



The Insolvency
Service

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DEAR INSOLVENCY PRACTITIONER Issue 101 – May 2020

Message from the Insolvency Service

Dear Reader

The Government has now introduced the [Corporate Insolvency and Governance Bill](#) to Parliament.

This Bill will help companies to maximise their chances of survival, protect jobs and support the country's economic recovery. It consists of insolvency measures which will support businesses through this period and, where needed, provide new options for company rescue, and corporate governance measures, which will give directors more flexibility during the Covid-19 emergency to focus on the things that matter most while they have reduced resources and restrictions.

There are eight measures included in the Bill. The company rescue proposals had been previously announced by government and were in development before Covid-19.

Company Moratorium: The Bill gives struggling businesses a formal breathing space to pursue a rescue plan. It creates a moratorium during which no legal action can be taken against a company without leave of the court. It is vital to introduce the moratorium now to ensure that companies which are struggling as a direct result of the pandemic are given the opportunity to survive.

Ipso Facto (Termination) Clauses: When a company enters an insolvency or restructuring procedure, suppliers will often either stop or threaten to stop supplying the company. The supply contract often gives them the right to do this, but it can jeopardise attempts to rescue the business. The Bill will mean suppliers will not be able to be jeopardise a rescue in this way. The proposals include safeguards to

ensure that continued supplies are paid for, and suppliers can be relieved of the requirement to supply if it causes hardship to their business. There will also be a temporary exemption for small company suppliers during the emergency.

Restructuring Plan: This will support viable companies struggling with debt obligations to restructure under a new procedure. It allows courts to sanction a plan that binds creditors to a restructuring plan if it is fair and equitable and in the interests of creditors. Creditors vote on the plan, but the court can impose it on dissenting creditors ('cram down').

Suspension of Wrongful Trading: The Bill will temporarily remove the threat of personal liability arising from wrongful trading for directors who continue to trade a company through the crisis with the uncertainty that the company may not be able to avoid insolvency in the future. Liquidators and administrators will not be able to take an action against an insolvent company's directors for any losses to creditors resulting from continued trading while the wrongful trading rules are suspended. This will remove the pressure on directors to close otherwise viable businesses to avoid potential liability. All the other checks and balances on directors remain in place.

Statutory Demands and Winding up Petitions (2 measures): The Bill helps struggling businesses by temporarily removing the threat of winding-up proceedings where unpaid debt is due to Covid-19. It introduces temporary provisions to void statutory demands issued against companies during the emergency. This gives businesses the opportunity to reach realistic and fair agreements with all creditors.

Annual General Meetings (AGMs): AGMs (and General Meetings) are central to good corporate governance, but having hundreds of individuals in a room is not permitted under the statutory restrictions on public gatherings, so many companies cannot hold their AGMs in accordance with their constitutions. The Bill temporarily allows those companies and other bodies that are under a legal duty to hold an AGM or GM to hold a meeting by other means even if their constitution would not normally allow it. As a result, directors will not be exposed to liability for measures that need shareholder endorsement, and shareholders rights are preserved.

Filing Requirements: Companies are required to make a number of different filings by fixed deadlines at Companies House each year. Missing the deadline automatically results in a financial penalty. Companies House has already done all it can under existing law to offer extensions to those deadlines. Over 70,000 companies have taken advantage of this flexibility already, but they may need more. The Bill allows the Secretary of State temporarily to make further extensions, enabling struggling businesses to focus on the things that matter most while they have reduced resources and restrictions.

We have been working closely with the Devolved Administrations to ensure that all appropriate measures can apply to the whole of the United Kingdom.

We hope you will support these important and urgent proposals which will help companies to maximise their chances of survival, protect jobs and support the country's economic recovery.

Please also find enclosed the latest updates from the Insolvency Service on the steps being taken during the COVID-19 pandemic.

In this issue:

Information/Notes page(s):

Chapter 29

Article 16

Article 17

COVID-19

Submission of DCRS Reports in the Absence of Records

Processing payments for employees who are made redundant whilst on the Coronavirus Job Retention Scheme (CJRS)

16) Submission of DCRS Reports in the Absence of Records

We are aware that since COVID-19 lockdown measures commenced on 23 March 2020, insolvency practitioners may not have been able to secure physical books and records for companies entering insolvency.

In cases where the books and records have not been secured as a result of COVID-19 lockdown measures, rather than because of director non co-operation, and no other potential conduct matters can be evidenced, insolvency practitioners are advised to answer “No” to the question “Having regard to the size and nature of the company's trading, are there material deficiencies in the company's available books and records?” This will result in a sift out and prevent the Insolvency Service making enquiries to establish what the books and records issues are.

Once COVID-19 lockdown measures are eased and it is practical for insolvency practitioners to arrange for books and records to be delivered or collected, if a director fails to co-operate in delivering up sufficient records or misconduct is identified from the records that do become available, details of this conduct should be submitted as new information as soon as possible.

Where evidence is held from electronic records and other sources that suggests potential misconduct, but where physical records have not been secured, insolvency practitioners should submit reports as normal.

In instances where potential misconduct matters have been highlighted but it is crucial to examine the books and records to further establish the facts surrounding these matters, then insolvency practitioners are advised to contact the Insolvency Service to request an extension of time to submit the report. The request should clearly explain why the extension is needed and how long will be required.

Enquiries regarding this article may be sent to:
intelligence.insolvent@insolvency.gov.uk

17) Processing payments for employees who are made redundant whilst on the Coronavirus Job Retention Scheme (CJRS)

The CJRS forms part of a collective national effort to protect people's jobs and is available to administrators if there is a reasonable likelihood of rehiring the workers. It is also available to a new employer in respect of the employees of a previous business transferred after the qualifying date if either the TUPE or PAYE business succession rules apply to the change in ownership.

Further information and general CJRS guidance is available on [GOV.UK](https://www.gov.uk).

CJRS and Redundancy Payments

This article contains initial guidance on the impact of the CJRS on key payments made from the Insolvency Service's Redundancy Payments Service (RPS).

We are working through complexities relating to payments and continue to monitor the scheme as it develops. We will communicate further guidance where necessary.

Key Payments

1. Rate of pay
 - If employee is normally paid a set rate of pay – the RPS will use their normal contractual rate of pay (prior to the CJRS period)
 - If employee normally receives a varied rate of pay – the RPS will calculate the 12-week average using the period prior to the CJRS.
2. Redundancy Pay
 - Calculated in the same way: based on age and length of service
 - Still requires two years qualifying service; however, the end date will include the CJRS period.
3. Arrears of pay
 - Any claims for arrears of pay where the company does not place the employee on to the CJRS will be treated as normal arrears of pay
 - When furloughed, employees agree to a temporary variation of contract and are placed on to the CJRS where the Government will meet 80% of their usual monthly wages, up to £2,500 a month

- There is no requirement for employers to top up an employee's wages to their normal contractual rate of pay
- The RPS will **not** meet any shortfall as arrears of pay.

4. Holiday pay

- This will be paid in line with The Working Time Regulations and will still be accrued during CJRS
- It is payable by the RPS at the normal rate of pay (see 1)
- Employees taking holiday during the furlough period must receive their normal contractual rate of pay (i.e. 80% from Govt. plus 20% from employer or £2,500 from Govt. plus top up to 100%)
- Where employees did not receive the top up to their normal rate of pay, this is discounted as holiday and the RPS will pay as an accrual at normal rate of pay (see 1)
- Details about employee holidays and payment amounts will need to be verified by the insolvency practitioner.

5. Compensatory notice pay

- Employees may be served notice whilst on CJRS
- We will issue a further update specific to notice pay shortly.

6. Pensions

- The CJRS scheme allows employers to claim for employer contributions (up to certain limits) and employers should deduct employee contributions prior to paying the employee
- If the employer fails to deduct and pay over the contributions, there will still be a claim to the RPS
- Same limitations apply as per Section 124 Pension Schemes Act.

Request

Insolvency practitioners taking appointments where employees have been placed onto the scheme are asked to ensure employees are aware of their redundancy rights.

Enquiries regarding this article may be sent to:

insolvency.technical@insolvency.gov.uk