STATUTORY INSTRUMENTS

2021 No. 1026

INSOLVENCY, SCOTLAND

COMPANIES, SCOTLAND

The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) (Amendment) Rules 2021

Made - - - -	*8th September 2021*
Laid before Parliament	*9th September 2021*
Coming into force - -	*1st October 2021*

The Secretary of State makes the following Rules in exercise of the powers conferred by section 411(1)(b) of the Insolvency Act 1986(**a**):

PART 1

Introductory provisions

Citation commencement and interpretation

1. These Rules may be cited as the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) (Amendment) Rules 2021 and come into force on 1st October 2021.

2. In these Rules the "Insolvency Rules" means the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018(**b**).

Extent

3. These Rules extend to Scotland only.

Saving provisions

4.—(1) This rule applies where before 1st October 2021—

(a) a moratorium under Part A1 of the Insolvency Act 1986 has come into force; or

(b) in the case of a moratorium for a company to which either section A4 or A5 of the Insolvency Act 1986(**c**) applies, an application has been made to the court.

(2) Where this rule applies—

(**a**) 1986 c.45; section 411(1)(b) has been amended by paragraph 22(2) of Schedule 3 to the Corporate Insolvency and Governance Act 2020 (c.12).
(**b**) SI 2018/1082; those Rules have been amended but the amendments are not relevant for the purposes of these Rules.
(**c**) Sections A4 and A5 were inserted by section 1 of the Corporate Insolvency and Governance Act 2020 (c. 12).

(a) the amendments made by Parts 2 to 4 of these Rules do not apply; and

(b) Part 4 of Schedule 4 to the Corporate Insolvency and Governance Act 2020(**a**) continues to have effect

in relation to that moratorium.

5. Nothing in Parts 2 to 4 of these Rules affects the operation of the Insolvency Rules in relation to a moratorium under Schedule 1A to the Insolvency Act 1986 which has come into force before 1st October 2021.

PART 2

Insertion of Part 1A into the Insolvency Rules

New Part 1A of the Insolvency Rules

6.—(1) After Part 1 of the Insolvency Rules (scope, interpretation, time and rules about documents)—

"PART 1A

MORATORIUM

CHAPTER 1

Preliminary

Application of Part 1A

1A.1. This Part applies for the purposes of a moratorium under Part A1 of the Act.

CHAPTER 2

Obtaining moratorium by lodging notice at court

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Application of Chapter

1A.2. This Chapter applies for the purpose of obtaining a moratorium under section A3.

Obtaining a moratorium by lodging document at court (section A3)

1A.3 An application for a moratorium under section A3 is made by lodging at court the relevant documents listed in section A6 (referred to in these Rules as "the relevant documents").

The relevant documents: standard contents and requirements (section A6)

1A.4.—(1) Each relevant document must—

(a) state the nature of the document;

(b) identify the proceedings;

(c) contain the identification details for the company to which it relates; and

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(**a**) 2020 c. 12; Schedule 4 has been amended but those amendments are not relevant for the purposes of these Rules.

(d) be authenticated by, or on behalf of, the person giving the notice or, as the case may be, making the statement.

(2) The statement under section A6(1)(b) to (e) must—

(a) be made within the period of 5 business days ending with the day on which the application is lodged with the court; and

(b) indicate the date on which the statement is made.

The relevant documents: further requirements relating to the proposed monitor's statement and consent to act (section A6(1)(b))

1A.5. A statement under section A6(1)(b) must—

(a) be headed "Proposed monitor's statement and consent to act"; and

(b) contain the following—

(i) a certificate that the proposed monitor(**a**) is qualified to act as an insolvency practitioner in relation to the company;

(ii) the name of the relevant recognised professional body which is the source of the proposed monitor's authorisation;

(iii) the proposed monitor's IP number; and

(iv) a statement that the proposed monitor consents to act as a monitor in relation to the company.

CHAPTER 3

Obtaining a moratorium by application to the court

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Application of Chapter

1A.6. This Chapter applies for the purpose of obtaining a moratorium under section A4 or A5.

Moratorium application (sections A4 and A5)

1A.7. An application for a moratorium under section A4 or A5 must—

(a) state the date on which the application is lodged; and

(b) be lodged with the court together with the relevant documents.

The relevant documents: standard contents and requirements (section A6)

1A.8.—(1) Each relevant document must—

(a) state the nature of the document;

(b) identify the proceedings;

(c) contain the identification details for the company to which it relates; and

(d) be authenticated by or on behalf of the person giving the notice or, as the case may be, making the statement.

(2) The statements under section A6(1)(b) to (e) must—

(a) be made within the period of 5 business days ending with the date on which the application is lodged with the court; and

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(**a**) "Monitor" in relation to the Moratorium has the meaning given by section A54.

(b) indicate the date on which the statement is made.

The relevant documents: further requirements relating to the monitor's statement and consent to act (section A6(1)(b))

1A.9. A statement under section A6(1)(b) must be headed "Proposed monitor's statement and consent to act" and must contain the following—

(a) a certificate that the proposed monitor is qualified to act as an insolvency practitioner in relation to the company;

(b) the name of the relevant recognised professional body which is the source of the proposed monitor's authorisation;

(c) the proposed monitor's IP number; and

(d) a statement that the proposed monitor consents to act as monitor in relation to the company.

CHAPTER 4

Obligations to notify where moratorium comes into force

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1]

Notice given by monitor where moratorium comes into force: standard contents and requirements

1A.10.—(1) Notification of the coming into force of a moratorium required by section A8(1) must be delivered—

(a) to each of the persons specified in section A8(2) (as applicable); and

(b) where paragraph (2) applies in accordance with that paragraph.

(2) Paragraph (3) applies where—

(a) notification is required to be given to any of the persons referred to in section A8(2)(b) to (d); or

(b) the moratorium is for a company which is a regulated company within the meaning given by section A49.

(3) Where the paragraph applies the monitor must deliver a copy of the document delivered to the registrar of companies to—

(a) the persons referred to in section A8(2)(b) to (d), for the purpose of giving the notification required by those paragraphs; and

(b) the appropriate regulator, for the purpose of giving the notification required by section A49(3)(**a**).

CHAPTER 5

Extending moratorium by lodging notice at court

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Application of Chapter

1A.11. This Chapter applies for the purpose of extending a moratorium under sections A10 or A11.

(**a**) "Appropriate Regulator" has the meaning given by A49.

Extending a moratorium by lodging a notice at court (sections A10 and A11): notice of extension

1A.12.—(1) The directors must lodge a notice with the court (referred to as a "notice of extension") in accordance with paragraph (2).

(2) The notice of extensions must—

(a) be lodged with the court together with the documents referred to in section A10(1) or, as the case may be, section A11(1);

(b) be headed "Notice of extension of a moratorium under section A10/A11";

(c) state—

(i) that the notice is lodged for the purpose of extending a moratorium;

(ii) whether the extension is under section A10 or section A11 of the Act;

(iii) the names of the persons lodging the notice;

(iv) the identification details of the company for which the moratorium is to be extended;

(v) the court in which the notice is lodged;

(vi) where the court has previously allocated a number to the insolvency proceedings in which the notice is lodged, that number; and

(vii) the date on which the notice is lodged; and

(d) be authenticated by, or on behalf of, the person lodging the notice.

(3) The notice of extension must be endorsed by the court with the date and time of lodging.

Documents lodged with the court under sections A10(1) or A11(1) of the Act: standard contents and requirements

1A.13.—(1) Each document lodged with the court under section A10(1) or A11(1) must—

(a) state the nature of the document;

(b) identify the proceedings;

(c) contain the identification details for the company to which it relates;

(d) be authenticated by, or on behalf of, the person giving the notice or, as the case may be, the statement.

(2) The statement under section A11(1)(e) must also state—

(a) a description of the procedure used;

(b) the venue;

(c) whether, in the case of a meeting, the required quorum was in place; and

(d) the outcome.

(3) The statements under section A10(1)(b) to (d) or, as the case may be, section A11(1)(b) to (e) must—

(a) be made within the period of 3 business days ending with the day on which the notice of extension is lodged with the court; and

(b) indicate the date on which the statement is made.

CHAPTER 6

Extending moratorium by application to the court

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Application of Chapter

1A.14. This Chapter applies for the purpose of extending a moratorium under section A13.

Extending a moratorium by application to the court (section A13)

1A.15.—(1) An application for an extension to a moratorium under section A13 must—

(a) state the date on which the application is lodged; and

(b) be lodged at court together with the documents referred to in section A13(2).

(2) The application must be endorsed by the court with the date and time of lodging.

Documents lodged with the court under section A13(2): standard contents and requirements

1A.16.—(1) Each document lodged with the court under section A13(2) must—

(a) state the nature of the document;

(b) identify the proceedings;

(c) contain the identification details for the company to which it relates; and

(d) be authenticated by, or on behalf of, the person making the statement.

(2) The statements comprised in a document lodged with the court under section A13(2) must—

(a) be made within the period of 3 business days ending with the day on which the application is lodged with the court; and

(b) indicate the date on which the statement is made.

CHAPTER 7

Notices about change in the end of moratorium

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Notification by directors to the monitor under section A17(1) of the Act: standard contents and requirements

1A.17.—(1) A notice under section A17(1) must be delivered to the monitor in accordance with paragraph (2).

(2) The notice must—

(a) be delivered within the period of 3 business days beginning with the day on which the duty to give the notice arises; and

(b) contain the following—

(i) the identification details for the company to which it relates;

(ii) the provision in Part A1 of the Act by virtue of which the moratorium was extended or, as the case may be, came to an end ; and

(iii) if the moratorium has come to an end by virtue of section A16(1)(a) or (b) (company enters into insolvency procedure etc), the additional information referred to in paragraph (3).

(3) The additional information that is required if a moratorium has come to an end by virtue of—

(a) section A16(1)(a) is the date on which the compromise or arrangement(**a**) came into effect; and

(b) section A16(1)(b) is—

(i) the date on which the company entered into the relevant insolvency procedure(**b**); and

(ii) the contact details for the office holder for that procedure.

Notification by the monitor to the relevant persons under section A17(2) or (3) of the Act: standard contents and requirements

1A.18.—(1) Notification under section A17(2) or (3) must—

(a) be delivered—

(i) to each of the relevant persons(**c**) specified in section A17(8)(a) to (d) (as applicable);

(ii) in accordance with paragraph (2); and

(iii) where paragraphs (3) and (4) apply in accordance with those paragraphs; and

(b) if the moratorium has come to an end by virtue of section A16(1)(b), contain the additional information referred to in paragraph (5).

(2) Notification delivered under this rule must be delivered within the period of 5 business days beginning with the date in which the duty to give the notice arises.

(3) Paragraph (4) applies where—

(a) notification is required to be given to any of the relevant persons referred to in section A17(8)(b) to (d); or

(b) the moratorium is for a company which is a regulated company within the meaning given by section A49.

(4) Where this paragraph applies the monitor must deliver a copy of the document to the registrar of companies to—

(a) the persons referred to in section A17(8)(b) to (d), for the purpose of giving the notification required by that section; and

(b) the appropriate regulator for the purpose of giving the notification required by section A49(3).

(5) The additional information that is required if a moratorium has come to an end by virtue of section A16(1)(b) is —

(a) the date on which the company entered into the relevant insolvency procedure; and

(b) the contact details for the office-holder for that procedure.

[Note: Chapter 9 includes provision about notification by the monitor to the company etc. where the end of the moratorium changes by virtue of a notice given to the court under section A38 (termination of the monitor).]

CHAPTER 8

Notification by directors of insolvency proceedings

[Note: a document required by the Act or these Rules must also contain the standard content set out in Part 1.]

(**a**) "Compromise or arrangement" has the meaning given by section A16(2).
(**b**) "Relevant insolvency procedure" has the meaning given by section A16(3)
(**c**) "relevant person" has the meaning given by section A17(8).

Notification by directors to the monitor of insolvency proceedings (section A24)

1A.19. Notice by the directors of certain insolvency proceedings under section A24 must be delivered within the period of—

(a) in the case of a notice under subsection (1), 3 business days ending with the day on which any of the steps mentioned in paragraphs (a) to (c) of that subsection are taken; and

(b) in the case of a notice under subsection (2), 3 business days beginning with the day on which the duty to give the notice arises.

CHAPTER 9

Termination of moratorium by monitor

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Notice bringing the moratorium to an end (section A38)

1A.20.—(1) Notice bringing the moratorium to an end under section A38 must be lodged with the court in accordance with paragraph (2).

(2) The notice must—

(a) be lodged with the court—

(i) together with one copy for the company; and

(ii) as soon as practicable after the duty to bring the moratorium to an end arises.

(b) be headed "Notice of termination of moratorium by monitor under section A38";

(c) state—

(i) that the notice is lodged for the purpose of terminating a moratorium under section A38 of the Act;

(ii) the identification details of the company to which the notice relates;

(iii) the name and contact details of the monitor;

(iv) the court in which the notice is lodged;

(v) where the court has previously allocated a number to the insolvency proceedings within which the notice is lodged, that number;

(vi) the date on which the notice is lodged;

(vii) the grounds on which the moratorium is to be terminated;

(viii) the monitor's reasons for concluding that those grounds are made out; and

(ix) the date on which the monitor concluded that those grounds were made out; and

(d) be authenticated by, or on behalf of, the monitor.

(3) The court must endorse both the notice and the copy of the notice with the date and time of lodging.

(4) The endorsed copy of the notice must be delivered to the monitor.

(5) The monitor must deliver—

(a) the endorsed copy of the notice to the company; and

(b) further copies of that notice to—

(i) the registrar of companies; and

(ii) where paragraph (7) applies, the person specified in paragraphs 7(b),

within the period of 3 business days beginning with the day on which the endorsed copy of the notice is delivered to the monitor.

(6) Paragraph (7) applies where—

(a) notification is required to be given to any of the relevant persons referred to in section A17(8)(b) to (d); or

(b) the moratorium is for a company which is a regulated company within the meaning given by section A49.

(7) Where this paragraph applies the monitor must deliver a copy of the document delivered to the registrar of companies to—

(a) the persons referred to in section A17(8)(b) to (d) for the purpose of giving the notification required by that section; and

(b) the appropriate regulator, for the purpose of giving the notification required by section A49(3).

Debts that are to be disregarded for the purpose of section A38(1)(d) of the Act

1A.21. For the purpose of deciding whether to bring a moratorium to an end under section A38(1)(d) the monitor must disregard—

(a) any debts that the monitor has reasonable grounds for thinking are likely to be—

(i) paid; or

(ii) compounded to the satisfaction of the creditor;

within 5 business days of the decision; and

(b) any debts in respect of which the creditor has agreed to defer payment until a time that is later than the decision.

CHAPTER 10

Replacement of monitor or appointment of additional monitor

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Replacement or additional monitor's statement and consent to act: standard contents and requirements (section A39(4))

1A.22.—(1) A statement by a proposed replacement or additional monitor under section A39(4) must be lodged with the court in accordance with paragraph (2).

(2) The statement must—

(a) be headed "Proposed monitor's statement and consent to act";

(b) contain the following—

(i) a certificate that the proposed monitor is qualified to act as an insolvency practitioner in relation to the company;

(ii) the name of the relevant recognised professional body which is the source of the proposed monitor's authorisation;

(iii) the proposed monitor's IP number; and

(iv) a statement that the proposed monitor consents to act as a replacement monitor or, as the case may be, an additional monitor, in relation to the company;

(c) indicate the date on which the statement was made;

(d) be authenticated by the proposed replacement monitor or, as the case may be, the proposed additional monitor; and

(e) be made within the period of 5 business days ending with the day on which the statement is lodged with the court.

Notice to be given by monitor of replacement of monitor or appointment of additional monitor (section A39(8))

1A.23.—(1) Notification of the appointment of a replacement monitor or, as the case may be, the appointment of an additional monitor, by virtue of an order under section A39(1) must be delivered—

(a) to each of the persons specified in section A39(8) (as applicable); and

(b) where paragraph (2) applies, in accordance with that paragraph.

(2) Paragraph (3) applies where—

(a) notification is required to given to any of the persons referred to in section A39(8)(b) to (d); or

(b) the moratorium is for a company which is a regulated company within the meaning given by section A49(13).

(3) Where this paragraph applies the monitor must deliver a copy of the document delivered to the registrar of companies to—

(a) the persons referred to in section A39(8)(b) to (d), for the purpose of giving the notification required by those paragraphs; and

(b) the appropriate regulator for the purpose of giving the notification required by section A49(3).

CHAPTER 11

Challenges to monitor remuneration

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Challenges to monitor's remuneration in subsequent insolvency proceedings

1A.24.—(1) An administrator or liquidator may apply to the court on the grounds that remuneration charged by the monitor in relation to a prior moratorium was excessive.

(2) An application under this rule may not be made after the end of the period of 2 years beginning with the day after the day on which the moratorium ends.

(3) On an application under this paragraph the court may—

(a) dismiss the application;

(b) order the monitor to repay—

(i) some or all of the remuneration; and

(ii) to pay interest on that sum at the rate specified in paragraph (4) for the period beginning with the date on which the remuneration was paid to the monitor and ending with the date of repayment; or

(c) make such other order as it sees fit.

(4) The rate specified for the purpose of paragraph (3)(b)(ii) is the official rate.

CHAPTER 12

Disposal of property

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Notice where the court grants permission under section A31 or A32

1A.25.—(1) This rule applies where the court grants permission on an application in respect of—

(a) the disposal of charged property by a company free from charge under section A31; or

(b) the disposal of hire-purchase property by a company under section A32.

(2) As soon as reasonably practicable after receiving the court order the company must deliver a copy to, as the case may be, the holder of the security or the owner of the hire-purchase goods.

CHAPTER 13

Claims by creditors

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Application and interpretation of Chapter

1A.26. This Chapter applies to the quantification of creditors' claims for the purposes of a qualifying decision procedure under Part A1 of the Act.

Submission of claims

1A.27.—(1) A creditor must submit a claim by producing to the convenor—

(a) a statement of claim as described in paragraph (2); and

(b) documentary evidence of debt;

but the convenor may dispense with the requirement of sub-paragraph (b) in respect of any debt or class of debt.

(2) The statement of claim must—

(a) be made out by, or under the direction of, the creditor and dated and authenticated by the creditor or a person authorised on the creditor's behalf;

(b) state the creditor's name and address;

(c) if the creditor is a company, identify the company;

(d) state the name and address of any person authorised to act on behalf of the creditor;

(e) state the total amount as at the date of the administration order claimed in respect of all debts;

(f) state whether or not the claim includes any outstanding uncapitalised interest;

(g) contain particulars of how and when the debt was incurred by the company;

(h) contain particulars of any security held, the date on which it was given and the value which the creditor puts on it;

(i) include details of any retention of title in relation to goods to which the debt relates;

(j) include any details of any document by reference to which the debt can be substantiated; and

(k) state the name, postal address and authority of the person authenticating the statement of claim and documentary evidence of debt (if someone other than the creditor).

Amount which may be claimed generally

1A.28.—(1) Subject to the provisions of this rule and rules 1A.29 and 1A.30 the amount in respect of which a creditor is entitled to claim is the accumulated sum of principal and any interest which is due on the debt as at the date of the decision procedure under Part A1 of the Act.

(2) In calculating the amount of a creditor's claim, the creditor must deduct any discount (other than any discount for immediate or early settlement) which is allowable by contract or course of dealing between the creditor and the company or by the usage of trade.

(3) The rate of interest referred to in paragraph (2) is to be whichever is the greater of—

(a) the official rate at the date the company entered the moratorium; or

(b) the rate applicable to that debt apart from the moratorium.

Debts depending on contingency

1A.29. The convenor must estimate the value of a debt that does not have a certain value because it is subject to a contingency or for any other reason.

Secured debts

1A.30.—(1) In calculating the amount of a secured creditor's claim for the purposes of a decision procedure under section A12 of the Act, the value of the debt for voting purposes is its full value without deduction of the value of the security.

(2) In calculating the amount of a secured creditor's claim for the purposes of a decision procedure under section A44(4)(c) of the Act, the secured creditor is to deduct the value of any security as estimated by the secured creditor.

Claims in foreign currency

1A.31.—(1) A creditor may state the amount of his or her claim in a currency other than sterling where—

(a) the creditor's claim is constituted by decree or other order made by a court ordering the company to pay to the creditor a sum expressed in a currency other than sterling; or

(b) where it is not so constituted, the creditor's claim arises from a contract or bill of exchange in terms of which payment is may be required to be made by the company in a currency other than sterling.

(2) Where under paragraph (1) a claim is stated in a currency other than sterling the convenor must convert it into sterling at a single rate for each currency determined by the convenor by reference to the exchange rates prevailing in the London market at the close of business on the business day preceding the date of the decision procedure.".

PART 3

Miscellaneous amendments of the Insolvency Rules

Amendment of Part 1 of the Insolvency Rules

7.—(1) Rule 1.17 (registrar of companies: covering notices) is amended as follows.

(2) For paragraph (1) substitute.—

"(1) This rule applies where—

(a) the Act or these Rules require an office-holder to deliver any of the documents specified in paragraph (1A) to the registrar of companies, or

(b) the directors are required to deliver a copy of a court order to the registrar of companies in accordance with sections A31(7) or A32(5)."

(3) After paragraph (1) insert—

"(1A) The documents specified in this paragraph are—

(a) a notice under section A38 bringing a moratorium under Part A1 of the Act to an end;

(b) an account or a summary of receipts and payments;

(c) a court order;

(d) a statement of administrator's proposals (including a statement of revised proposals);

(e) a statement of affairs;

(f) a statement of concurrence;

(g) a notice of an administrator's resignation under paragraph 87(2) of Schedule B1;

(h) any report including—

(i) a final report,

(ii) a progress report (including a final progress report);

(iii) a report of a creditor's decision under paragraph 53(2) or 54(6) of Schedule B1, and

(iv) a report of a decision approving a CVA under section 4(6) and 6(A) or paragraph 30(3) and (4) of Schedule A1;

(i) a copy of the notice that a CVA has been fully implemented or terminated that the supervisor is required to deliver under rule 2.43(3).".

(4) In paragraph (2), after "office holder" insert "or the directors (as the case may be).

8.—(1) Rule 1.19 (standard contents of documents relating to the office of office-holders) is amended as follows.

(2) For paragraph (1)(b) substitute—

"(b) where the document relates to—

(i) an appointment (other than an appointment to which sub-paragraph (b)(ii) refers) the person, body or court making the appointment; or

(ii) in the case of an appointment of a person as a monitor in respect of a moratorium for a company to which section A3 applies, the court with which the relevant documents, within the meaning given by section A6, were lodged. ".

9.—(1) Rule 1.27 (standard contents of notices relating to the office of office-holders) is amended as follows.

(2) For paragraph (b) substitute—

"(b) Where the document relates to—

(i) an appointment (other than an appointment to which sub-paragraph (b)(ii) refers) the person, body or court making the appointment; or

(ii) in the case of an appointment of a person as a monitor in respect of a moratorium for a company to which section A3 applies, the court with which the relevant documents, within the meaning given by section A6, were lodged. ".

10.—(1) Rule 1.34 (creditor's election to opt-out) is amended as follows.

(2) Before paragraph (1) insert—

"(A1) This rule does not apply in relation to a moratorium under Part A1 of the Act.".

11.—(1) Rule 1.35 (office-holder to provide information to creditors on opting-out) is amended as follows.

(2) Before paragraph (1) insert—

"(A1) This rule does not apply in relation to a moratorium under Part A1 of the Act.".

12.—(1) Rule 1.52 (right to list of creditors) is amended as follows.

(2) In paragraph (1)—

(a) after "administration" insert "or a moratorium under Part A1"; and

(b) after "administrator" insert "or as the case may be, the monitor,".

(3) In paragraph (2) after "administrator" insert "or, as the case may be, the monitor".

(4) In paragraph (3)—

(a) after "administrator" insert "or, as the case may be, the monitor".

(b) substitute "the administrator thinks" with "the administrator or monitor thinks".

Amendment of Part 2 of the Insolvency Rules

13.—(1) Rule 2.2 (proposal for a CVA: general principles and amendment) is amended as follows.

(2) For paragraph (2) substitute—

"(2) The proposal may be amended with the nominee's agreement in writing where—

(a) the nominee is not the liquidator or administrator of the company; and

(b) the nominee's report has not been lodged with the court under section 2(2).".

(3) Omit paragraphs (3) and (4).

14.—(1) Rule 2.3 (proposal: contents) is amended as follows.

(2) In the Table in paragraph (1), for the entry "Address (where moratorium proposed)" substitute—

"Matters relating to a moratorium	whether a moratorium is, or has been, in force under Part A1 of the Act and, if so, the day that moratorium came into force and (if applicable) the day it ended;"

15.—(1) Rule 2.5 (statement of affairs (section 2(3)) is amended as follows.

(2) In paragraph (1) after "the following information" insert "and, in addition, where paragraph (1B) applies, the information specified in that paragraph".

(3) After paragraph (1) insert—

"(1A) Paragraph (1B) applies if a moratorium under Part A1 of the Act is, or has been, in force for the company at any time within the period of 12 weeks ending with the day on which the statement of affairs is made up.

(1B) Where this paragraph applies the statement of affairs must identify which of the debts owed by the company are—

(a) moratorium debts; or

(b) priority pre-moratorium debts

within the meaning given by section 174A(**a**).

(1C) Where paragraph 1B applies, paragraph 1(c) has effect as if the reference to preferential creditors included references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A.".

16.—(1) Rule 2.25 (members' consideration at a meeting) is amended as follows.

(2) For paragraph (2) substitute—

(**a**) Section 174A was inserted by paragraph 13 of Schedule 3 to the Corporate Insolvency and Governance Act 2020.

"(2) The date of the meeting (except where the nominee is the administrator or liquidator of the company) must not be more than 28 days from the date on which the nominee's report is lodged with the court under rule 2.8.".

17. For rule 2.26 (creditors' consideration by a decision procedure) substitute—

"**Creditors' consideration by a decision procedure**

2.26. Where the nominee is inviting the creditors to consider the proposal by a decision procedure, the decision date must not be less than 14 days from the date of delivery of the notice and not more than 28 days from the date the nominee's report is lodged with the court under rule 2.8.".

Amendment of Part 3 of the Insolvency Rules

18.—(1) Rule 3.10 (the hearing) is amended as follows.

(2) After paragraph (c) insert—

"(ca) if there is a moratorium in force for the company under Part A1 of the Act, the monitor;".

19.—(1) Rule 3.23 (notice of intention to appoint) is amended as follows.

(2) In paragraph (1)—

(a) after sub-paragraph (e) insert—

"(ea) a statement as to whether there is a moratorium in force for the company under Part A1 of the Act;", and

(b) for sub-paragraph (f) substitute—

"(f) a statement that the company has not within the preceding 12 months been in administration;".

20.—(1) Rule 3.25 (notice of appointment without prior notice of intention to appoint) is amended as follows.

(2) In paragraph (2)—

(a) after sub-paragraph (e) insert—

"(ea) whether there is a moratorium in force for the company under Part A1 of the Act; " and

(b) for sub-paragraph (f) substitute—

"(f) that the company has not within the past 12 months been in administration;".

21.—(1) Rule 3.27 (publication of administrator's appointment) is amended as follows.

(2) In paragraph (3), before sub-paragraph (a) insert—

"(za) if there is a moratorium in force for the company under Part A1 of the Act, to the monitor;".

22.—(1) Rule 3.30 (statement of affairs: content (paragraph 47 of Schedule B1)) is amended as follows.

(2) In paragraph (2) after "(in addition to the matters required by paragraph 47(2) of Schedule B1)" insert "the following and, in addition, where paragraph (2B) applies, the information specified in that paragraph".

(3) After paragraph (2) insert—

"(2A) Paragraph (2B) applies if a moratorium under Part A1 of the Act is, or has been, in force for the company at any time within the period of 12 weeks ending with the day on which it entered administration.

(2B) Where this paragraph applies the statement of affairs must identify which of the debts owed by the company are—

(a) moratorium debts; or

(b) priority pre-moratorium debts

within the meaning given by section 174A.

(2C) Where paragraph (2B) applies—

(a) Sub-paragraph 2(a)(iv) has effect as if the references to preferential creditors included references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A; and

(b) Sub-paragraph 2(b)(i), (ii), (vii) has effect as if the reference to the preferential debt including references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A.".

23.—(1) Rule 3.35 (administration's proposals: additional content) is amended as follows.

(2) In paragraph (1)—

(a) after sub-paragraph (d) insert—

"(da) a statement as to whether a moratorium under Part A1 of the Act has been in force for the company at any time within the period of 2 years ending with the day on which it entered administration and, if so—

(i) the day on which it came into force;

(ii) the day on which it ended; and

(iii) particulars of the purposes for which it was entered into and whether, and to what extent, those purposes were achieved;" and

(b) in sub-paragraph (h)(i) after "financial position of the company" insert "(as to which see paragraph (1A))".

(3) After paragraph (1) insert—

"(1A) For the purposes of paragraph (1)(h)(i) if a moratorium has been in force at any time within the period of 12 weeks ending with the day on which the company entered administration then the details of the financial position of the company must identify which of the debts owed by the company are—

(a) moratorium debts; or

(b) priority pre-moratorium debts

within the meaning given by section 174A.".

24.—(1) Rule 3.50 (expenses) is amended as follows.

(2) After paragraph (3) insert—

"(4) The costs of an application by the administrator under rule 1A.24 are to be treated as an expense of the administration unless the court orders otherwise.".

25.—(1) Rule 3.51 (order of priority) is amended as follows.

(2) For paragraph (1) substitute—

"(1) Where paragraph 64A(**a**) or paragraph 99(1) of Schedule B1 apply, the items specified in paragraph 64A or as the case may be, paragraph 99, are payable in priority to the expenses in this rule.".

26. After 3.51 insert—

(**a**) Section 64A was inserted by paragraph 31(3) of Schedule 3 to the Corporate Insolvency and Governance act 2020 (c. 12)

"**Priority of moratorium debts in subsequent administration**

3.51A. Where paragraph 64A(1) of Schedule B1 applies, the moratorium debts and priority pre-moratorium debts mentioned in paragraph 64A(2) of the Schedule are payable in the following order of priority—

(a) amounts payable in respect of goods or services supplied during the moratorium under a contract where, but for section 233B(3) or (4)(**a**), the supplier would not have to had to make that supply;

(b) wages or salary(**b**) arising under a contract of employment;

(c) other debts or other liabilities apart from the monitor's remuneration or expenses; and

(d) the monitor's remuneration or expenses.".

27.—(1) Rule 3.117 (estate to be distributed in respect of the accounting periods) is amended as follows.

(2) After paragraph (5) insert—

"(5A) Where paragraph 64A of Schedule B1 applies, paragraph (4) and (5) shall have effect as if the reference to preferential creditors and preferential debts included references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A.".

Amendment of Part 4 of the Insolvency Rules

28.—(1) Rule 4.1 (power to make a block transfer order) is amended as follows.

(2) In paragraph (2)—

(a) in sub-paragraph (a) omit "or";

(b) in sub paragraph (b) after "CVA" insert "or";

(c) after sub-paragraph (b) insert—

"(c) a monitor in respect of a moratorium under Part A1 of the Act.".

29.—(1) Rule 4.2 (application for a block transfer order) is amended as follows.

(2) In paragraph (2) before sub-paragraph (a) insert—

"(za) section A39 (moratorium under Part A1 of the Act);".

(3) In paragraph (3) before sub-paragraph (a) insert—

"(za) section A39 (moratorium under Part A1 of the Act);".

Amendment of Part 5 of the Insolvency Rules

30.—(1) Rule 5.2 (interpretation) is amended as follows.

(2) In paragraph (1), at the appropriate place, insert—

""creditor" in relation to a decision procedure under section A11 (extension by directors with creditor consent) means a creditor who is a pre-moratorium creditor within the meaning given by section A12;".

31.—(1) Rule 5.6 (physical meetings) is amended as follows.

(2) In paragraph (1), after "business days" insert "or in the case of a decision procedure in respect of a moratorium under Part A1 of the Act, three days".

32.—(1) Rule 5.8 (notices to creditors of decision procedure) is amended as follows.

(**a**) Section 233B was inserted by section 14 of the Corporate Insolvency and Governance Act 2020.
(**b**) "Wages or salary" has the same meaning as section A18 of the Act.

(2) At the beginning of paragraph (3)(f) and paragraph (3)(g) insert "except in the case of a decision procedure in respect of a moratorium under Part A1 of the Act".

33.—(1) Rule 5.9 (voting in a decision procedure) is amended as follows.

(2) In paragraph (2), before "an administration" insert "a decision procedure in respect of a moratorium under Part A1 of the Act or".

34.—(1) Rule 5.11 (notice of decision procedures or of seeking deemed consent: when and to whom delivered) is amended as follows.

(2) In the table in paragraph (1), before the entry for "administration" insert—

"Moratorium under Part A1 of the Act	decision of pre-moratorium creditors under section A11 and decisions of creditors required by virtue of an order under section A44(3)	in the case of a decision under section A11 the pre-moratorium creditors, or, where the decision is required by virtue of an order under section A44(3), the creditors	5 days"

35.—(1) Rule 5.14 (notice to company officers in respect of meetings) is amended as follows.

(2) In paragraph (1), before "a proposal for a CVA" insert "a decision procedure in respect of a moratorium under Part A1 of the Act,".

36.—(1) Rule 5.22 (adjournment by chair) is amended as follows.

(2) In paragraph (1), after "subject to" insert "rule 5.22A which applies for the purpose of a decision procedure in respect of a moratorium under Part A1 of the Act and".

37. After rule 5.22 insert—

"**Adjournment of meeting in, or for the purpose of, a moratorium under Part A1 of the Act**

5.22A.—(1) This rule applies where a meeting is for the purpose of a decision procedure in respect of a moratorium under Part A1 of the Act.

(2) Where this rule applies the chair may, (and must if it is so resolved), adjourn a meeting.

(3) A meeting may be adjourned under this rule on more than one occasion.

(4) An adjournment under this rule—

(a) must not be:

(i) for a period which is more than 14 days;

(ii) to a day which is more than 14 days after the first day on which the meeting was held; and

(b) where a meeting is for the purpose of seeking a decision of creditors to a revised end date for a moratorium under section A11, must be to a day which is before the end of the moratorium(**a**).

(**a**) Section A9 makes provisions specifying the time at which the moratorium comes to an end in cases where the moratorium has not previously been extended and section A11 makes provisions specifying the time at which the moratorium comes to an end in cases where the moratorium has previously been extended.

(5) This rule is subject to any direction of the court.".

38.—(1) Rule 5.23 (adjournment in the absence of chair) is amended as follows.

(2) In paragraph (1), before "an administration" insert "a decision procedure in respect of a moratorium under Part A1 of the Act or".

39.—(1) Rule 5.24 (statements of claim and documentary evidence of debt in adjournment) is amended as follows.

(2) Before "in an administration" insert "for the purpose of a decision procedure in respect of a moratorium under Part A1 of the Act or".

40.—(1) Rule 5.26 (creditors' voting rights) is amended as follows.

(2) Before paragraph (1) insert—

"(A1) In a decision procedure in respect of a moratorium under Part A1 of the Act a creditor is entitled to vote only if the requirements in paragraph (1)(a) to (c) are satisfied in relation to that decision procedure.".

41.—(1) Rule 5.28 (calculation of voting rights) is amended as follows.

(2) Before paragraph (1)(a) insert—

"(za) in a decision procedure in respect of a moratorium under Part A1 of the Act, as at the decision date;".

(3) In paragraph (1)(b)—

(a) for sub-paragraph (iii) substitute—

"(iii) where (i) and (ii) do not apply, at the decision date;"; and

(b) omit sub-paragraph (iv).

(4) In paragraph (3), before "a proposed CVA" insert "a decision procedure in respect of a moratorium under Part A1 of the Act, or".

(5) For paragraph (6) substitute—

"(6) The value of the debt for voting purposes is its full value without deduction of the value of the security in the following cases—

(a) where, in respect of a moratorium under Part A1 of the Act, there is a decision of pre-moratorium creditors on whether to extend or further extend that moratorium under section A11; and

(b) where the administrator has made a statement under paragraph 52(1)(b) of Schedule B1 and the administrator has been requested to seek a decision under paragraph 52(2) of that Schedule.".

42.—(1) Rule 5.29 (calculation of voting rights: hire purchase agreements) is amended as follows.

(2) Before paragraph (1) insert—

"(A1) In a decision procedure in respect of a moratorium under Part A1 of the Act, a creditor under a hire purchase agreement is entitled to vote in respect of the amount of the debt due and payable by the company at the decision date.

(B1) In calculating the amount of any debt for the purpose of paragraph (A1) no account is to be taken of any amount attributable to the exercise of any right under the relevant agreement so far as the right has become exercisable solely by virtue of a moratorium for the company coming into force.".

43.—(1) Rule 5.31 (requisite majorities) is amended as follows.

(2) Before paragraph (1) insert—

"(A1) Subject to paragraphs (B1) and (D1), a decision in respect of a moratorium under Part A1 of the Act is made when a majority (in value) of those voting have voted in favour of the proposed decision.

(B1) A decision is not made if, of the total number of those creditors voting in respect of the proposed decision who are, to the best of the convener's belief, unconnected with the company, a majority vote against it.

(C1) For the purpose of paragraph (B1) a creditor is unconnected unless the convener decides that the creditor is connected.

(D1) In the case of a decision which is required by virtue of an order under section A44(3) paragraphs (A1) and (B1) have effect subject to such modifications as may be set out in the court's order.".

(3) For paragraph (3) substitute—

"(3) In the case of a proposed CVA a decision approving a proposal or a modification is made when 75% or more (in value) of those responding vote in favour of it.".

44.—(1) Rule 5.32 (appeals against decisions under this Chapter) is amended as follows.

(2) At the beginning of paragraph (3)—

(a) omit "If the"; and

(b) insert "In respect of a decision, other than one which is taken, or required, under Part A1 of the Act (as to which see paragraphs (3A) and (3B)) if that".

(3) After paragraph (3) insert—

"(3A) Subject to paragraph (3B), on an appeal against a decision taken, or required, under Part A1 of the Act a court may—

(a) reverse the decision;

(b) vary the decision;

(c) declare certain votes to be invalid; or

(d) make such order as it sees fit.

(3B) A court must not make an order of the kind referred to in paragraph (3A)(a) to (c) if—

(a) it is satisfied that the circumstances which led to the appeal did not give rise to unfair prejudice or material irregularity; or

(b) the decision was taken at a time when the moratorium was in force, and that moratorium has subsequently come to an end.".

PART 4

Minor amendments of the Insolvency Rules

45. Schedule 1 makes minor amendments of the Insolvency Rules in respect of moratoriums under Part A1 of the Insolvency Act 1986.

46. Schedule 2 makes amendments of the Insolvency Rules in consequence of the repeal of Schedule A1 to the Insolvency Act 1986(**a**).

Callanan
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

8th September 2021

(**a**) Schedule A1 was repealed by paragraph 30 of Schedule 3 to the Corporate Insolvency and Governance Act 2020.

SCHEDULE 1

Rule 45

Minor amendments

1. The Insolvency Rules are amended as follows.

2. In the provisions of the Insolvency Rules specified in the first column in the Table in paragraph 3, at the appropriate place (as specified in the third column in the table), the amendments specified in the fourth column in the Table have effect.

3. This is the Table referred to in paragraph 2—

Insolvency Rules	*Topic*	*Appropriate place*	*Amendment*
Rule 1.1	Scope	In paragraph (1)	After "in relation to" insert "moratoriums,"
		In paragraph (1)(a)	For "Parts 1" substitute "Parts A1, 1"
		In paragraph (2)	For "Parts 1" substitute "Parts A1, 1"
Rule 1.25	Standard contents of notices to be delivered to persons other than the registrar of companies	In paragraph (1)	For "Parts 1" substitute "Parts A1, 1"
Rule 1.49	Right to copies of documents		For "Parts 1" substitute "Parts A1, 1"

SCHEDULE 2

Rule 46

Amendments in consequence of the repeal of Schedule A1 to the Insolvency Act 1986

1. The Insolvency Rules are amended as follows.

2. In the provisions in the Insolvency Rules specified in the first column in the Table in paragraph 3, at the appropriate place (as specified in the third column in the Table), the amendments specified in the fourth column in the Table have effect.

3. This is the Table referred to in paragraph 2—

Insolvency Rules	*Topic*	*Appropriate place*	*Amendment*
Rule 1.2	Defined terms	In paragraph (1) in the definition of "the Act"	For "Schedule A1" substitute "Schedule ZA1, ZA2,"
		In paragraph (1) in the definition of "hire-purchase agreement"	Omit the words from "and is supplemented by" to "Schedule B1"
Rule 1.17	Registrar of companies: covering notices	In paragraph(1)(g)(iv)	Omit the words after "sections 4(6) and 6A"
Rule 2.3	Proposal: contents	In the table in paragraph (1) to entry	In sub-paragraph (c) omit "or paragraph

		"Handling of funds arising"	37(2)(b)(ii) of Schedule A1"
Chapter 3 of Part 2	Procedure for a CVA without a moratorium	In the heading	Omit "without a moratorium"
Rules 2.10 to Rule 2.23	Procedure for a CVA with a moratorium		Omit
Rule 2.28	Creditors' approval of modified proposal		Omit
Rule 2.36	Notice of order made under section 4A(6) or paragraph 36(5) of Schedule A1	In the heading and in paragraph (1)	Omit the words after "section 4A(6)"
Rule 2.37	Report of consideration of proposal under section 4(6) and (6A) or paragraph 30(3) and (4) of Schedule A1	In the heading	Omit the words after section 4(6) and (6A)
		In paragraph (1)	Omit "or paragraph 30(3) and (4) of Schedule A1"
		In paragraph (6)	Omit "or paragraph 36 of Schedule A1"
Rule 2.38	Hand-over of property etc. to supervisor	In paragraph (1)	Omit "or paragraph 36 of Schedule A1"
Rule 2.39	Revocation or suspension of CVA	In paragraph (1)	Omit the words after "section 6"
		In paragraph (4)	Omit "or under paragraph 38(4)(b) or (c) of Schedule A1"
Rule 2.42	Fees and expenses	In sub-paragraph (a)	Omit the words after "section 4A"
Rule 4.2	Applications for a block transfer order	In paragraphs (2)(a) and 3(a)	Omit the words after "section 7(5)"
Rule 5.11	Notice of decision procedures or of seeking deemed consent: when and to whom delivered	In the table in paragraph (1) in the fourth column corresponding with the entry headed "proposed CVA"	Omit the words from the beginning of that entry up to and including "Schedule A1"
Rule 5.22	Adjournment by chair	Paragraph (3)	Omit
Rule 5.32	Appeals against decisions under this Chapter	In paragraph (5)	Omit "or paragraph 30(3) of Schedule A1"
Paragraph 8 of Schedule 2	CVA moratoria		Omit

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Insolvency (Scotland) (Company Voluntary Arrangement and Administration) Rules 2018 (SI 2018/1082) ("the 2018 Rules") in connection with the introduction of the new moratorium procedure ("the moratorium") in Part A1 of the Insolvency Act 1986 (c.45) ("the 1986 Act") and the repeal of Schedule A1 to that Act.

Section 1 of the Corporate Insolvency and Governance Act 2020 (c.12) ("CIGA 2020") inserted a new Part A1 into the 1986 Act. Part A1 provides for a moratorium which, in summary, enables an eligible company to obtain certain protections from creditors. Schedule 4 to CIGA 2020 contains temporary rules for the purpose of the moratorium. These temporary rules were enacted so that the moratorium could be given immediate effect pending the making of these Rules. In addition, section 2 of CIGA 2020 repealed Schedule A1 to the 1986 Act. Schedule A1 contained provisions for a different form of moratorium which was, in effect, superseded by the coming into force of the new Part A1 moratorium.

These Rules are in four Parts. Part 1 contains introductory provisions dealing with the coming into force and territorial extent of the Rules. Rules 4 and 5 make saving provision for cases where a moratorium (or a moratorium under Schedule A1 to the 1986 Act) is in effect (or, in certain cases, an application for a moratorium has been made) at the time these Rules come into force. If that is the position then the amendments made by these Rules do not apply; instead the rules that apply at the time that the moratorium first came into effect (or when the application for the moratorium was made) continue to apply for the lifetime of that moratorium.

Part 2 of these Rules inserts a new Part into the 2018 Rules setting out the detailed procedures for the conduct of the moratorium; in particular, it specifies the content and timing of the various notifications that are required to be given in connection with the obtaining, coming into force, extension and termination of the moratorium.

Part 3 of these Rules makes consequential amendments to Parts 1 to 5 of the 2018 Rules. These consequential amendments deal with matter such as: the notifications that must be given where a company enters another form of insolvency procedure during a moratorium; the identification of debts incurred during a moratorium which are required to under the 1986 Act to have priority in subsequent insolvency procedures; and matters relating to decision making procedures during a moratorium.

Part 4 of these Rules introduces Schedules 1 and 2. Those Schedules make minor and consequential textual amendments to the 2018 Rules. Schedule 1 makes a minor amendments to various provisions in the Rules which are intended to be of general application to insert a reference to moratoriums, while Schedule 2 removes references in the 2018 Rules to Schedule A1 of the 1986 Act which are no longer needed following the repeal of Schedule A1.

A full impact assessment has not been produced for this instrument as no, or no significant impact on the private, voluntary or public sector is foreseen. An explanatory memorandum has been published alongside this instrument at www.legislation.gov.uk.

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