

INSOLVENCY PRACTICE DIRECTION AMENDMENTS

The new Insolvency Practice Direction is made by the Chancellor of the High Court under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and is approved by the Lord Chancellor.

The new Insolvency Practice Direction comes into force in accordance paragraph 2 of the Practice Direction.



The Right Honourable Sir Julian Flaux
Chancellor of the High Court
Date: 29 September 2021



The Right Honourable Lord Wolfson QC
Parliamentary Under Secretary of State
Date:

TEMPORARY INSOLVENCY PRACTICE DIRECTION
SUPPORTING THE INSOLVENCY PRACTICE DIRECTION

Introduction

This Insolvency Practice Direction is intended to retain those parts of the previous Temporary Practice Direction that were not concerned with workable solutions for court users during the COVID-19 pandemic and which come to an end under SI at the end of September 2021. Those elements were concerned with permanent changes to the way insolvency business is handled in the courts, and include:

1. the out of hours appointment of administrators,
2. the provisions relating to making statutory decisions remotely, and

3. the time of obtaining a moratorium, which need to continue until such time (if at all) as they are addressed by substantive rule changes.

Acceptance Act	Bears the meaning ascribed by paragraph 5.3(1) of PD 510
Business Day	Any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day that is a bank holiday in any part of England & Wales
CE-File	Refers to the Court's Electronic Working portal, and "CE-Filing" means the filing with the court of any document using Electronic Working
Filing Submission Email	The email referred to at paragraph 5.3(1) of PD510, generated by automatic notification following submission of a document using Electronic Working, which email acknowledges that the document has been submitted
MIPD 2021	This Practice Direction
PD510	Practice Direction 510 – The Electronic Working Pilot Scheme which supplements CPR rules 5.5 and 7.12
Rule or Rules	The Insolvency (England and Wales) Rules 2016

Coming into force

2. This MIPD 2021 applies to all insolvency proceedings throughout the Business and Property Courts, subject to any variations as directed by (in London) the Chief Insolvency and Companies Court Judge or (outside London) the relevant Supervising Judge. It will come into force on the lapse of the practice direction made on 30 June 2021 and remain in force unless amended or revoked by a further insolvency practice direction.

Filing a notice of intention to appoint an administrator and a notice of appointment of an administrator

3. Subject to paragraphs 4 to 7 below, for the purposes of r 1.46(2), and notwithstanding anything to the contrary in PD510, in the case of a CE-filing of any of the Notices identified in para 4 below, the Notice shall be treated as delivered to the court at the date and time recorded in the Filing Submission Email.
4. The Notices to which paragraph 3 applies are: (1) a Notice of Intention to Appoint an Administrator filed by a company or its directors under para 27 of Schedule B1 to the Act; (2) a Notice of Appointment of an Administrator filed by a qualifying floating charge holder under para 18 of Schedule B1 to the Act; and (3) a Notice of Appointment of an Administrator by a company or its directors under para 29 of Schedule B1 to the Act.
5. Paragraph 3 above shall not apply to a Notice of Intention to Appoint an Administrator filed by CE-File pursuant to para 27 of Schedule B1 to the Act outside the time period 10:00 hours to 16:00 hours on any day that the courts are open for business. Any such Notice filed by CE-file outside that time period shall, for the purposes of Insolvency r 1.46(2), be treated as delivered to the Court at 10:00 hours on the day that the courts are next open for business. Accordingly, the date on which the time period of ten days in para 28(2) shall begin is the date on which the courts are next open for business.
6. Paragraph 3 shall not apply to a Notice of Appointment filed by CE-File pursuant to paragraph 29 of Schedule B1 to the Act outside the time period 10:00 hours to 16:00 hours on any day that the courts are open for business. Any such Notice filed by CE-file outside that time period

shall, for the purposes of r 1.46(2), be treated as delivered to the court at 10:00 hours on the day that the courts are next open for business.

7. Notwithstanding paragraph 3 all Notices of Appointment shall continue to be reviewed by the Court, as and when practicable, in accordance with paragraph 5.3 of PD510. The validity and time at which the appointment of an administrator is effective shall not be affected by reason only of any delay in Acceptance of the Notice.
8. Electronic Working may not be used to file a Notice of Appointment of an administrator under paragraph 14 of Schedule B1 to the Act by the holder of a qualifying floating charge outside Normal Court Opening Hours. Such a Notice may only be filed outside Normal Court Opening Hours by the procedure set out in Rules 3.20 to 3.22.

Statutory Declarations

9. Where Schedule B1 to the Act 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 r 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.
10. Where a statutory declaration is made in the manner described in paragraphs 10.1-10.3 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.
 - 10.1. The person making the statutory declaration does so by way of video conference with the person authorised to administer the oath;
 - 10.2. The person authorised to administer the oath attests that the statutory declaration was made in the manner referred to in 10.1 above; and
 - 10.3. The statutory declaration states that it was made in the manner referred to in para 10.1 above.

Obtaining a moratorium under section A3 of the 1986 Act

11. Where directors of a company file relevant documents with the court by means of electronic delivery (within the meaning of PD 510) for the purposes of obtaining a moratorium pursuant to section A3 of the 1986 Act, for the avoidance of doubt the documents shall be treated as being filed with the court at the date and time recorded in the email referred to in paragraph 5.3(1) of PD5 10, generated by automatic notification acknowledging that the documents have been submitted.