



TECHNICAL ALERT

TECHNICAL UPDATE

Scotland - The insolvency processes and procedures that rely on the Scottish courts for progression

R3's Scottish Technical Committee has identified the insolvency processes and procedures that rely on the Scottish courts for progression. The committee thinks this is a comprehensive picture of the courts' involvement in insolvency, and the extent to which insolvency is rooted in court procedure, and our members rely on the courts to progress their cases.

The letter to the Scottish Courts and Tribunals Service can be found [here](#).

The decision handed down in the matter of Carluccio's Limited (in administration)

Brief summary of [judgment](#) –

1. Adoption of employment contracts requires an action by an administrator;
2. Administrators are at liberty to adopt employment contracts of furloughed employees when they make payments to employees, or make an application for payments under the Coronavirus Job Retention Scheme; but not before then;
3. The employment contracts of furloughed employees have not been adopted by administrators merely by virtue of not terminating the contract of employment of that employee within the first 14 days of appointment;
4. The Administrators are not under any duty to apply for a grant under the Scheme in respect of any employee other than a consenting employee or a non-responding employee whose contract has been varied;
5. The variation letter to employees at paragraph 24 is good guidance for other IPs, whilst noting the comment at paragraph 93;

Final point, before considering whether to use the Job Retention Scheme there needs to be a reasonable likelihood of achieving a sale of the business. Comprehensive notes should be kept on any decisions.

For a more detailed overview of the decision please read the publication by R3's General Technical Committee member, Gabrielle Ruiz, and her team at Clifford Chance, which is available [here](#). (Please note that the publication is not designed to provide legal or other advice)

The Coronavirus Business Interruption Loan Scheme - what happens in the event of default

The Coronavirus Business Interruption Loan Scheme (CBILS) provides financial support to smaller businesses (SMEs) across the UK that are losing revenue, and seeing their cashflow disrupted, as a result of the COVID-19 outbreak.

The scheme is a part of a wider package of government support for UK businesses and employees. Read more at the Government's [Business Support website](#).

For information about default and the new rules around Personal Guarantees, please click [here](#).

HMRC - the Coronavirus Job Retention Scheme (Live from Monday 20 April)

The Coronavirus Job Retention Scheme portal/website went live on Monday 20 April 2020.

HMRC are expecting millions of calls and to assist, HMRC have engaged 9,500 staff to deal with scheme queries. Employers should go through the portal where possible and be patient.

HMRC has asked members to defer calling them about insolvency cases until 4 May as the insolvency team won't be available to deal with insolvency queries on either new or existing cases during this period.

Further details can be found [here](#).

The scheme will be open until the end of June 2020.

Before you make a claim:

- please read all the available guidance on [GOV.UK](#) before you apply
- gather all the information and the precise calculations you need before you [start your application](#) – if you have a payroll provider, they will be able to help you with this
- you can find out more in the [calculation guidance](#) where you can access a claim calculator – this will allow you to check your claim for most employees who are paid the same amount each pay period
- access our simple [step-by-step guide](#) for additional help.

After you've made a claim:

- keep a note or a print-out of your claim reference number – you won't receive a confirmation SMS or email
- retain all records and calculations for your claims, in case we need to contact you about them
- expect to receive the funds six working days after you apply, provided your claim matches records that we hold for your PAYE scheme – **please do not contact HMRC before this time**
- to receive payment by 30 April, you will need to complete an application by 22 April
- please ask your furloughed employees not to contact us directly – HMRC not be able to provide them with any information on individual claims.

ICAEW announcements

The use of 'light touch' administration is available [here](#).

AML responsibilities: take on procedures during Covid-19 is available [here](#).

The Insolvency Service, Dear IP, Issue 96

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

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

The Insolvency Service, Dear IP, Issue 97

- 1) Bank details for payments against PODs
- 2) Fee requests to RPS (one/two days' notice is not acceptable)
- 3) Scam alert - Parliamentary Hub app
- 4) Guidance to accompany the straightforward IVA Protocol
- 5) Bankrupt estates - exemption for payments made under the Victims Payment Regulations 2020

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

Money and Pensions Service - Update

The Money and Pensions Service have outlined some of the measures that they are taking on debt advice referrals and capacity.

Further information available [here](#).

Global Guide: Measures adopted to support distressed businesses through the COVID-19 crisis

INSOL International / World Bank Group - Interactive Map INSOL International and the World Bank Group have jointly produced a Global Guide to highlight some of the primary measures that have been introduced in 38 countries as a response to the COVID-19 crisis (current as of April 10, 2020).

Global guide can be found [here](#).

SCOTLAND

Court of Session, Guidance note for Practitioners

A guidance note has been issued for Practitioners to facilitate insofar as is possible the efficient disposal of court proceedings in the Court of Session during the ongoing Covid-19 emergency.

Details available [here](#).

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~