
Changes to legislation: There are currently no known outstanding effects for the Corporate Insolvency and Governance Act 2020, Cross Heading: Insolvency Act 1986. (See end of Document for details)

SCHEDULES

SCHEDULE 3

MORATORIUMS IN GREAT BRITAIN: FURTHER AMENDMENTS

Insolvency Act 1986

- 1 The Insolvency Act 1986 is amended as follows.
- 2 Omit section 1A (moratorium where directors propose voluntary arrangement).
- 3 In section 2 (procedure where nominee is not the liquidator or administrator), in subsection (1), omit from “and the directors” to the end.
- 4 (1) Section 4 (decision of the company and its creditors in relation to voluntary arrangement) is amended as follows.
 - (2) After subsection (4) insert—
 - “(4A) Subject to subsection (4B), where the nominee's report under section 2(2) is submitted to the court before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the company under Part A1, neither the company nor its creditors may approve any proposal or modification under which the following are to be paid otherwise than in full—
 - (a) moratorium debts (within the meaning given by section 174A);
 - (b) priority pre-moratorium debts (within the meaning given by section 174A).
 - (4B) Subsection (4A) does not prevent the approval of such a proposal or modification with the concurrence of the creditor concerned.”
- 5 (1) Section 4A (approval of voluntary arrangement) is amended as follows.
 - (2) In subsection (2)(b), for “(4)” substitute “(6) ”.
 - (3) In subsection (5), for “within the meaning given by paragraph 44 of Schedule A1” substitute “ as defined by section A49(13) ”.
 - (4) In subsection (5A), for “within the meaning of paragraph 44 of Schedule A1” substitute “ as defined by section A49(13) ”.
- 6 (1) Section 5 (effect of approval of voluntary arrangement) is amended as follows.
 - (2) After subsection (3) insert—
 - “(3A) Where immediately before the voluntary arrangement took effect a moratorium for the company was in force under Part A1 and a petition for the winding up of the company, other than an excepted petition within the meaning of section A20, was presented before the beginning of the moratorium, the court must dismiss the petition.”

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- (3) In subsection (4) after “subsection (3)(a)” insert “ or dismiss a petition under subsection (3A) ”.
- 7 (1) Section 7A (prosecution of delinquent officers of company) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) This section applies where the approval of a voluntary arrangement in relation to a company has taken effect under section 4A.”
- (3) In subsection (2)—
- (a) for the words before paragraph (a) substitute “ If it appears to the supervisor that any past or present officer of the company has committed an offence in connection with the voluntary arrangement, the supervisor must forthwith ”;
- (b) in paragraph (b), omit “nominee or”.
- (4) In subsection (8), omit “nominee or”.
- 8 In section 7B (arrangements coming to an end prematurely) omit—
- (a) “or paragraph 36 of Schedule A1”;
- (b) “or, as the case may be, paragraph 37(2)(b)(i) of Schedule A1”.
- 9 In section 115 (expenses of voluntary winding up), at the beginning insert “ After the payment of any liabilities to which section 174A applies, ”.
- 10 In section 122 (circumstances in which company may be wound up by the court), in subsection (1), omit paragraph (fa).
- 11 In section 124 (winding up by the court), omit subsection (3A).
- 12 In section 127 (avoidance of property dispositions etc), after subsection (2) insert—
- “(3) This section has no effect in respect of anything done during a moratorium under Part A1, or during a period mentioned in section 5(4)(a) following the end of a moratorium, where the winding-up order was made on a petition presented before the moratorium begins, unless the petition was presented under section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in section 367(3)(b) of that Act.”
- 13 Before section 175 (and before the italic heading “Preferential debts” above that section) insert—

“Moratorium: order of priority of payment of debts

Moratorium debts etc: priority

- 174A(1) This section applies where proceedings for the winding up of a company are begun before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the company under Part A1.
- (2) In the winding up, the following are payable out of the company's assets (in the order of priority shown) in preference to all other claims—
- (a) any prescribed fees or expenses of the official receiver acting in any capacity in relation to the company;
- (b) moratorium debts and priority pre-moratorium debts.

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- (3) In subsection (2)(b) “priority pre-moratorium debt” means—
- (a) any pre-moratorium debt that is payable in respect of—
 - (i) the monitor's remuneration or expenses,
 - (ii) goods or services supplied during the moratorium,
 - (iii) rent in respect of a period during the moratorium, or
 - (iv) wages or salary arising under a contract of employment, so far as relating to a period of employment before or during the moratorium,
 - (b) any pre-moratorium debt that—
 - (i) consists of a liability to make a redundancy payment, and
 - (ii) fell due before or during the moratorium, and
 - (c) any pre-moratorium debt that—
 - (i) arises under a contract or other instrument involving financial services,
 - (ii) fell due before or during the moratorium, and
 - (iii) is not relevant accelerated debt (see subsection (4)).
- (4) For the purposes of subsection (3)(c)—
- “relevant accelerated debt” means any pre-moratorium debt that fell due during the relevant period by reason of the operation of, or the exercise of rights under, an acceleration or early termination clause in a contract or other instrument involving financial services;
- “the relevant period” means the period—
- (a) beginning with the day on which the statement under section A6(1)(e) is made, and
 - (b) ending with the last day of the moratorium.
- (5) The rules may make provision as to the order in which the debts mentioned in subsection (2)(b) rank among themselves in a case where the assets of the company are insufficient to meet them in full.
- (6) The Secretary of State may by regulations made by statutory instrument amend this section for the purposes of changing the definition of “moratorium debt” or “priority pre-moratorium debt” in this section.
- (7) Regulations under subsection (6) may make consequential, supplementary, incidental or transitional provision or savings.
- (8) A statutory instrument containing regulations under subsection (6) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (9) For the purposes of this section proceedings for the winding up of a company are begun when—
- (a) a winding-up petition is presented, or
 - (b) a resolution for voluntary winding up is passed.
- (10) Any rules made under section A18(4) (meaning of supply of goods or services) apply also for the purposes of subsection (3)(a)(ii) of this section.
- (11) In this section—

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“acceleration or early termination clause”, in relation to a contract or other instrument involving financial services, means a provision of the contract or other instrument—

- (a) under which, on the happening of an event—
 - (i) a debt or other liability falls due earlier than it otherwise would, or
 - (ii) a debt or other liability is terminated and replaced by another debt or liability, or
- (b) which confers on a party a right which, if exercised, will result in —
 - (i) a debt or other liability falling due earlier than it otherwise would, or
 - (ii) a debt or other liability being terminated and replaced by another debt or liability;

“contract or other instrument involving financial services” has the same meaning as it has for the purposes of section A18 (see Schedule ZA2);

“monitor's remuneration or expenses” has the meaning given by section A18;

“moratorium debt” has the meaning given by section A53;

“pre-moratorium debt” has the meaning given by section A53;

“redundancy payment” has the meaning given by section A18;

“wages or salary” has the meaning given by section A18.”

- 14 (1) Section 175 (preferential debts: general provision) is amended as follows.
 - (2) In subsection (1), at the end insert “after the payment of—
 - (a) any liabilities to which section 174A applies, and
 - (b) expenses of the winding up.”
 - (3) In subsection (1A), omit “after the expenses of the winding up”.
- 15 (1) Section 233 (supplies of gas, water, electricity etc) is amended as follows.
 - (2) In subsection (1)—
 - (a) omit paragraph (ba);
 - (b) in the words after paragraph (e), omit “the nominee,”.
 - (3) In subsection (4), omit paragraph (ba).
- 16 In section 246ZD (power to assign certain causes of action), in subsection (2)—
 - (a) after “under” insert “ or by virtue of ”;
 - (b) before paragraph (a) insert—
 - “(za) section A43 (challenges to monitor remuneration in subsequent insolvency proceedings);”.
- 17 In section 246A (remote attendance at meetings), in subsection (10), before paragraph (a) insert—
 - “(za) the monitor in relation to a moratorium under Part A1,”.
- 18 In section 246B (use of websites), in subsection (3), before paragraph (a) insert—
 - “(za) the monitor in relation to a moratorium under Part A1,”.

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- 19 In section 247 (meaning of “insolvency” etc), in subsection (1), after “includes” insert “ the coming into force of a moratorium for the company under Part A1, ”.
- 20 In section 387 (“the relevant date” in relation to preferential debts), omit subsection (2A).
- 21 (1) Section 388 (meaning of “act as insolvency practitioner”) is amended as follows.
- (2) In subsection (1)(a), for “or administrative receiver” substitute “ , administrative receiver or monitor ”.
- (3) In subsection (4), at the appropriate place insert—
- ““monitor” has the same meaning as in Part A1 (moratorium);”.
- 22 (1) Section 411 (company insolvency rules) is amended as follows.
- (2) In subsection (1), in the words after paragraph (b), for “Parts I” substitute “ Parts A1 ”.
- (3) In subsection (3), for “Parts I” substitute “ Parts A1 ”.
- 23 (1) Section 414 (fees orders) is amended as follows.
- (2) In subsection (1)(a), for “Parts I” substitute “ Parts A1 ”.
- (3) In subsection (8), for “Parts I” substitute “ Parts A1 ”.
- 24 Before section 416 (monetary limits (companies winding up)) insert—

Monetary limits (company moratorium)

“415~~B~~) The Secretary of State may by regulations increase or reduce any of the money sums for the time being specified in the following provisions of Part A1—

- (a) section A25(1) (maximum amount of credit which company may obtain without disclosing moratorium);
- (b) section A28(2) (maximum amount for certain payments without obtaining monitor consent etc);
- (c) section A46(2) (minimum value of company property concealed or fraudulently removed, affecting criminal liability of company's officer).

(2) Regulations under this section may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.

(3) Regulations under this section are to be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

- 25 Omit section 417A (money sums: company moratorium).
- 26 In section 430 (provision introducing Schedule of punishments), after subsection (4) insert—
- “(4A) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, a reference in Schedule 10 to 12 months on summary conviction in England and Wales is to be read as a reference to 6 months.”

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- 27 In section 431 (summary proceedings), in subsection (1), for “Parts I” substitute “ Parts A1 ”.
- 28 In section 432 (offences by bodies corporate), in subsection (4)—
- (a) after “sections” insert “ A19(5), A25(3), A26(4), A27(1), A28(5), A29(6), A30(2), A31(10), A32(4), ”;
 - (b) omit from “and those under” to the end.
- 29 In section 434 (Crown application), after “Insolvency Act 1985” insert “ and Part A1 ”.
- 30 Omit Schedule A1 (moratorium where directors propose voluntary arrangement).
- 31 (1) Schedule B1 (administration) is amended as follows.
- (2) Omit paragraph 24.
 - (3) Before paragraph 65 (but after the italic heading “Distribution”) insert—
 - “64A(1) This paragraph applies where a company enters administration before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the company under Part A1.
 - (2) The administrator must make a distribution to the creditors of the company in respect of—
 - (a) moratorium debts (within the meaning given by section 174A), and
 - (b) priority pre-moratorium debts (within the meaning given by section 174A).
 - (3) A sum payable under sub-paragraph (2) is to be paid in priority to—
 - (a) any security to which paragraph 70 applies or paragraph 115(1) applies;
 - (b) any sums payable under paragraph 99.
 - (4) The administrator must realise any property necessary to comply with sub-paragraph (2).
 - (5) The rules may make provision as to the order in which the moratorium and priority pre-moratorium debts rank among themselves for the purposes of this paragraph in a case where the assets of the company are insufficient to meet them in full.”
 - (4) In paragraph 65, for sub-paragraph (1) substitute—
 - “(1) If the assets of a company are sufficient to meet any debts or other liabilities payable under paragraph 64A in full, the administrator of the company may make a distribution to any other creditor of the company.”
 - (5) In paragraph 66, for “The administrator of a company” substitute “ If the debts and other liabilities payable under paragraph 64A have been met, the administrator of a company ”.
- 32 (1) Schedule 8 (provision capable of inclusion in company insolvency rules) is amended as follows.
- (2) In paragraph 2, for “Parts I” substitute “ Parts A1 ”.

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- (3) In paragraph 8, after “is,” insert “ the monitor in relation to a moratorium under Part A1 or ”.
- 33 (1) Schedule 10 (punishment of offences under the Act) is amended as follows.
- (2) Omit the entries relating to Schedule A1.
- (3) At the appropriate place insert—

“A8(4)	Directors failing to notify monitor of beginning of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A8(5)	Monitor failing to notify creditors etc of beginning of moratorium.	Summary.	Level 3 on the standard scale.
A17(6)	Directors failing to notify monitor of change in end of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A17(7)	Monitor failing to notify creditors etc of change in end of moratorium.	Summary.	Level 3 on the standard scale.
A19(5)	Company or officer failing to state in correspondence etc that moratorium in force.	Summary.	Level 3 on the standard scale.
A24(4)	Directors failing to notify monitor of insolvency proceedings etc.	1. On indictment. 2. Summary.	2 years or a fine or both. On conviction in England and Wales: 12 months or a fine or both. On conviction

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			in Scotland: 12 months or the statutory maximum or both.
A25(3)(a)	Company obtaining credit without disclosing existence of moratorium.	1. On indictment. 2. Summary.	A fine. On conviction in England and Wales: a fine. On conviction in Scotland: the statutory maximum.
A25(3)(b)	Obtaining credit for company without disclosing existence of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A26(4)(a)	Company granting security without monitor's consent.	1. On indictment. 2. Summary.	A fine. On conviction in England and Wales: a fine. On conviction in Scotland: the statutory maximum.
A26(4)(b)	Authorising or permitting company to do so.	1. On indictment. 2. Summary.	2 years or a fine or both. On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A27(1)(a)	Company entering into market contract, etc.	1. On indictment. 2. Summary.	A fine. On conviction in England and

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			Wales: a fine. On conviction in Scotland: the statutory maximum.
A27(1)(b)	Authorising or permitting company to do so.	1. On indictment. 2. Summary.	2 years or a fine or both. On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A28(5)(a)	Company making unauthorised payments.	1. On indictment. 2. Summary.	A fine. On conviction in England and Wales: a fine. On conviction in Scotland: the statutory maximum.
A28(5)(b)	Authorising or permitting company to do so.	1. On indictment. 2. Summary.	2 years or a fine or both. On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A29(6)(a)	Company making unauthorised disposal of property.	1. On indictment. 2. Summary.	A fine. On conviction in England and Wales: a fine. On conviction in Scotland: the statutory maximum.
A29(6)(b)	Authorising or permitting such a disposal.	1. On indictment.	2 years or a fine or both.

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		2. Summary.	On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A30(2)(a)	Unauthorised disposal of hire-purchase property.	1. On indictment.	A fine.
		2. Summary.	On conviction in England and Wales: a fine. On conviction in Scotland: the statutory maximum.
A30(2)(b)	Authorising or permitting such a disposal.	1. On indictment.	2 years or a fine or both.
		2. Summary.	On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A31(8)	Directors failing to send to registrar copy of court order permitting disposal of charged property.	Summary.	Level 3 on the standard scale.
A31(10)(a)	Company failing to comply with requirements relating to disposal of charged property.	1. On indictment.	A fine.
		2. Summary.	On conviction in England and Wales: a fine. On conviction in Scotland: the statutory maximum.
A31(10)(b)	Authorising or permitting such a failure.	1. On indictment.	2 years or a fine or both.
		2. Summary.	On conviction in England and Wales: 12 months or a fine or both.

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			On conviction in Scotland: 12 months or the statutory maximum or both.
A32(4)(a)	Company failing to comply with requirements relating to disposal of hire-purchase property.	1. On indictment. 2. Summary.	A fine. On conviction in England and Wales: a fine. On conviction in Scotland: the statutory maximum.
A32(4)(b)	Authorising or permitting such a failure.	1. On indictment. 2. Summary.	2 years or a fine or both. On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A32(6)	Directors failing to send to registrar copy of court order permitting disposal of hire-purchase property.	Summary.	Level 3 on the standard scale.
A39(9)	Monitor failing to notify creditors etc of change in monitor.	Summary.	Level 3 on the standard scale.
A46(1)	Fraud or privity to fraud during or in anticipation of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A46(4)	Knowingly taking in pawn or pledge, or otherwise receiving, company property.	1. On indictment.	2 years or a fine or both.

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		2. Summary.	On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A47(1)	False representation or fraud for purpose of obtaining or extending moratorium.	1. On indictment.	2 years or a fine or both.
		2. Summary.	On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A49(5)	Directors failing to notify regulator of qualifying decision procedure in relation to regulated company	1. On indictment.	2 years or a fine or both.
		2. Summary.	On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.”

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