

# Restrictions on winding up petitions and statutory demands

Regulations taking effect on 1 October 2021 (and set to last until 31 March 2022) will replace the current restrictions creditors face in winding up debtor companies.

The regulations mark a transitional period as the Government takes steps over the coming six months to remove restrictions creditors have faced to commercial debts.

Creditors will be able to serve and rely on statutory demands but the new regulations impose additional conditions before a winding up petition can be applied for on the basis the company is unable to pay its debts, the usual ground relied on by creditors.

Tenants of commercial premises will retain some protection until 31 March 2022 in certain cases. A landlord will be unable to obtain a winding up order if the debt comprises rent (or any other payment due under the lease) which are unpaid "*by reason of a financial effect of coronavirus*".

In all other cases creditors will be able to seek winding up orders for liquidated sums which are unpaid provided certain conditions are met including:

- A 21-day notice. The notice confirms that the creditor is seeking a proposal from the debtor for payment and that if a satisfactory proposal is not made within 21 days that the creditor intends to apply to wind up the debtor.



Creditors will be able to serve statutory demands at the same time and do not need to wait until the 21-day notice period has passed before issuing statutory demands.

- The debt must be £10,000 or more. If more than one creditor wants to present a petition together, the total debt must be £10,000 or more.

When a creditor seeks a winding up order, if the debtor makes proposals for payment, the creditor must give its reasons to the Court why those proposals were not satisfactory. We anticipate the Court will review these reasons when considering whether to exercise its discretion to wind up a company.

In the right circumstances statutory demands and winding up petitions will become a viable option for creditors to seek to wind up a company.

While the regulations go some way to returning to a pre-Coronavirus position, landlords will still face additional uncertainty from the regulations and questions surrounding a winding up petition being an abuse of process to enforce a commercial debt remains.



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