

**CASE LAW**

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# TECHNICAL UPDATE

## Declaration of Property vesting in Trustee

In the case of *Re D'Eye; Thomas and another v Mariner Properties Ltd and another* [2016] All ER (D) 85 (Dec) the court was asked for a declaration that a property, which had been bought in D's father's name and had been transferred, for no consideration, to the first respondent company, of which D was a director, formed part of the bankruptcy estate and vested in them as the trustees in bankruptcy. Based on the facts of the case including the father's repudiation of any interest in the property, the debtor having collected rent and not accounted for it to the father or the company, and the debtor having paid the conveyancing fees, the court made the declaration in favour of the Trustees.

## Culpability and costs for appealing the rejection of a proof of debt

In the case of *Fielding and another v Hunt (acting as Liquidator of the Burnden Group Ltd)* [2017] All ER (D) 29 (Mar) the court considered the liability of the costs for appealing against the liquidator personally and as an expense of the liquidation. The court held that there were no grounds for the liquidator being held personally liable for costs. The court held that the default position on the costs of appeal was that they were an expense of the liquidation but considered in this case that the evidence of the amount owed had substantially

changed from the initial proof of debt submitted. The court awarded 80% of the costs of appeal as an expense of the liquidation.

## New Rules and Secondary Legislation

The new statutory instruments have been coming thick and fast over the last 6 weeks and I have just listed them below:-

- The Small Business, Enterprise and Employment Act 2015 (Commencement No. 6 and Transitional and Savings Provisions) Regulations 2016 (Amendment) Regulations 2017 SI 2017/363 (addresses annual meetings for pre 2010 cases) may be found [here](#)
- The Insolvency (England and Wales) Rules 2016 (Consequential Amendments and Savings) Rules 2017 SI2017/369 comes into force 6th April 2017 (LLPs will still use 1986 rules - they obviously did not have enough time to deal with this issue, so watch this space it may be amended in Oct 2017) which may be found [here](#)
- The Insolvency (England and Wales) (Amendment) Rules 2017 SI2017/366 comes into force 6th April 2017 (too many amendments to list but addresses para 52(1)(b) issues on fees and definition of a year back to a year rather than a year and a day) which may be found [here](#)
- The Deregulation Act 2015 (Growth Duty Guidance) Order 2017 SI2017/268
- Deregulation Act 2015 and Small Business, Enterprise and Employment Act 2015

## SIP 6

The new SIP 6 came into force on 6 April 2017 without consultation and on an interim basis, with a replacement being planned for 31 December 2017.

The SIP replaces SIPs 8, 10 and 12. More importantly this affects all decision making including deemed consent, not just decision procedures to place a company into CVL.

This is again a principles based SIP rather than prescriptive and I think that creates issues for IPs by identifying areas IPs need to address and not suggesting solutions.

### Applies to all Decision Making

- Para 7 provide information which is transparent, consistent and useful.

This means, for example, when using deemed consent to seek an extension in ADM, although a progress report is no longer required, the information supplied must be sufficient for creditors to be able to decide whether to object.

- Para 8 ensure that notices are sent on the same business day irrespective of the delivery method used.

This is quite important when you are sending emails to overseas creditors but first class post to all other creditors.

- Para 9 have procedures in place to ensure sufficient and proportionate safeguards against participation by persons who are not properly entitled to participate.

It is unclear what the RPB requires.

- (Consequential Amendments) (Savings) Regulations 2017-SI 2017/Draft may be found [here](#)
- Deregulation Act 2015 (Commencement No 7) Order 2017, SI 2017/331 copy may be found [here](#)
  - Investment Bank (Amendment of Definition) and Special Administration (Amendment) Regulations 2017, copy may be found [here](#).

### RPO Weekly wage increase

The Employment Rights (Increase of Limits) Order 2017 came into force on 6 April 2017 and increases the weekly wage to £489 and a copy of the SI may be found [here](#).

### Scottish Bankruptcy

The Bankruptcy Fees (Scotland) Revocation Regulations 2017 came into force on 28 March 2017 and the regulation may be found [here](#).

### Money Laundering Regulations 2017

The Treasury published on 15th March 2017 the result of its consultation on the [Transposition of the Fourth Money Laundering Directive and Fund Transfer Regulation](#) which was launched in September and closed in November. The draft [Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017](#) which comes into force 26th June 2017 may be found [here](#).

### Shareholders' rights in EU Companies

The Council today adopted a directive aimed at strengthening shareholders' engagement in big European companies. The directive will encourage transparent and active engagement by shareholders of listed companies by reviewing the

current Shareholders' Rights Directive (2007/36/EC). Member states will have up to two years to incorporate the new provisions into domestic law. Further information may be found [here](#).

### Insolvency Forms

The Court, Insolvency Service and Registrar of Companies have all produced forms for the new insolvency legislations and the links to these documents are below:-

Court : [here](#)  
 Insolvency Service : [here](#)  
 Registrar of Companies : [here](#)

### Regulation of the Insolvency Profession

The Insolvency Service has published its annual review of insolvency practitioner regulation which may be found [here](#).

### Think Tank for EU and National Insolvency Law

The Conference of European Restructuring and Insolvency Law (CERIL) has recently been founded as an independent non-profit, non-partisan, self-supporting organisation of approximately 75 lawyers and other restructuring and insolvency practitioners, law professors and (insolvency) judges committed to the improvement of restructuring and insolvency laws and practices in the European Union and in its Member States and their operation. More information may be found [here](#).

### Insolvency: Practice Direction

The new practice direction is being drafted but it is not yet available. The court's guidance in the mean time may be found [here](#).

### SIP 6- ctd

The requirement clearly highlights the issue of virtual meetings and electronic voting and the potential lack of control inherent in these procedures. However the software developers seem to have been busy and providers have introduced systems which should help address this issue.

- Para 10 requires using professional judgement to determine authenticity but also an IP should facilitate the participation of those who appear to be properly entitled.

It is unclear what if anything an IP needs to do beyond providing information on how to participate with a decision procedure to meet this requirement.

#### Provisions specific to CVL

- Para 11  
 The requirements of para 11 would need to be addressed in writing. I would suggest this be part of the engagement letter, where it is possible to detail the duties and responsibilities as well as issues of entitlement and voting quantum to the convener.

- Para 12  
 This para deals with the content of the report that is to be provided to creditors. There are a few differences between this and the old SIP 8 report but the main difference is needing to make the report available to creditors not later than one business day prior to the decision date. The confusion has arisen around what 'make available' means. It has been suggested putting the document on a website and advising creditors of the login would meet this criteria. I would prefer to see this circulated with the SOA. Since this SIP may change in December it will be interesting to see if further guidance is provided.  
 The SIP may be accessed [here](#).



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Joanne is also a partner of both The Compliance Alliance and JOH Consultancy which offer a range of services that may be tailored to an individual IP's needs.