of company property could be considered as information relevant to the creditors and therefore included when reporting on the progress of the case. As section 110 of the Insolvency Act 1986 is relevant to Scotland and the 1986 rules did not include an equivalent rule 18.11 we have not sought to change the process in this regard. We do not believe the rules would

	prevent you from including the details referred to in a receipts and payments account.
Rule 7.11(8) provides that a liquidator's remuneration may be fixed on either a percentage, time-cost, or set fee (fixed fee) (or a combination of them per rule 7.11(9)). Rule 7.11(7) provides that within 6 weeks after the end of an accounting period, it is for the committee or the court to issue a determination fixing the amount of the liquidator's remuneration. A stakeholder could not see any explicit provision as to how the basis (as opposed to the amount) of remuneration is to be fixed. It was asked if it is intended that at each accounting period the committee/court is to fix (determine) the basis of remuneration and to then determine the amount of remuneration on that basis? Or is the fixing of the basis of remuneration a separate step – and once fixed, that basis remains throughout the life of the liquidation and thereafter only the amount of remuneration falls to be determined each accounting period?	In a straight reading of rule 7.11 of the Insolvency (Scotland) (Receivership and Winding up) Rules 2018, the basis and amount of remuneration could be fixed in each accounting period. The rules do not state that the basis should be fixed in the initial accounting period and, therefore, continue for the remainder of the liquidation. This is effectively the same process as the 1986 Rules where the liquidator submits a claim for remuneration (which includes the basis and the quantum) except in the new Scottish rules there is the ability not to submit a claim at the end of every accounting period. There is the ability to use a different basis for different acts. It is for the party setting the remuneration to agree if the amount and basis claimed by the liquidator is appropriate for the period claimed or the acts carried out by the liquidator (for example selling a specific asset).
In Court Liquidations the relevant date for claims has moved from the date of the presentation of the petition to the date of the winding-up order. However, there are no transitional provisions in relation to this change. A stakeholder has queried whether, for a pre-6 April liquidation where a dividend is anticipated and claims have already been received, they are expected to write to creditors to give them the opportunity to resubmit a claim to include the period from the date of the petition to the date of the winding up order. There was a question as to whether a transitional provision had been overlooked.	In a significant number of court liquidations, the petition date and the provisional appointment date would be the same or within a few days of each other and, therefore, it is unlikely that further credit will be incurred by the company after the date of presentation of the petition and prior to the date the company went into liquidation. Therefore, there would be limited impact on claims in these cases. It is appreciated that this will not be the position in all cases and it is more likely that credit may have been incurred between the date of presentation of the petition and the date the company went into liquidation in cases where there has been no prior provisional liquidation and therefore the first appointment is the date of the winding up order. The liquidator will be able, based on the dates of appointment and knowledge of their cases, to identify cases where a different date for claims may have an impact and take whatever action they deem is appropriate to ensure that the sums claimed by each creditor is correct prior to adjudicating on the claims.

	In the circumstances, it was felt that a transitional provision was not required.
A request was made to clarify the position in respect of progress reporting in CVLs, specifically accounts of receipts and payments, under the new insolvency rules. Under the old rules there was a requirement to report to the AiB under the following periods; • After 12 months, • Every period of 6 months thereafter, until the case is closed. The stakeholder's understanding of the new rules is that there is a requirement to report to the AiB every 12 months and there is no need for the interim 6-month report of receipts and payments and the request sought confirmation of this. If this was not the position, confirmation was requested on what form would be submitted as SCVL15 refers to a progress report.	Where there is an obligation to prepare a report after the date of commencement of the Insolvency (Scotland) Receivership and Winding up) Rules 2018, Rule 7.7 requires submission of progress reports for the following periods: • 12 months starting from the date on which the liquidator is appointed: and • each subsequent period of 12 months. There is no requirement for an interim 6-month report of receipts and payments. The content of the progress reports is included in Rule 7.4, which includes a summary account of receipts and payments. For ease the AiB have created a non-statutory form for the submission of the progress reports. This is a guide only and each practitioner requires to ensure that any document submitted contains all information required by the rules. A link to this form is attached below: https://www.aib.gov.uk/scvl-rule-77-notice-progress-report.
The wording in rule 5.22 (and also 4.12 conversion to CVL from MVL) is "within 5 business days of the date of the notice" and it is thought that the date of a Notice is the date it is signed, not the date it is delivered. It is not clear what defines date of a notice as being the date it is delivered. That wording is also quite distinct from section 246ZE(7) of the Act re calling a physical meeting or the Rules on the liquidator's release or SoA expenses that specifically refer to date of delivery. It may not be what was intended but taken on what is stated it has been suggested that the notice could be sent by 2nd class post using up 4	We interpret that the 5 working days runs from delivery of the notice and that the date of the notice is the same as the date of delivery. This is because rules 4.12(5) and 5.22(5) refer back respectively to rules 4.12(2) and 5.22(2), which both refer to delivery of the notice, and, therefore, delivery of the notice is the only event provided for by each provision. As delivery of the notice is the only event provided in these rules, we do not consider that there is a requirement to provide a definition of the date of the notice. We also note that postage is not the only form of delivery and would envisage that going forward there will be a move towards sending notices

business days leaving the creditors with just 1 business day to respond (obviously with the purpose of defeating alternative nominations). Although this would be counter to the spirit and principles of SIP 6, the Rules do say date of the notice.	by electronic means such as email. The date of delivery will depend on the method of sending the notice. Where post is used the date of delivery would be calculated based on rule 1.38 in conjunction with rule 1.3. Even if the interim liquidator chose to send the notice by post there is nothing to prevent a creditor from returning their nomination using a different form of delivery, for example, email where it would be deemed under rule 1.41 to have been received by the interim liquidator by 9.00 am on the next business day after it was sent. It is for the parties using the legislation to operate it and if any party considers that in a case there has been an incorrect interpretation or operation of any rule they have the ability to challenge this through the courts.

Queries on the Court Rules, being: • **The Act of Sederunt (Rules of the Court of Session 1994) (SI 1994/1443); and** • **The Act of Sederunt (Sheriff Court Company Insolvency Rules 1986) (SI 1986/2297)**	**Response provided by Accountant in Bankruptcy, and action taken**
Rules 7.13A and 7.13B of the 1986 Rules were removed and not replicated in the 2018 Rules as it was felt that they related to court proceedings and would therefore sit better within the Court Rules. However, rules equivalent to 7.13A and 7.13B were omitted from amendments to the Court Rules which commenced on 06 April 2019.	The Court Rules have been amended to reflect rule 7.13A of the 1986 Rules with the addition of paragraph 74.30A(1A) in SI 1994/1443 and paragraph 31A(1A) in SI 1986/2297. The following text has been added: (1A) The petition or note, as the case may be, must include averments in relation to— (a) the type of insolvency proceedings in which the application arises; (b) the financial position of the company; (c) the basis for the applicant's view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits; and (d) whether any other insolvency practitioner is acting in relation to the company and, if so, that insolvency practitioner's name and address.
Rule 4.18(3) of the 1986 Rules was also removed and not replicated in the 2018 Rules. It was considered that the requirement for the court to send a copy of the order to the liquidator should be governed by the Court Rules rather than the 1986 Rules. Stakeholders expressed concern that there was no requirement within the Court Rules for the court to issue an interlocutor to the liquidator. This could result in delays in dealing with their statutory requirements.	Rule 74.26(1) of the Act of Sederunt Rules of the Court of Session 1994 states: - *"Where the court pronounces an interlocutor appointing a liquidator-* *(a) the Deputy Principal Clerk shall send a certified copy of that interlocutor to the liquidator"* We consider that this would cover the appointment of a liquidator under any sections of the Insolvency Act (including 100(3), 108, 138(1), 138(5), 139(4) and 140). However, Rule 26 of the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986, as amended by the Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) 2019

	(SSI 2019/81) appeared to be more limited in the scope of the circumstances under which the liquidator is appointed. It stated: - *"(2) Where the court appoints a liquidator under sections 100(3), 108 or 138(5) of the Act of 1986, the sheriff-clerk shall send a certified copy of the interlocutor pronounced by the court to the liquidator forthwith."* It was therefore silent on what the court required to do with the interlocutor where an appointment was made under sections 138(1), 139(4) and 140. While there were no specific requirements for the court to send the interlocutor to any party, it was envisaged that they would forward it to either the liquidator or the party making the application for the liquidator's appointment. However, for clarity, the Act of Sederunt (Sheriff Court Company Insolvency Rules 1986) have been amended by the Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Company Insolvency Rules Amendment) (Insolvency) 2019 (SSI 2019/247) to ensure that there is a requirement for the court to forward the order to the liquidator.