



## Insolvency Practice Direction: a quiet revolution

The new Insolvency Practice Direction is the latest in a series of steps designed to modernise insolvency procedure in England and Wales. Although many provisions from the old Practice Direction – introduced in 1999 – have been retained, it has been radically altered with the introduction of new requirements, subtle revisions and clauses that incorporate practice notes and acknowledge amendments to the Insolvency Rules and the Insolvency Act 1986. Despite the new Practice Direction's importance, it has not been heavily publicised and the Ministry of Justice's Civil Procedure Rules website still refers readers to the older, obsolete Practice Direction. For those who might have missed the Practice Direction's quiet introduction, Arron Walthall highlights some of its main provisions.

### ***Documents***

From now on, every court document has to be headed in accordance with the new Practice Direction and evidence must be by witness statement rather than affidavit. This shift away from the use of affidavits continues on from recent amendments to the Insolvency Rules and should save time and expense with no real disadvantage. Although the Court is still expected to draw up orders, the new Practice Direction includes the qualification,

*“except... where the court otherwise directs”* - whether this will change current practice remains to be seen.

### ***Urgent Applications***

Practitioners who need their applications heard urgently must now complete an urgent applications certificate using the wording set out in the new Practice Direction. This includes a prominent warning that sanctions will be imposed for misuse. The new Practice Direction largely follows the wording of the certificate published in July 2008 by the Chief Registrar for use in London, extending it nationwide and emphasising its importance.

### ***EU-wide Jurisdiction***

One of the key provisions in the new Practice Direction states that some insolvency practitioners can serve applications inside the EU without the Court's permission. This offers useful clarification and should assist with cross-border cases.

### ***Extension of Administration***

The Chancery Guide recommends making applications for the extension of an administration order in good time and warns that the Court can disallow costs if applications are made late. The new Practice Direction takes this advice a stage further by setting a 1-month deadline – any applications that are made

less than 1 month before the end of the administration are likely to result in costs penalties.

### ***Winding up***

The new Practice Direction recommends against signing the statement of truth verifying a winding-up petition more than 10 days before issuing proceedings and highlights the fact that the deadline for applications to rescind a winding-up order has been changed to “5 working days” from “7 days”. The 2007 Practice Note on validation orders has been incorporated with subtle amendments – most notably, applicants must now provide details of any relevant bank accounts (including the bank's name, address and sort code)

### ***Bankruptcy***

The new Practice Direction introduces a provision that applies to statutory demands and substituted service – certificates of service must now explain why the petitioner believes that the debtor resides or works at the address where service was attempted, and state whether or not the debtor is represented by a solicitor. Practitioners should pay close attention to these extra requirements, particularly as the standard form certificate on the Insolvency Service's website does not have space set aside for this information. The section on setting aside statutory demands has also been modernised to state that the Court will be reluctant to set aside demands

based on liability orders, costs certificates, tax assessments or tribunal decisions as well as those based on judgments or orders.

The new Practice Direction introduces wording for certificates confirming the search for previous petitions and there is a stricter approach to hearings where the petition has not been served, there has been no extension of time and there is no attendance at Court. Whilst the old Practice Direction stated that it "*will be relisted for hearing about 21 days later*", under the new Practice Direction, the Court can dismiss the petition straightaway.

### ***Persons at risk of Violence***

In light of the Citizens Advice Bureau's concern that advertising residential addresses puts those fleeing domestic violence in danger, the Insolvency Rules were recently amended so that vulnerable people can apply to Court to have their whereabouts concealed from the public. The new Practice Direction adds an extra layer of detail, requiring applicants to join the trustee in bankruptcy or official receiver as respondent (and obtain their consent to the application if possible), listing what the Court expects to find in supporting witness statements and confirming that applications will initially be dealt with on the papers without a hearing.

### ***Remuneration of Appointees and Appeals***

The new Practice Direction incorporates the 2004 Practice Statement on the remuneration of appointees, with minor updates. The section on Appeals has also been simplified and made clearer.

### ***Conclusion***

After significant changes in insolvency over the last 10 years, the Practice Direction was in desperate need of updating. As well as recognising these changes and consolidating existing guidance, the new provisions contain many welcome refinements that should help to make insolvency proceedings run more smoothly. Practitioners should be careful not to overlook the importance of these quietly introduced changes.

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