

# What is the “Key” to Validly Appointing Administrators?

Article By:

Rachael Markham

---

First, there was the *HMV* case, then *Skeggs Beel* and *SJ Henderson*. Following which we had further judicial decision in *All Star Leisure* and now *Keyworker Homes*, all of which considered the validity of appointment of administrators using the e-filing system.

*Keyworker Homes* deals with these questions:

1. Can a notice of intention to appoint administrators be e-filed out of court hours?
2. How is the ten day time period in paragraph 28 (2) of Schedule B1 of the Insolvency Act 1986 (the “Act”) calculated following filing a notice of intention appointment?
3. Can directors e-file a notice of appointment out of court hours?

We look at the answers to those, and consider some of the issues that the answers create.

## Background

The facts of the case are simple.

The directors of Keyworker Homes (North West) Ltd sought to appoint administrators. They e-filed a notice of intention to appoint (“NOI”) at 4.29pm on Friday 11 October which was endorsed and stamped with that time and date. The directors subsequently e-filed a Notice of Appointment (“NOA”) at 6pm on Thursday 24 October.

Whilst filed on 24 October, the NOA was endorsed with a time of 10am on 25 October – assumedly following Judge Burton’s recommendations in *SJ Henderson*.

The administrators applied to court to determine whether their appointment was valid given that both the NOI and NOA had been e-filed outside of court hours – court hours being 10am until 4pm in the regional courts.

## Can a NOI be e-filed out of court hours?

---

Judge Hodge agreed with Judge Burton's conclusion in *SJ Henderson*, that a NOI can be e-filed at any time by either the directors, a company or a qualifying floating charge holder.

This means that the benefit of a moratorium can be obtained at any time of day, any day of the week.

Practically, if an NOI is e-filed out of hours, the sealed document will not be available until the Court office next opens. The difficulty that this creates is proving that the moratorium exists and also being confident that the filing will be accepted by the court. If rejected, there is no moratorium, so any actions taken (or not taken) having assumed a moratorium exists could be open to challenge.

Filing an NOI out of hours does have its advantages because it could potentially allow the directors/a company to beat a winding up petition.

A winding up petition can be e-filed out of hours but the petition will only be endorsed (and effective from that time) once the official receiver's deposit is paid which is only possible once the Court office opens. Therefore, even if the NOI is e-filed after the petition, this could thwart a winding up petition because the moratorium prohibiting legal proceedings comes into effect at the time and date of endorsement, being the time and date e-filed.

### **How is the ten day time period in paragraph 28 (2) of Schedule B1 of the Act calculated following filing a NOI?**

Paragraph 28(2) of Schedule B1 of the Act provides that the appointment of administrators may not be made "after the period of ten business days beginning with the date on which the notice of intention to appoint is filed under paragraph 27(1)".

In *Keyworkers* the NOI was e-filed on the 11th, the NOA was e-filed on the 24th at 6pm but endorsed (and therefore effective) from 10am on the 25th of October. Accordingly, if the ten day time period began on the 25th, the NOA would have been filed on the eleventh day.

In *Keyworkers* this point was not critical to the case, because Judge Hodge determined that the directors could e-file out of hours and the date and time of appointment was 6pm on the 24th. However, he did consider how the time period should be calculated.

Contrary to what is arguably common practice (and taking a different view to Judge Burton in *SJ Henderson*) Judge Hodge concluded that the 10 day period under paragraph 28(2) starts the day after the NOI is e-filed – effectively extending the 10 day period to 11. In reaching that conclusion he applied, the "expansive" approach to the clear day rule.

The Civil Procedure Rules (and the "clear day rule") do apply to the Act and the Insolvency Rules when calculating time periods. However, what Judge Hodge was not referred to was the Court of Appeal decision in *Zoan v Rouamba* [2000] 1 W.L.R 1509 which is referred to CPR 2.8.1. This case is authority for the fact that where a period of time is described as "beginning with" a specified day then the specified day is counted as the first day. Applying that to paragraph 28(1) the 10 period should begin on the day the NOI is filed.

Given that *Zoan* is a Court of Appeal authority and binding on the High Court, it therefore appears that Judge Hodge's decision on this point is *per incuriam*.

---

## Can director e-file a notice of appointment out of court hours?

Taking a different view to Judge Burton in *SJ Henderson* and preferring the findings of Judge Barling in *HMV*, Judge Hodge came to the conclusion that directors can appoint administrators out of hours using the e-filing system but a qualifying floating charge holder must use the procedure prescribed in the Insolvency Rules.

This decision (and those previously) might leave practitioners wondering what they should do to ensure that administrators are validly appointed giving the conflicting views of the judiciary.

The position of a qualifying floating charge holder is clear. Out of hours, they must follow the procedure prescribed in r3.20 of the Insolvency Rules 2016. If they don't (although they should) *Skeggs Beel* and *All Star Leisure* do provide some comfort that failure to file in accordance with r3.20 is a defect that is capable of remedy.

Does *Keyworkers* conclude the argument about whether the director/a company can appoint out of hours? Arguably yes, at least at first instance, because Judge Hodge considered all previous cases (save for *All Star Leisure* but that decision concerned a QFCH appointment and followed *Skeggs Beel*).

That said, most practitioners remain cautious about e-filing a directors or company NOA out of hours until the position is confirmed by amendment to the practice directions and Insolvency Rules. An amendment to the Rules has been called for by the judiciary and is expected – but when that might happen, who knows.

© Copyright 2025 Squire Patton Boggs (US) LLP

---

National Law Review, Volume X, Number 16

Source URL: <https://natlawreview.com/article/what-key-to-validly-appointing-administrators>