



The Insolvency
Service

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DEAR INSOLVENCY PRACTITIONER Issue 115 – December 2020

Message from the Insolvency Service

Dear Reader

We would like to thank respondents who sent in comments and feedback on the Guide for Monitors following our request in Dear IP Issue No.110.

We have set out in this issue of Dear IP, clarification on a number of points raised which we hope is helpful, together with updates from the Insolvency Service.

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107) Official Receiver Services (ORS) Operating Model

On 1 October the ORS Operating Model was introduced as a new way to manage the work of ORS.

The Operating Model aims to streamline processes and prevent duplication, as well as empowering colleagues to take responsibility for their own area of work, to make decisions within the parameters of their responsibilities and to work collaboratively to meet the objectives of their office and of ORS.

This means that ORS will deal with the component parts of cases in parallel to reduce the overall lifespan of cases and produce outputs sooner. ORS has set up various centralised teams, who will be dealing with asset realisations and distributions, relationship management of service providers and aftercare enquiries.

Stakeholders should note that cases will no longer be allocated solely to individuals; component parts of cases will be allocated to the relevant team working on specific areas until those components are concluded.

The Operating Model allows flexibility to deal with changes in demand for ORS services. Bankruptcies and compulsory liquidations are running at a significantly reduced level compared to this time last year, and ORS is not able to judge what the impact of changing the COVID-19 support measures, including the extension of measures introduced in the Corporate Insolvency and Governance Act 2020, will be. The Operating Model facilitates ORS' ability to generate additional capacity if insolvencies increase.

Reduced case numbers are allowing ORS colleagues time to work together to drive improvements to the Operating Model using their knowledge, skill and innovation.

Contacting Us

The Insolvency Service's aim is to develop a consistent and streamlined approach to the call handling process. Most telephone calls will now be taken by the Customer Services Team (CST) who will answer a wide range of enquiries. However, for urgent calls that require intervention by official receiver staff, CST will send a call back request to the relevant official receiver office. This will mean that urgent queries will be dealt with promptly by the team rather than by a single individual.

Customer services can be contacted:

By telephone 0300 6780016 or;

Online by completion of an [enquiry form](#)

Official receivers can also be contacted by email and the contact details are on [gov.uk](#)

Enquiries regarding this article may be sent to:
ORS.Change.Questions@insolvency.gov.uk

39) Feedback on Guide for Monitors

General Data Protection Regulation (GDPR)

A query was raised concerning the absence of guidance on the application of the GDPR in relation to any obligations the monitor is under to comply with those regulations. The Guide for Monitors explains a monitor's obligations under Part A1 of the Insolvency Act 1986 and is not intended to be an exhaustive summary of all of the legal obligations to which a monitor will be subject.

The Recognised Professional Bodies have previously issued guidance and FAQs on the practical considerations of the GDPR and data protection more generally for insolvency practitioners. It may be helpful for practitioners (including those who intend to take appointment as monitor) to review these (see below) and any updated guidance issued by their RPB.

Guidance:

<https://insolvency-practitioners.org.uk/uploads/documents/efe03f9987513fae5a37f9bd54f8ff4b.pdf>
<https://www.icaew.com/technical/legal-and-regulatory/information-law-and-guidance/data-protection>
<https://www.icas.com/regulation/guidance-and-helplets/preparing-for-gdpr>
<https://www.charteredaccountants.ie/News/new-technical-release-gdpr-guidance-for-insolvency-practitioners>

FAQs:

https://www.lexisnexis.com/uk/lexispsl/restructuringandinsolvency/document/393783/5SR2-TFR1-F18D-T34H-00000-00/GDPR_FAQs_for_Insolvency_Practitioners

As the information Commissioner's Office website notes, during the transition period the GDPR will continue to apply in the UK and core data protection principles, obligations and rights will remain the same. Practitioners should, therefore, continue to abide by the regulations and monitor the ICO website for developments in guidance.

Extension by creditor consent– tight timescales where creditors request a physical meeting

We acknowledge stakeholder concerns about tight time-scales for notice to creditors where creditors request a physical meeting. We are looking to ameliorate this in the permanent rules (work on amendments to the Insolvency (England and Wales) Rules 2016 to provide permanent procedural rules for the moratorium is currently ongoing).

Bonding

A query concerning how the bond will be calculated was raised given the practitioner in their capacity as monitor will not be handling assets. The prospective monitor should know the estimated value of the company's assets as the guide sets out clearly that the prospective monitor will need to ascertain information about the company's assets and liabilities in order to assess the company's eligibility to enter a moratorium.

Service debts

Further guidance was requested concerning section A18(3) and how the portion of service debts (such as rent) which are excluded from the payment holiday should be calculated. As an example, we consider the wording of A18(3)(c) "rent in respect of a period during the moratorium" indicates that quarterly rent should be pro-rated.

Secured creditor voting rights

Clarification was requested regarding which secured creditors may be considered secured pre-moratorium creditors for the purposes of voting on an extension in light of section A18(3)(f) of the Insolvency Act 1986. Some secured creditors will not be able to vote in a decision procedure to extend a moratorium due to the exemption from a payment holiday in A18(3)(f) which applies to liabilities involving financial services (as defined in Schedule ZA2). However, there are secured creditors who do not fall into these exemption provisions, and so who would be able to vote, such as directors who have made loans to the company secured by a debenture, Pension Funds that have taken a charge on company assets to secure a pension deficit and landlords for a rent deposit charge.

Opt out provisions

Confirmation was requested as to whether the opt out provisions apply as the Guide is silent on this. The temporary rules do not apply the opt out provisions in the Insolvency (England and Wales) Rules 2016 as most moratoriums will be fairly short in duration with limited communications sent to creditors.

End of the moratorium

There is no legislative requirement on the monitor to inform creditors (or the Registrar of Companies or the court) that a moratorium has ended at the end of the initial or extended period unless the moratorium is brought to an end prematurely. Otherwise (as explained in section 2 of the Guide) the monitor is required to inform creditors and the Registrar of Companies of the start of the

moratorium, the end date, any change to the end date and the appointment of a replacement or additional monitor.

Rule 15.34 B1 (requisite majorities)

A query was raised concerning the meaning of “a majority of the pre-moratorium creditors” in the amended rule 15.34 (B1) of the IR 2016 and whether the reference to a majority means a majority in value or to a majority in number. We can confirm that a majority in this context refers to a majority in number.

Enquiries regarding this article may be sent to: Polic.Unit@insolvency.gov.uk