

Date: 1 January 2024



ICAS Insolvency Regulations

A thick, teal-colored brushstroke underline is positioned beneath the word 'Regulations'.

The Institute of Chartered Accountants of Scotland

Index

Council, in terms of Rules 8.1, 11.11.4 and 11.11.5 of the ICAS Rules, hereby makes the following Regulations.

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1. General

Citation and commencement

- 1.1 These Regulations may be cited as the ICAS Insolvency Regulations and shall come into force on 1 January 2024.

Definitions

- 1.2 In these Regulations words and phrases have the same meaning as in the ICAS Rules and, unless the context requires otherwise:

Act – the Insolvency Act 1986, as amended, consolidated or replaced, including any subordinate legislation, and, where appropriate, the equivalent legislation in Scotland or Northern Ireland.

Adverse Decisions – a decision of the Committee under Regulation 5.10.

AIB – the Accountant in Bankruptcy, or any successor body performing the same function in Scotland.

Applicant – a Member or Affiliate applying for Authorisation in accordance with these Regulations.

Appointment – the appointment of an Insolvency Practitioner to an office or position in terms of the Act.

Authorisation – authorisation to act as an Insolvency Practitioner in accordance with these Regulations, including Partial Authorisation.

DBT – the Department of Business and Trade, including any successor body performing the same insolvency regulation function, or a body to which such function is delegated.

Committee – the committee established by the Regulation Board under Regulation 2.1.

CPD – continuing professional development.

DfE – Department for the Economy, or any successor body performing the same insolvency regulation function in Northern Ireland.

Firm – a body corporate, partnership, limited liability partnership or unincorporated practice, which is subject to Rules and Regulations.

Hearing – a hearing in respect of a proposed Adverse Decision under Regulation 5.1 or an order of suspension under Regulation 5.3.

Insolvency Practitioner – a person authorised by the Committee in accordance with Regulation 2.11.1.

Insolvency Work – includes work undertaken while acting as an Insolvency Practitioner under the Act.

Monitoring – the arrangements for enabling the Insolvency Work, practices and procedures of Insolvency Practitioners to be monitored.

Partial Authorisation – authorisation under Regulation 2.11.1 which is restricted in accordance with the Act.

Recognised Professional Body – a body with designated authority under the Act to regulate insolvency practitioners in the United Kingdom.

Regulatory Penalty – a penalty proposed by the Committee in accordance with Regulation 5.26.

SIPs – Statements of Insolvency Practice, as amended, consolidated or replaced from time to time.

Sub-Committee – means no fewer than three members of the Committee appointed under these Regulations, including not less than one Lay Member.

Notices

- 1.3 Any notice or other document to be sent under these Regulations shall be delivered electronically, by hand or by post. It must be sent to the address that the Member, CA Student Member, Affiliate, Applicant or Firm has given to ICAS for this purpose. Delivery shall be deemed to have occurred:
- 1.3.1 for emails, facsimile, and other electronic means when sent;
 - 1.3.2 by hand, when delivered; and
 - 1.3.3 by post 48 hours after posting.
- 1.4 Any reference to legislation, Rules, Regulations, schemes, SIPs, guidance notes or other documents will apply to any re-enactment, re-issue or amendment.

Application

- 1.5 These Regulations apply to Members, Firms, Affiliates and Applicants.
- 1.6 Any reference to an act or omission of an Insolvency Practitioner shall be deemed, where appropriate, to include the acts or omissions of any persons or entities acting on behalf of the Insolvency Practitioner.

2. The Committee

Constitution and composition

- 2.1 The Regulation Board shall establish a Committee comprised of a Convener and nine or more other persons. Not less than one third of the members of the Committee shall be Lay Members.
- 2.2 Appointments to the Committee shall be for a term of three years, renewable for one further term of three years at the discretion of the Regulation Board.
- 2.3 The length and number of terms referred to in Regulation 2.2 may be extended or varied in exceptional circumstances at the discretion of the Regulation Board.

Conduct of business

- 2.4 The Committee shall meet a minimum of four times a year.
- 2.5 At meetings of the Committee, three members shall constitute a quorum, of who one shall be a Member and one shall be a Lay Member. The majority of those present must not be Lay Members.
- 2.6 Meetings and other business of the Committee may be conducted in person, by email, telephone, or other electronic or video conferencing means whereby communications between members can be conducted in real time.
- 2.7 The Convener shall, in the case of an equality of votes, have a second or casting vote.

Declaration of interest

- 2.8 Each member of the Committee must declare any interest in any matter before the Committee. A member of the Committee who has declared such an interest shall ensure that they withdraws from any discussion and decision on the matter concerned.

Remuneration

- 2.9 Members of the Committee are entitled to be reimbursed by ICAS for any expenses reasonably incurred in connection with their membership of the Committee.
- 2.10 Lay Members of the Committee are entitled to reasonable remuneration in connection with their membership of the Committee.

Powers

- 2.11 The Committee shall have the power to:
- 2.11.1 grant or reject applications for Authorisation;
 - 2.11.2 impose conditions and/or restrictions on Authorisation;
 - 2.11.3 suspend or withdraw Authorisation;
 - 2.11.4 apply to the Discipline Panel for an interim order;
 - 2.11.5 monitor the work and compliance of Insolvency Practitioners;
 - 2.11.6 offer and impose Regulatory Penalties;
 - 2.11.7 give effect to a direct sanctions order made by a court in accordance with the Act;
 - 2.11.8 request undertakings, make enquiries, directions and determine all other matters incidental to or arising from the exercise of its powers under Regulations 2.11.1 to 2.17.
- 2.12 In exercising its powers, the Committee may take into account:
- 2.12.1 any findings under Rule 13;
 - 2.12.2 any information provided by an Applicant or Insolvency Practitioner;
 - 2.12.3 any information provided by board or committee of ICAS;
 - 2.12.4 any information, directions or guidance provided by the AIB, DBT or DfE;
 - 2.12.5 any guidance issued in relation to the Act;
 - 2.12.6 the regulatory objectives set out in the Act;
 - 2.12.7 any other information which it believes to be relevant.

Delegation of powers

- 2.13 Subject to Regulation 2.14, the Committee may sub-delegate all or any of its powers under Regulation 2.11 to an individual or Sub-Committee on such terms as it may decide.
- 2.14 The powers under the following Regulations shall not be delegated:
- 2.14.1 Regulation 2.11.3;
 - 2.14.2 Regulation 2.11.4;
 - 2.14.3 Regulation 2.11.6;
 - 2.14.4 Regulation 2.11.7.

3. Applications for Authorisation

Requirement for Authorisation

- 3.1 A Member or Affiliate shall not undertake Insolvency Work unless:
- 3.1.1 Authorisation has been granted by the Committee under Regulation 2.11.1;
or
 - 3.1.2 Authorisation has been granted by a body with designated authority under the Act to regulate insolvency practitioners in the United Kingdom.

Eligibility requirements for Authorisation

- 3.2 An Applicant must satisfy the Committee that they:
- 3.2.1 are a Member or Affiliate;
 - 3.2.2 satisfy the requirements of either Regulation 3.3 or 3.4, where applicable;
 - 3.2.2 are a fit and proper person;
 - 3.2.3 satisfy any knowledge, skills and experience requirements as may be prescribed by the Committee or DBT;
 - 3.2.4 have undertaken, and will continue to undertake, adequate and relevant CPD;
 - 3.2.5 have adequate professional indemnity insurance cover;
 - 3.2.6 can demonstrate compliance with the Act, Rules and Regulations, SIPs, and other standards, where appropriate;
 - 3.2.7 have provided the Committee with all information requested in connection with the application.

Practising Certificate

- 3.3 An Applicant who is a Member must satisfy the Committee that they hold a Practising Certificate.
- 3.4 An Applicant who is an Affiliate must satisfy the Committee that they hold a practising certificate, or equivalent authorisation, if they are a member of a professional body which issues such authorisations.

Applying for Authorisation

- 3.5 An application for Authorisation under Regulation 2.11.1 shall be:
- 3.5.1 in the form prescribed by the Committee, including such supporting information as may be requested;
 - 3.5.2 submitted on or before any date which may be prescribed by the Committee;
 - 3.5.3 accompanied by payment of applicable fees.
- 3.6 Insolvency Practitioners who wish to continue Authorisation shall submit an application under Regulation 3.5 at such time as may be prescribed by DBT or ICAS.

Consideration of applications

- 3.7 Upon receipt of an application for Authorisation under Regulation 3.5, the Committee may:
- 3.7.1 grant the application, with Authorisation to be effective from such date as may be stated by the Committee;
 - 3.7.2 be minded to reject the application;
 - 3.7.3 be minded to grant the application subject to conditions and/or restrictions;
 - or
 - 3.7.4 request further information from the Applicant before taking a decision.

Cessation of Authorisation

- 3.8 The Authorisation of an Insolvency Practitioner shall cease on such date as may be determined by the Committee, if:
- 3.8.1 the Insolvency Practitioner becomes insolvent in accordance with Rule 3.13, or is otherwise disqualified in accordance with the Act;
 - 3.8.2 the Insolvency Practitioner ceases to be a Member or Affiliate;
 - 3.8.3 the Committee accepts an application from the Insolvency Practitioner to terminate Authorisation;
 - 3.8.4 the Insolvency Practitioner fails to make payment to ICAS in accordance with Regulation 4.2;
 - 3.8.5 the Insolvency Practitioner does not apply for Authorisation in accordance with Regulation 3.6;

- 3.8.6 the Committee withdraws the Insolvency Practitioner's Authorisation in accordance with these Regulations.

Waiver

- 3.9 Subject to Regulation 3.10, the Committee may waive or vary the requirements of these Regulations to adapt to the particular circumstances of an Applicant or Insolvency Practitioner if it considers that:
- 3.9.1 complying with the relevant requirements would be unnecessarily burdensome for the Applicant or Insolvency Practitioner compared to any benefit which compliance might give to insolvent estates, clients, third parties or the public interest; and
- 3.9.2 waiving or varying the requirements of these Regulations would not constitute a material breach of the Act and is unlikely to result in any undue risk to insolvent estates, clients, third parties or the public interest.
- 3.10 A waiver or variation granted by the Committee under Regulation 3.9 may be limited in terms of scope and timing, as the Committee deems appropriate.

4. Obligations of Insolvency Practitioners

Cooperation and compliance

- 4.1 An Insolvency Practitioner shall, at all times:
- 4.1.1 comply with these Regulations;
- 4.1.2 cooperate fully and promptly with the Committee and individuals acting on its behalf or otherwise employed by ICAS;
- 4.1.3 cooperate fully and promptly with enquiries from the AIB, DBT, DfE or individuals acting on behalf thereof;
- 4.1.4 with reference to Regulations 4.1.2 and 4.1.3, also ensure the cooperation of the Firm of which the Insolvency Practitioner is a Principal or employee, and all employees of the Firm;
- 4.1.5 use their best endeavours to accommodate Monitoring.
- 4.2 An Insolvency Practitioner shall pay to ICAS such fees and other monies as are required to be paid to ICAS in connection with Authorisation and/or these Regulations, within such timescales as may be prescribed by ICAS or the Committee.
- 4.3 Upon receipt of a request from the Committee or an individual acting on its behalf, an Insolvency Practitioner shall:
- 4.3.1 provide such information or explanation as requested, by way of report, return or otherwise;
- 4.3.2 permit the examination of or deliver up such internal systems or processes, books, papers or records as the Committee considers necessary.
- 4.4 The Committee may require an Insolvency Practitioner to attend a meeting with the Committee on provision of reasonable notice.
- 4.5 All duties and obligations arising under these Regulations shall equally apply to a person who ceases to be authorised as an Insolvency Practitioner in accordance with Regulation 3.8.

Monitoring

- 4.6 Monitoring may cover:
- 4.6.1 the Insolvency Work undertaken by an Insolvency Practitioner, including work undertaken on their behalf;
- 4.6.2 the regulatory and compliance processes of an Insolvency Practitioner and their Firm;
- 4.6.3 the resources allocated to Insolvency Work by an Insolvency Practitioner;

- 4.6.4 the level of compliance with the Act, Rules, Regulations, SIPs and guidance which applies to the appointments of an Insolvency Practitioner;
 - 4.6.5 the CPD undertaken by an Insolvency Practitioner;
 - 4.6.6 such other work as may be undertaken by the Insolvency Practitioner by virtue of their Authorisation.
- 4.7 Subject to the requirement that an Insolvency Practitioner undertaking Insolvency Work shall receive a Monitoring visit not less than every six years, the Committee shall determine the timing and frequency of Monitoring visits.
- 4.8 At the conclusion of a Monitoring visit, the Insolvency Practitioner shall receive a report in summary of the visit.
- 4.9 Where the report referred to in Regulation 4.8 raises concerns in respect of one or more of the matters referred to in Regulation 4.6, it shall be intimated to the Committee which shall consider whether it requires to take any action in response. The Insolvency Practitioner shall be notified of the decision of the Committee accordingly.

Change of circumstances

- 4.10 An Insolvency Practitioner shall notify the Committee of any change in circumstances which affects either his Authorisation or his ability to undertake Insolvency Work, including, but not limited to:
- 4.10.1 any matter affecting his compliance with the eligibility requirements in Regulation 3.2;
 - 4.10.2 any breach of the Act, Rules or Regulations which has been committed, or is likely to be committed, by the Insolvency Practitioner;
 - 4.10.3 any change in the name or address of the Insolvency Practitioner;
 - 4.10.4 any change in the entity through which the Insolvency Practitioner operates.
- 4.11 Notification under Regulation 4.10 shall be provided by the Insolvency Practitioner within 10 business days of the matter or change in question.

Compliance with standards

- 4.12 An Insolvency Practitioner shall ensure that Insolvency Work is undertaken in compliance with:
- 4.12.1 all relevant UK legislation, including, but not limited to, the Act, and other applicable primary and secondary legislation;
 - 4.12.2 all relevant EU legislation, including regulations and directives;
 - 4.12.3 any standards, regulations or guidance issued by the AIB, DBT or DfE;
 - 4.12.4 ICAS Code of Ethics;
 - 4.12.5 Statements of Insolvency Practice;
 - 4.12.6 any other applicable standard, code of practice or guidance, whether ethical or technical.
- 4.13 An Insolvency Practitioner shall ensure that they comply with all applicable regulations and standards for the retention of files for Insolvency Work.
- 4.14 An Insolvency Practitioner shall ensure that all persons acting on his behalf are performing their roles with sufficient competence and expertise to comply with these Regulations.

Referrals for investigation

- 4.15 The Committee may refer an Insolvency Practitioner to the Investigation Committee if it considers that the Insolvency Practitioner:
- 4.15.1 has failed to comply with the Regulations;
 - 4.15.2 may be liable to disciplinary action in accordance with Rule 13.

5. Decisions of the Committee

Conditions, restrictions, and withdrawal

- 5.1 The Committee may seek to take the following actions in respect of Authorisation if it is satisfied that one or more of the conditions in Regulation 5.2 applies:
 - 5.1.1 application of restrictions and/or conditions; or
 - 5.1.2 withdrawal.
- 5.2 The conditions referred to in Regulation 5.1 are as follows:
 - 5.2.1 an Insolvency Practitioner no longer meets one or more of the eligibility requirements in Regulation 3.2;
 - 5.2.2 an Insolvency Practitioner has not complied with the Act, Rules or Regulations;
 - 5.2.3 an Insolvency Practitioner has not complied with any applicable statutory requirements, standards, code of practice, or guidance, whether ethical or technical, including those set out in Regulation 4.12;
 - 5.2.4 the quality of work undertaken by an Insolvency Practitioner has fallen significantly short of the standards expected of an Insolvency Practitioner;
 - 5.2.5 an Insolvency Practitioner has not complied with an existing condition and/or restriction placed on Authorisation or any written undertaking provided to the Committee;
 - 5.2.6 the action is required to prevent risk or potential risk to insolvent estates, clients, third parties or the public interest.

Suspension

- 5.3 The Committee may immediately suspend Authorisation for a period of not more than 30 days if it considers that:
 - 5.3.1 one or more of the conditions listed in Regulation 5.2 applies; and
 - 5.3.2 the order of suspension is required to address an undue risk to clients, third parties or the public interest.
- 5.4 An Insolvency Practitioner who is subject to a suspension order under Regulation 5.3 may apply for a Hearing in accordance with Regulation 5.13.2. The suspension shall remain in place pending the outcome of the Hearing.
- 5.5 If it is satisfied that the considerations in Regulation 5.3 no longer apply, the Committee may recall a suspension order prior to the intended date of its expiry.
- 5.6 On expiry or withdrawal of an order of suspension, the Committee may:
 - 5.6.1 take no further action;
 - 5.6.2 take action under Regulation 5.1;
 - 5.6.3 refer the Insolvency Practitioner to the Investigation Committee; and/or
 - 5.6.4 apply for an Interim Order in accordance with Regulation 5.8.
- 5.7 If the Authorisation of an Insolvency Practitioner is suspended under Regulation 5.3, the Insolvency Practitioner shall adhere to any directions given by the Committee in respect of existing or future Appointments.

Interim Order

- 5.8 The Committee may apply to the Discipline Panel for an Interim Order to suspend or apply specified conditions to Authorisation, under Rule 13.18, if it considers that such an order would be justified in all the circumstances, having regard to the public interest.

Implementation of decisions

- 5.9 Subject to Regulation 5.10, a decision of the Committee shall come into force immediately, or on such date as may be specified by the Committee.

Adverse Decisions

- 5.10 Subject to Regulation 5.12, the Committee shall make an Adverse Decision if it exercises its powers under Regulation 2.11 by:
- 5.10.1 rejecting an application for Authorisation;
 - 5.10.2 imposing conditions or restrictions on Authorisation;
 - 5.10.3 withdrawing Authorisation.
- 5.11 The application of a direct sanction order made by a court in accordance with the Act, under Regulation 2.11.7, shall not be an Adverse Decision and shall immediately come into force on such date as may be stated by the court or the Committee.
- 5.12 If the Committee proposes to make an Adverse Decision, it shall first serve notice on the Applicant or Insolvency Practitioner, which notice shall include a note of the reasons in support of the proposed Adverse Decision.
- 5.13 An Applicant or Insolvency Practitioner who does not accept the proposed Adverse Decision may:
- 5.13.1 submit written representations in opposition; or
 - 5.13.2 request a Hearing.
- 5.14 If the Applicant or Insolvency Practitioner does not submit written representations and does not request a hearing in accordance with Regulation 5.13, the proposed Adverse Decision shall come into force upon expiry of ten business days from the date of service of the notice under Regulation 5.13.

Written representations

- 5.15 If the Applicant or Insolvency Practitioner submits written representations in accordance with Regulation 5.13.1, the Committee shall consider the written representations and decide whether to withdraw, vary or affirm the proposed Adverse Decision.

Hearings

- 5.16 If the Applicant or Insolvency Practitioner requests a Hearing in accordance with Regulation 5.13.2, a Hearing shall be held before the Committee.
- 5.17 The Committee shall consider the representations made by the Applicant or Insolvency Practitioner and decide whether to withdraw, vary or affirm the proposed Adverse Decision or suspension.
- 5.18 Hearings shall be held in accordance with any guidance on regulatory hearings which may be issued by ICAS from time to time.
- 5.19 The Committee may at its discretion order the Applicant or Insolvency Practitioner to contribute to the costs of a Hearing.

Notification of outcome

- 5.20 The Applicant or Insolvency Practitioner shall be notified of the outcome of the Committee's decision following its consideration of representations made in writing or at a Hearing.

- 5.21 If the Committee decides not to withdraw the proposed Adverse Decision, the notice under Regulation 5.20 shall confirm the date upon which the Adverse Decision shall come into effect, subject to Regulation 5.22.
- 5.22 If the Committee decides not to recall the suspension order, it shall remain in place until expiry, in accordance with Regulation 5.6.

Appeals

- 5.23 If the Committee decides not to withdraw its proposed Adverse Decision following its consideration of representations made in writing or at a Hearing, the Applicant or Insolvency Practitioner has the right to appeal the Adverse Decision.
- 5.24 An appeal must be made to the Tribunal Clerk within 21 days of the date on which notice of the Adverse Decision is notified to the Applicant or Insolvency Practitioner in accordance with Regulation 5.20 and shall be considered in accordance with the Discipline and Appeal Tribunal Regulations.
- 5.25 If the Applicant or Insolvency Practitioner submits an appeal under Regulation 5.24, the Adverse Decision shall not come into force until such date as may be prescribed by the Appeal Tribunal.

Regulatory Penalties

- 5.26 The Committee may propose a Regulatory Penalty under Rule 13.16.10 to an Insolvency Practitioner if it is satisfied that the following conditions are met:
- 5.26.1 the Insolvency Practitioner has not complied with the Regulations; and
 - 5.26.2 the circumstances do not involve conduct or competence which calls into question the fitness of the Insolvency Practitioner to undertake Insolvency Work.
- 5.27 The Committee shall determine the amount of the proposed Regulatory Penalty and shall notify the Insolvency Practitioner accordingly.
- 5.28 The Insolvency Practitioner shall respond to the Committee in writing within ten business days of service under Regulation 5.28 to confirm whether or not the proposed Regulatory Penalty is accepted.
- 5.29 The Insolvency Practitioner may make representations to the Committee in respect of the proposed Regulatory Penalty. Upon consideration of any such representations, the Committee shall notify the Insolvency Practitioner that the proposed Regulatory Penalty has been affirmed, varied or withdrawn.
- 5.30 If a proposed Regulatory Penalty has been affirmed or varied under Regulation 5.29, the Insolvency Practitioner shall have an additional period of 10 business days to confirm whether or not the proposed Regulatory Penalty is accepted. The Committee shall not be obliged to consider any additional representations from the Insolvency Practitioner.
- 5.31 If the Insolvency Practitioner accepts a proposed Regulatory Penalty, the sum referred to shall be payable within ten business days of the Insolvency Practitioner's acceptance, or within such longer period of time as the Committee may specify or agree.
- 5.32 If the Insolvency Practitioner does not accept the proposed Regulatory Penalty, or does not respond within the applicable timescale, the Committee may proceed in accordance with Regulation 4.15.

Publicity

- 5.33 The Committee may publish its decisions and the course of any action taken under these Regulations in such manner as it thinks fit.



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