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IS THIS A WIND-UP?

Winding-up petitions presented on or after 1 October 2021 and the new Schedule 10 to the Corporate Insolvency & Governance Act 2020

Nick Taylor

[kingschambers.com](https://www.kingschambers.com)  [@kings_chambers](https://twitter.com/kings_chambers)  [@kings-chambers](https://www.linkedin.com/company/kings-chambers)



1. Key reflections
2. The scheme of New Schedule 10 and the Conditions
3. Modifications of the insolvency rules
4. Practical tips

1. KEY REFLECTIONS

- Closer to the old era than the pandemic era
- Hurdles in the path of creditors, opportunities for debtors
- Until March 2022...??



2. SCHEDULE 10

CONDITION A (gateway hurdle)

- Liquidated debts fallen due
- Not commercial rent arrears (unless would pass 'coronavirus test', see *A v B* [2021] EWHC 2289 (Ch))

2. SCHEDULE 10

CONDITION B (procedural hurdle)

- Formal written notice
- “Must” comply with formalities, e.g. statement that:

“...if no proposal to the creditor’s satisfaction is made within the period of 21 days beginning with the date on which the notice is delivered, the creditor intends to present a petition to the court for the winding-up of the company.”

- Delivery requirements

2. SCHEDULE 10

CONDITION C (payment proposals hurdle)

- How will the court interpret “*to the creditor’s satisfaction*”?
- Unfettered discretion unlikely
- Analogies with offers of reasonable security in bankruptcy petitions? (see *Hughes and another v Howell* [2021] EWCA Civ 143)
- Court unlikely to go behind prima facie reasonable commercial justification given for refusing offer

2. SCHEDULE 10

CONDITION D (debt threshold hurdle)

- £10,000 minimum debt
- Creditors can band together, this could create complexities ('divide and conquer')

2. SCHEDULE 10

CAN ANY OF THE HURDLES BE SWERVED?

- Yes
- Applications can be made to disapply Condition B or C, or shorten the 21 day notice period
- Will be justified in relatively rare circumstances

3. OTHER MATTERS



- Note the requirement for what a petition must also contain on its face



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3. PRACTICAL TIPS

- Ensure the usual formalities are complied with (especially if rusty)
- Be alive to potential lines of challenge by debtors
- Have a fall-back position re directions
- Unknown how the court will deal with e.g. Condition C in the Companies Court



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ANY QUESTIONS?

Nick Taylor

ntaylor@kingschambers.com

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