



TECHNICAL ALERT

Swearing a Statutory Declaration

As members will appreciate there is a legislative requirement for the swearing of certain documents to be executed before another person. For those acting as Insolvency Practitioners ('IPs'), this most often takes the form of a Notice of Intention to appoint an Administrator or a Declaration of Solvency (MVLs).

The impact of the restrictions imposed by the UK Government on the population has raised a number of practical difficulties with the swearing of documents in person. The restrictions imposed has led to a number of firms offering services to facilitate the remote swearing of documents by making use of video conferencing facilities and the scanning of documents to a solicitor.

Whilst remote swearing is useful and practical in these times, concerns have been raised as to whether documents sworn remotely are legally valid for the purpose sought and therefore it has not been appropriate for R3 to engage with members on this subject until guidance was issued by the Law Society, SRA, the Courts or by another appropriate body.

Guidance on remote swearing is now available in the form of a temporary Insolvency Practice Direction, which is available [here](#). Although, there is no iron-clad guarantee as there may be times where a fraud is being perpetrated, the practice direction does give assurance that a statutory declaration can be sworn remotely.

"Where Schedule B1 requires a person to provide a statutory declaration, a statutory declaration that is made otherwise than in-person before a person authorised to administer the oath may constitute a formal defect or irregularity. Pursuant to Rule 12.64 it is open to the court, on objection made, to declare that such a formal defect or irregularity shall not invalidate the relevant insolvency proceedings to which the statutory declaration relates, unless the court considers that substantial injustice has been caused by the defect or irregularity which cannot be remedied by any order of the court. "

"Where a statutory declaration is made in the manner described in sub-paragraphs 9.2.1 to 9.2.3 below then the defect or irregularity (if any) arising solely from the failure to make the statutory declaration in person before a person authorised to administer the oath shall not by itself be regarded as causing substantial injustice.

9.2.1 The person making the statutory declaration does so by way of video conference with the person authorised to administer the oath;

9.2.2 The person authorised to administer the oath attests that the statutory declaration was made in the manner referred to in 9.2.1 above; and

9.2.3 The statutory declaration states that it was made in the manner referred to in paragraph 9.2.1 above."

It is not completely clear from the above however that this supports the swearing of a Declaration Solvency in an MVL. We are urgently seeking clarity from the Insolvency Service and will circulate an update to members upon receipt.

With regards to the procedure to follow for remote swearing we expect this to be dependent on the technologies available at each individual legal practice and therefore procedures will differ. R3 will shortly be looking to publish some points to be considered when remote swearing.

For now, a tip for scanning documents using a mobile device (iPhone or Android) can be found [here](#).

Temporary Insolvency Practice Direction 2020, Dear IP Issue 96

A temporary insolvency practice direction ('TPD') came into force on the evening of 3 April 2020 and is contained within Dear IP, Issue 96. Available [here](#).

The TPD provides guidance on 'Filing notice of intention to appoint an administrator and notice of appointment of an administrator', 'Remote Hearings', 'Pending petitions and applications', 'Winding up and bankruptcy petitions', 'Urgent hearings', 'Non-London business', 'Statutory Declarations'.

Key points to note –

1. Remain in force until 1 October 2020 (unless amended or revoked)
2. Notice of intention to appoint an administrator and notice of appointment of an administrator - the notice(s) will be treated as delivered to the court on the date and at the time recorded in a filing submission email. This is intended to reduce any uncertainty as to timing.
3. If a filing submission email attaching a notice of appointment of an administrator is sent outside the time period 10:00 hours to 16:00 hours on any day that the courts are open for business, the notice shall be treated as delivered to the court at 10:00 hours on the day that the courts are next open for business.
4. If a filing submission email attaching a notice of intention to appoint an administrator is sent outside the time period 10:00 hours to 16:00 hours on any day that the courts are open for business, the notice shall be treated as delivered to the court at 10:00 hours on the day that the courts are next open for business – the 10 day period commences from this date.
5. Winding up and bankruptcy petitions will continue to be heard but will be dealt with by remote hearing in batches.
6. Unless ordered otherwise, all insolvency hearings will be conducted remotely by way of Skype for Business or such other technology as the parties and the court agree in advance of the hearing.
7. Statutory Declarations – see page one.

IPs are recommended to read the temporary practice direction carefully.

The Insolvency Service, Dear IP, Issue 95

Dear IP 93 provides updated on COVID-19 measures and the acceptance of CAU103 & 104 forms by email. The issue also mentions –

Books and records

"Insolvency practitioners should continue to take all possible steps to locate and secure the records whilst keeping a detailed record of the action taken. They should also keep a record of their communications with directors regarding books and records, whilst the current restrictions are in place."

Furlough and redundancy consultation

"Where employers/ administrators are furloughing their staff and they are not contemplating dismissing 20 or more staff in a single establishment, there is no requirement to carry out a formal consultation and notify the Secretary of State."

The Dear IP can be found [here](#).

The Insolvency Service, Dear IP, Issue 94

Dear IP 93 provides details on placing gazette notices, a reminder of the revised insolvency code of ethics, a joint statement from FCA, ICO and FSCS about dealing with personal data and the increase cap on the prescribed part.

The Dear IP can be found [here](#).

The Coronavirus Job Retention Scheme - updated

The guidance issued by the UK Government in respect of this scheme has been updated and can be found [here](#).

Key updates to note –

Administrators

"Where a company is being taken under the management of an administrator, the administrator will be able to access the Job Retention Scheme. However, we would expect an administrator would only access the scheme if there is a reasonable likelihood of rehiring the workers. For instance, this could be as a result of an administration and pursuit of a sale of the business."

Transfers to a newco

The scheme does not prevent a transfer of employees to a newco under TUPE, however, the newco would not be able to access the scheme in accordance with the below -

*"You can only claim for furloughed employees that were on **your PAYE payroll on or before 28 February 2020**. Employees hired after 28 February 2020 cannot be furloughed and claimed for in accordance with this scheme."*

Members should bear this in mind when considering pre-pack sales of business and assets.

Directors

"Where furloughed directors need to carry out particular duties to fulfil the statutory obligations they owe to their company, they may do so provided they do no more than would reasonably be judged necessary for that purpose, for instance, they should not do work of a kind they would carry out in normal circumstances to generate commercial revenue or provides services to or on behalf of their company."

How much you can claim

"You can choose to top up your employee's salary, but you do not have to. Employees must not work or provide any services for the business while furloughed, even if they receive a top-up salary."

Please take the time to read the updated guidance as the above is only a few additions.

HM Courts & Tribunals Service

On 2 April 2020 the Civil court listing priorities was updated. Category titled 'Priority 2 – work that could be done' now includes,

"Applications or hearings pursuant to the Insolvency Act 1986 which concern the survival of a business or the solvency of a business or an individual"

Update available [here](#).

Electronic filing at Companies House for IPs

The ICAEW and IPA have issued the following note to members -

"The Insolvency Service has been in dialogue with Companies House to try to enable electronic filing by insolvency practitioners (IPs). To enable this it will need to share IPs' business email addresses with Companies House. If you aren't happy for your business email address to be shared with Companies House you should contact your RPB asap. Once we have more details of how this will work, we will share them with you."

The R3 Technical Team have been in constant dialogue with Companies House and have been campaigning for the introduction of electronic filing for IPs. We have also asked for notices in relation to a conversion from Administration to Creditors Voluntary Liquidation to be prioritised for filing purposes. We expect further guidance from Companies House to be issued shortly.

Practice Direction 51ZA – Extension of time limits and clarification of practice direction 51Y- Coronavirus

Practice Direction 51ZA concerns extensions of time limits and came into force on Thursday 2 April 2020. It also provides clarification of [Practice Direction 51Y](#), which came into force on 25 March 2020.

Details available [here](#).

Hearings before Insolvency and Companies Court Judges

"During the period where restrictive travel, social distancing and other urgent measures are in force hearings currently listed will generally, and as far as practicable progress remotely. Where hearings are currently listed the Applicant/Respondent/Claimant must contact the court as soon as reasonably practicable to inform it if an adjournment is required or if the parties wish for the hearing to progress remotely. Arrangements for a remote hearing will be made where practicable.

The court is experiencing a high volume of urgent applications, and priority will be given to these. If your matter is urgent please e-mail Rolls.ICL.Hearings1@justice.gov.uk . Details of how to arrange and conduct an urgent hearing can be found in a temporary practice direction which will be published on the judicial [website](#) You will need to provide the Court with all parties e-mail addresses to that a Skype hearing can be arranged.

The winding up list will be conducted by Skype or BTMeetMe telephone call. The onus is on the Petitioning Creditor to keep the debtor informed of the hearing and the remote hearing arrangements.

Generally a skype hearing will be the remote hearing of choice. If skype is not possible, for example litigants in person do not often have skype, a telephone hearing can be set up. It is the responsibility of parties to arrange this with their telephone provider. Once the telephone hearing has been arranged (after agreeing the date and time for hearing with the court) the dial in number should be provided so that this can be passed on to the judge assigned to the hearing."

COVID-19 CONTINGENCY ARRANGEMENTS

As a reminder for all COVID 19 technical related announcements, please visit our designated page [here](#) or connect with Ben Luxford on [LinkedIn](#) for updates.

~End~