

Changes to temporary measures impacting UK insolvency proceedings – a bite sized update

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A number of recent extensions and changes to temporary measures have been announced that impact insolvency practice and procedure, what are they?

The exemption from the ipso facto regime (preventing a supplier from terminating a contract for insolvency related reasons) for small suppliers has been extended until 30 March 2021 (see our [updated quick guide](#)) and changes have been made to the criteria for obtaining a corporate moratorium.

The temporary provisions in the Corporate Insolvency and Governance Act 2020 that allow a company that has been subject to a winding up petition, CVA, moratorium or administration in the past 12 months are extended until 30 March 2020 however the temporary relaxed criteria enabling a monitor to disregard the worsening of a company's financial position due to COVID-19 has not been extended. As such when obtaining, extending or monitoring the moratorium a monitor now has to be able to say that the company can be rescued as a going concern (see our [updated quick guide](#)). We have also produced a quick guide explaining the Restructuring Plan that is available [here](#).

The temporary restrictions affecting winding up petitions have been extended until 31 December 2020 (see our [previous blog](#) for more detail). This does not mean that a winding up petition cannot be presented, but the petitioner will have to overcome the 'coronavirus test' in order to proceed with a petition. Petitions, which are usually public, remain private until a judge has determined whether the petitioner has overcome the coronavirus test. The [Insolvency Practice Direction relating to the Corporate Insolvency and Governance 2020](#) sets out the current procedure for dealing with winding up petitions.

This extension comes along side an extension to the prohibition on forfeiture proceedings until 31 December 2020 (for further reading about the impact of this on landlords see [our blog](#)).

One measure that has not been extended is the relaxation of the wrongful trading rules (for further reading about this measure see [our insight](#)) this means that from 30 September 2020 usual rules apply and a director should ensure that they comply with their directors' duties to minimise the risk of liability for wrongful trading. What remains to be seen is how a court will deal with a director who may have traded a company wrongfully during the temporary period (1 March 2020 until 30 September

2020) when the relaxed rules applied, but continues to do so post 30 September 2020.

On 1 October, a revised [Temporary Insolvency Practice Direction](#) (TIPD) came into effect. This replaces the previous temporary practice direction although the practice and procedure in the new TIPD largely reflects that in the older version.

Under the revised TIPD, the procedure that enables notices of intention (NOIs) and notices of appointment of administrators (NOAs) to be sworn remotely remains in place, as do the provisions that determine the date and time that the NOIs and NOAs will be endorsed. This is helpful when many people are still working remotely.

The revised TIPD does however introduce the option of dealing with insolvency hearings in-person, remotely or a mixture of both – a hybrid hearing – reflecting changes in practice as some courts have re-opened.

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