



# Corporate Insolvency and Governance Act 2020

## 2020 CHAPTER 12

### *Moratorium*

#### **1 Moratoriums in Great Britain**

(1) In the Insolvency Act 1986, before Part 1 (but within the First Group of Parts) insert—

#### **“PART A1**

#### MORATORIUM

#### **CHAPTER 1**

#### INTRODUCTORY

##### **A1 Overview**

- (1) This Part contains provision that enables an eligible company, in certain circumstances, to obtain a moratorium, giving it various protections from creditors set out in this Part.
- (2) In this Chapter section [A2](#) introduces Schedule ZA1 (which defines what is meant by an “eligible” company).
- (3) Chapter 2 sets out how an eligible company may obtain a moratorium.
- (4) Chapter 3 sets out for how long a moratorium has effect.
- (5) Chapter 4 sets out the effects of a moratorium on the company and its creditors.
- (6) Chapter 5 contains provision about the monitor.

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- (7) Chapter 6 contains provision about challenges.
- (8) Chapter 7 contains provision about certain offences.
- (9) Chapter 8 contains miscellaneous and general provision, including—
  - (a) special provision for certain kinds of company;
  - (b) definitions for the purposes of this Part;
  - (c) provision about regulations under this Part.

## **A2 Eligible companies**

Schedule ZA1 contains provision for determining whether a company is an eligible company for the purposes of this Part.

## **CHAPTER 2**

### **OBTAINING A MORATORIUM**

#### **A3 Obtaining a moratorium by filing or lodging documents at court**

- (1) This section applies to an eligible company that—
  - (a) is not subject to an outstanding winding-up petition, and
  - (b) is not an overseas company.
- (2) The directors of the company may obtain a moratorium for the company by filing the relevant documents with the court (for the relevant documents, see section [A6](#)).
- (3) For the purposes of this Chapter a company is “subject to an outstanding winding-up petition” if—
  - (a) a petition for the winding up of the company has been presented, and
  - (b) the petition has not been withdrawn or determined.

#### **A4 Obtaining a moratorium for company subject to winding-up petition**

- (1) This section applies to an eligible company that is subject to an outstanding winding-up petition.
- (2) The directors of the company may apply to the court for a moratorium for the company.
- (3) The application must be accompanied by the relevant documents (for the relevant documents, see section [A6](#)).
- (4) On hearing the application the court may—
  - (a) make an order that the company should be subject to a moratorium, or
  - (b) make any other order which the court thinks appropriate.
- (5) The court may make an order under subsection [\(4\)\(a\)](#) only if it is satisfied that a moratorium for the company would achieve a better result for the company’s creditors as a whole than would be likely if the company were wound up (without first being subject to a moratorium).

### **A5 Obtaining a moratorium for other overseas companies**

- (1) This section applies to an eligible company that—
  - (a) is not subject to an outstanding winding-up petition, and
  - (b) is an overseas company.
- (2) The directors of the company may apply to the court for a moratorium for the company.
- (3) The application must be accompanied by the relevant documents (for the relevant documents, see section A6).
- (4) On hearing the application the court may—
  - (a) make an order that the company should be subject to a moratorium, or
  - (b) make any other order which the court thinks appropriate.

### **A6 The relevant documents**

- (1) For the purposes of this Chapter, “the relevant documents” are—
  - (a) a notice that the directors wish to obtain a moratorium,
  - (b) a statement from a qualified person (“the proposed monitor”) that the person—
    - (i) is a qualified person, and
    - (ii) consents to act as the monitor in relation to the proposed moratorium,
  - (c) a statement from the proposed monitor that the company is an eligible company,
  - (d) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its debts, and
  - (e) a statement from the proposed monitor that, in the proposed monitor’s view, it is likely that a moratorium for the company would result in the rescue of the company as a going concern.
- (2) Where it is proposed that more than one person should act as the monitor in relation to the proposed moratorium—
  - (a) each of them must make a statement under subsection (1)(b), (c) and (e), and
  - (b) the statement under subsection (1)(b) must specify—
    - (i) which functions (if any) are to be exercised by the persons acting jointly, and
    - (ii) which functions (if any) are to be exercised by any or all of the persons.
- (3) The rules may make provision about the date on which a statement comprised in the relevant documents must be made.
- (4) The Secretary of State may by regulations amend this section for the purposes of adding to the list of documents in subsection (1).
- (5) Regulations under subsection (4) are subject to the affirmative resolution procedure.

### **A7 Beginning of moratorium and appointment of monitor**

- (1) A moratorium for a company comes into force at the time at which—
  - (a) in the case of a company to which section A3 applies, the relevant documents are filed with the court under subsection (2) of that section;
  - (b) in the case of a company to which section A4 applies, an order is made under section A4(4)(a);
  - (c) in the case of a company to which section A5 applies, an order is made under section A5(4)(a).
- (2) On the coming into force of a moratorium, the person or persons who made the statement mentioned in section A6(1)(b) become the monitor in relation to the moratorium.

### **A8 Obligations to notify where moratorium comes into force**

- (1) As soon as reasonably practicable after a moratorium for a company comes into force, the directors must notify the monitor of that fact.
- (2) As soon as reasonably practicable after receiving a notice under subsection (1), the monitor must notify the following that a moratorium for the company has come into force—
  - (a) the registrar of companies,
  - (b) every creditor of the company of whose claim the monitor is aware,
  - (c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
  - (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by section 126 of the Pensions Act 2004, the Board of the Pension Protection Fund.
- (3) A notice under subsection (2) must specify—
  - (a) when the moratorium came into force, and
  - (b) when, subject to any alteration under or by virtue of any of the provisions mentioned in section A9(3) or (4), the moratorium will come to an end.
- (4) If the directors fail to comply with subsection (1), any director who did not have a reasonable excuse for the failure commits an offence.
- (5) If the monitor without reasonable excuse fails to comply with subsection (2), the monitor commits an offence.

## CHAPTER 3

### LENGTH OF MORATORIUM

#### *Initial period*

#### **A9 End of the moratorium**

- (1) A moratorium ends at the end of the initial period unless it is extended, or comes to an end sooner, under or by virtue of a provision mentioned in subsection (3) or (4).
- (2) In this Chapter “the initial period”, in relation to a moratorium, means the period of 20 business days beginning with the business day after the day on which the moratorium comes into force.
- (3) For provision under or by virtue of which a moratorium is or may be extended, see—
  - section A10 (extension by directors without creditor consent);
  - section A11 (extension by directors with creditor consent);
  - section A13 (extension by court on application of directors);
  - section A14 (extension while proposal for CVA pending);
  - section A15 (extension by court in course of other proceedings).
- (4) For provision under or by virtue of which the moratorium is or may be terminated, see—
  - section A16 (termination on entry into insolvency procedure etc);
  - section A38 (termination by monitor);
  - section A42 or A44 (termination by court).
- (5) A moratorium may not be extended under a provision mentioned in subsection (3) once it has come to an end.
- (6) Where the application of two or more of the provisions mentioned in subsections (3) and (4) would produce a different length of moratorium, the provision that applies last is to prevail (irrespective of whether that results in a shorter or longer moratorium).

#### *Extension of moratorium*

#### **A10 Extension by directors without creditor consent**

- (1) During the initial period, but after the first 15 business days of that period, the directors may extend the moratorium by filing with the court—
  - (a) a notice that the directors wish to extend the moratorium,
  - (b) a statement from the directors that all of the following that have fallen due have been paid or otherwise discharged—
    - (i) moratorium debts, and

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- (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see section A18),
  - (c) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its pre-moratorium debts, and
  - (d) a statement from the monitor that, in the monitor's view, it is likely that the moratorium will result in the rescue of the company as a going concern.
- (2) The rules may make provision about the date on which a statement mentioned in subsection (1) must be made.
- (3) On the filing with the court of the documents mentioned in subsection (1), the moratorium is extended so that it ends at the end of the period—
- (a) beginning immediately after the initial period ends, and
  - (b) ending with the 20th business day after the initial period ends.

#### **A11 Extension by directors with creditor consent**

- (1) At any time after the first 15 business days of the initial period the directors may, if they have obtained creditor consent, extend the moratorium by filing with the court—
- (a) a notice that the directors wish to extend the moratorium,
  - (b) a statement from the directors that all of the following that have fallen due have been paid or otherwise discharged—
    - (i) moratorium debts, and
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see section A18),
  - (c) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its pre-moratorium debts,
  - (d) a statement from the monitor that, in the monitor's view, it is likely that the moratorium will result in the rescue of the company as a going concern, and
  - (e) a statement from the directors that creditor consent has been obtained, and of the revised end date for which that consent was obtained.
- (2) The rules may make provision about the date on which a statement mentioned in subsection (1) must be made.
- (3) On the filing with the court of the documents mentioned in subsection (1), the moratorium is extended so that it ends with the revised end date mentioned in the statement under subsection (1)(e).
- (4) A moratorium may be extended under this section more than once.

#### **A12 Creditor consent for the purposes of section A11**

- (1) References in section A11 to creditor consent are to the consent of pre-moratorium creditors to a revised end date for the moratorium.
- (2) The decision as to consent is to be made using a qualifying decision procedure.
- (3) The revised end date must be a date before the end of the period of one year beginning with the first day of the initial period.

- (4) In this section “pre-moratorium creditor” means a creditor in respect of a pre-moratorium debt—
  - (a) for which the company has a payment holiday during the moratorium (see section A18), and
  - (b) which has not been paid or otherwise discharged.
- (5) In determining for the purposes of subsection (4) what counts as a pre-moratorium debt for which the company has a payment holiday during the moratorium, sections A18(3) and A53(1)(b) apply as if the references to the moratorium were to the moratorium as proposed to be extended.
- (6) The Secretary of State may by regulations amend this section for the purposes of changing the definition of “pre-moratorium creditor”.
- (7) Regulations under subsection (6) are subject to the affirmative resolution procedure.

### **A13 Extension by court on application of directors**

- (1) At any time after the first 15 business days of the initial period, the directors may apply to the court for an order that the moratorium be extended.
- (2) The application must be accompanied by—
  - (a) a statement from the directors that all of the following that have fallen due have been paid or otherwise discharged—
    - (i) moratorium debts, and
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see section A18),
  - (b) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its pre-moratorium debts,
  - (c) a statement from the directors as to whether pre-moratorium creditors (as defined by section A12(4) and (5)) have been consulted about the application and if not why not, and
  - (d) a statement from the monitor that, in the monitor’s view, it is likely that the moratorium will result in the rescue of the company as a going concern.
- (3) The rules may make provision about the date on which a statement mentioned in subsection (2) must be made.
- (4) On hearing the application the court may—
  - (a) make an order that the moratorium be extended to such date as is specified in the order, or
  - (b) make any other order which the court thinks appropriate.
- (5) In deciding whether to make an order under subsection (4)(a) the court must, in particular, consider the following—
  - (a) the interests of pre-moratorium creditors, as defined by section A12(4) and (5), and
  - (b) the likelihood that the extension of the moratorium will result in the rescue of the company as a going concern.
- (6) Subsection (7) applies where—

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- (a) an application under this section is made, and
  - (b) apart from that subsection, the moratorium would end at a time before the application has been disposed of.
- (7) The moratorium—
- (a) does not end at the time mentioned in subsection (6)(b), and
  - (b) instead, ends—
    - (i) in a case in which the court makes an order under subsection (4)(a), in accordance with the order;
    - (ii) otherwise, when the application is withdrawn or disposed of.
- (8) A moratorium may be extended under this section more than once.

#### **A14 Extension while proposal for CVA pending**

- (1) Subsection (2) applies where—
- (a) at any time, the directors make a proposal under Part 1 (company voluntary arrangements), and
  - (b) apart from that subsection, the moratorium would end at a time before the proposal is disposed of.
- (2) The moratorium—
- (a) does not end at the time mentioned in subsection (1)(b), and
  - (b) instead, ends when the proposal is disposed of.
- (3) For the purposes of this section a proposal under Part 1 is “disposed of” when any of the following takes place—
- (a) the company and its creditors both decide under section 4 not to approve the voluntary arrangement contained in the proposal;
  - (b) the decisions taken by the company and its creditors under section 4 differ, and—
    - (i) the period for making an application under section 4A(3) expires and either no application has been made within that period or any application made within that period has been withdrawn, or
    - (ii) an application is made under section 4A(3) and that application is disposed of, or it is withdrawn after the expiry of the period for making an application under section 4A(3);
  - (c) the voluntary arrangement contained in the proposal takes effect under section 5;
  - (d) the proposal is withdrawn.

#### **A15 Extension by court in the course of other proceedings**

- (1) Subsection (2) applies where—
- (a) an application is made under section 896 or 901C(1) of the Companies Act 2006 (arrangements and reconstructions: court order for holding of meeting) in respect of a company, and
  - (b) during proceedings before a court in connection with the application, a moratorium for the company is in force.



- (2) The court may make an order that the moratorium be extended to such date as is specified in the order.

*Early termination on certain grounds*

**A16 Company enters into insolvency procedure etc**

- (1) A moratorium comes to an end at any time at which the company—
- (a) enters into a compromise or arrangement (see subsection (2)), or
  - (b) enters into a relevant insolvency procedure (see subsection (3)).
- (2) For the purposes of this section a company enters into a compromise or arrangement if an order under section 899 or 901F of the Companies Act 2006 (court sanction for compromise or arrangement) comes into effect in relation to the company.
- (3) For the purposes of this section a company enters into a relevant insolvency procedure if—
- (a) a voluntary arrangement takes effect under section 5 in relation to the company,
  - (b) the company enters administration (within the meaning of Schedule B1 (see paragraph 1(2)(b) of that Schedule)),
  - (c) paragraph 44 of Schedule B1 (administration: interim moratorium) begins to apply in relation to the company, or
  - (d) the company goes into liquidation (see section 247).

*Obligations to notify change in end of moratorium*

**A17 Obligations to notify change in end of moratorium**

- (1) The table imposes obligations on the directors of a company to notify the monitor where a moratorium for the company is extended or comes to an end.

	<i>Where a moratorium is extended or comes to an end under or by virtue of the following provision</i>	<i>the directors must</i>
1	Section <a href="#">A10</a>	Notify the monitor of the extension.
2	Section <a href="#">A11</a>	Notify the monitor of the extension and of the revised end date.
3	Section <a href="#">A13(4)</a>	Notify the monitor of the extension and provide the monitor with the court order under section <a href="#">A13(4)</a> .
4	Section <a href="#">A13(7)(a)</a>	Notify the monitor of the extension.
5	Section <a href="#">A13(7)(b)(ii)</a>	Notify the monitor that the moratorium has come to an end and of the date that it ended.
6	Section <a href="#">A14(2)(a)</a>	Notify the monitor of the extension.

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	<i>Where a moratorium is extended or comes to an end under or by virtue of the following provision</i>	<i>the directors must</i>
7	Section <a href="#">A14(2)(b)</a>	Notify the monitor that the moratorium has come to an end and of the date that it ended.
8	Section <a href="#">A15</a>	Notify the monitor of the extension and provide the monitor with any court order under section <a href="#">A15</a> .
9	Section <a href="#">A16</a>	Notify the monitor that the moratorium has come to an end.
10	Section <a href="#">A42</a>	Notify the monitor that the moratorium has come to an end and provide the monitor with the court order under section <a href="#">A42</a> .
11	Section <a href="#">A44</a>	Notify the monitor that the moratorium has come to an end and provide the monitor with the court order under section <a href="#">A44</a> .

- (2) After receiving a notice under subsection (1), other than a notice under entry 4 or 6 of the table, the monitor must notify the relevant persons of when the moratorium ended or, subject to any alteration under or by virtue of any of the provisions mentioned in section [A9\(3\)](#) or (4), the moratorium will come to an end.
- (3) After receiving a notice under entry 4 or 6 of the table, the monitor must notify the relevant persons.
- (4) If a moratorium comes to an end under section [A38](#) (termination by monitor), the monitor must notify the company and the relevant persons of when the moratorium ended.
- (5) The rules may—
- make further provision about the timing of a notice required to be given under this section;
  - require a notice to be accompanied by other documents.
- (6) If the directors fail to comply with subsection (1), any director who did not have a reasonable excuse for the failure commits an offence.
- (7) If the monitor without reasonable excuse fails to comply with any of subsections (2) to (4), the monitor commits an offence.
- (8) In this section “the relevant persons” means—
- the registrar of companies,
  - every creditor of the company of whose claim the monitor is aware,
  - in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
  - in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given

by section 126 of the Pensions Act 2004, the Board of the Pension Protection Fund.

## CHAPTER 4

### EFFECTS OF MORATORIUM

#### *Introductory*

#### **A18 Overview and construction of references to payment holidays**

- (1) This Chapter makes provision about the main effects of a moratorium for a company.
- (2) The provision made by this Chapter includes restrictions on the enforcement or payment of the debts that are defined by subsection (3) as pre-moratorium debts for which a company has a payment holiday during a moratorium.
- (3) In this Part a reference to pre-moratorium debts for which a company has a payment holiday during a moratorium is to its pre-moratorium debts that have fallen due before the moratorium, or that fall due during the moratorium, except in so far as they consist of amounts payable in respect of—
  - (a) the monitor’s remuneration or expenses,
  - (b) goods or services supplied during the moratorium,
  - (c) rent in respect of a period during the moratorium,
  - (d) wages or salary arising under a contract of employment,
  - (e) redundancy payments, or
  - (f) debts or other liabilities arising under a contract or other instrument involving financial services.
- (4) The rules may make provision as to what is, or is not, to count as the supply of goods or services for the purposes of subsection (3)(b).
- (5) The Secretary of State may by regulations amend this section for the purposes of changing the list in subsection (3).
- (6) Regulations under subsection (5) are subject to the affirmative resolution procedure.
- (7) In this section—
  - “contract or other instrument involving financial services” has the meaning given by Schedule ZA2;
  - “monitor’s remuneration or expenses” does not include remuneration in respect of anything done by a proposed monitor before the moratorium begins;
  - “redundancy payment” means—
    - (a) a redundancy payment under Part 11 of the Employment Rights Act 1996 or Part 12 of the Employment Rights (Northern Ireland) Order 1996, or

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- (b) a payment made to a person who agrees to the termination of their employment in circumstances where they would have been entitled to a redundancy payment under that Part if dismissed; “wages or salary” includes—
  - (a) a sum payable in respect of a period of holiday (for which purpose the sum is to be treated as relating to the period by reference to which the entitlement to holiday accrued),
  - (b) a sum payable in respect of a period of absence through illness or other good cause,
  - (c) a sum payable in lieu of holiday, and
  - (d) a contribution to an occupational pension scheme.

### *Publicity about moratorium*

#### **A19 Publicity about moratorium**

- (1) During a moratorium, the company must, in any premises—
  - (a) where business of the company is carried on, and
  - (b) to which customers of the company or suppliers of goods or services to the company have access,
 display, in a prominent position so that it may easily be read by such customers or suppliers, a notice containing the required information.
- (2) During a moratorium, any websites of the company must state the required information.
- (3) During a moratorium, every business document issued by or on behalf of the company must state the required information.
- (4) For the purposes of subsections (1), (2) and (3), “the required information” is—
  - (a) that a moratorium is in force in relation to the company, and
  - (b) the name of the monitor.
- (5) If subsection (1), (2) or (3) is contravened—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the contravention commits an offence.
- (6) In this section “business document” means—
  - (a) an invoice,
  - (b) an order for goods or services,
  - (c) a business letter, and
  - (d) an order form,
 whether in hard copy, electronic or any other form.

*Effect on creditors etc***A20 Restrictions on insolvency proceedings etc**

- (1) During a moratorium—
- (a) no petition may be presented for the winding up of the company, except by the directors,
  - (b) no resolution may be passed for the voluntary winding up of the company under section 84(1)(a),
  - (c) a resolution for the voluntary winding up of the company under section 84(1)(b) may be passed only if the resolution is recommended by the directors,
  - (d) no order may be made for the winding up of the company, except on a petition by the directors,
  - (e) no administration application may be made in respect of the company, except by the directors,
  - (f) no notice of intention to appoint an administrator of the company under paragraph 14 or 22(1) of Schedule B1 may be filed with the court,
  - (g) no administrator of the company may be appointed under paragraph 14 or 22(1) of Schedule B1, and
  - (h) no administrative receiver of the company may be appointed.
- (2) Subsection (1)(a) does not apply to an excepted petition; and subsection (1)(d) does not apply to an order on an excepted petition.
- (3) For these purposes, “excepted petition” means a petition under—
- (a) section 124A, 124B or 124C, or
  - (b) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.

**A21 Restrictions on enforcement and legal proceedings**

- (1) During a moratorium—
- (a) a landlord or other person to whom rent is payable may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company, except with the permission of the court,
  - (b) in Scotland, a landlord or other person to whom rent is payable may not exercise a right of irritancy in relation to premises let to the company, except with the permission of the court,
  - (c) no steps may be taken to enforce any security over the company’s property except—
    - (i) steps to enforce a collateral security charge (within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979)),
    - (ii) steps to enforce security created or otherwise arising under a financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226)), or

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- (iii) steps taken with the permission of the court,
  - (d) no steps may be taken to repossess goods in the company’s possession under any hire-purchase agreement, except with the permission of the court, and
  - (e) no legal process (including legal proceedings, execution, distress or diligence) may be instituted, carried out or continued against the company or its property except—
    - (i) employment tribunal proceedings or any legal process arising out of such proceedings,
    - (ii) proceedings, not within sub-paragraph (i), involving a claim between an employer and a worker, or
    - (iii) a legal process instituted, carried out or continued with the permission of the court.
- (2) An application may not be made for permission under subsection (1) for the purposes of enforcing a pre-moratorium debt for which the company has a payment holiday during the moratorium.
- (3) An application may not be made for permission under subsection (1)(c), (d) or (e) with a view to obtaining—
- (a) the crystallisation of a floating charge, or
  - (b) the imposition, by virtue of provision in an instrument creating a floating charge, of any restriction on the disposal of any property of the company.
- (4) Permission of the court under subsection (1) may be given subject to conditions.
- (5) Subsection (1)(c)(iii) is subject to section A23(1).
- (6) In this section—
- “agency worker” has the meaning given by section 13(2) of the Employment Relations Act 1999;
  - “employer”—
    - (a) in relation to an agency worker, has the meaning given by section 13(2) of the Employment Relations Act 1999;
    - (b) otherwise, has the meaning given by section 230(4) of the Employment Rights Act 1996;
  - “worker” means an individual who is—
    - (a) a worker within the meaning of section 230(3) of the Employment Rights Act 1996, or
    - (b) an agency worker.

## **A22 Floating charges**

- (1) This section applies where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force.
- (2) During the moratorium, the holder of the floating charge may not give any notice which would have the effect of—
  - (a) causing the floating charge to crystallise, or

- (b) causing the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of property of the company.
- (3) No other event occurring during the moratorium is to have the effect mentioned in subsection (2)(a) or (b).
- (4) Subsection (5) applies where—
  - (a) the holder of a floating charge (“the chargee”) is prevented by subsection (2) from giving a notice mentioned there during the moratorium, and
  - (b) under the terms of the floating charge, the time for giving such a notice ends during the moratorium or before the chargee is given notice of the end of the moratorium under section A17.
- (5) The chargee may give notice later than is required under the terms of the floating charge, but only if the chargee does so as soon as is practicable after—
  - (a) the end of the moratorium, or
  - (b) if later, the day on which the chargee is notified of the end of the moratorium.
- (6) Where—
  - (a) subsection (3) prevents an event which occurs during the moratorium from having the effect mentioned there, and
  - (b) the holder of the floating charge gives notice of the event to the company as soon as is practicable after—
    - (i) the end of the moratorium, or
    - (ii) if later, the day on which the chargee is notified of the end of the moratorium,the event is to be treated as if it had occurred when the notice was given.
- (7) This section does not apply in relation to a floating charge that is—
  - (a) a collateral security (as defined by section A27);
  - (b) a market charge (as defined by section A27);
  - (c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));
  - (d) a system-charge (as defined by section A27).

### **A23 Enforcement of security granted during moratorium**

- (1) Security granted by a company during a moratorium in relation to the company may be enforced only if the monitor consented to the grant of security under section A26.
- (2) See also section A21(1)(c), which restricts enforcement during a moratorium.

### *Notification of insolvency proceedings*

#### **A24 Duty of directors to notify monitor of insolvency proceedings etc**

- (1) The directors of a company must notify the monitor before taking any of the following steps during a moratorium—
  - (a) presenting a petition for the winding up of the company;
  - (b) making an administration application in respect of the company;
  - (c) appointing an administrator under paragraph 22(2) of Schedule B1.
- (2) The directors of a company must notify the monitor if, during a moratorium for the company, they recommend that the company passes a resolution for voluntary winding up under section 84(1)(b).
- (3) The rules may make provision about the timing of a notice required to be given under subsection (1) or (2).
- (4) If the directors fail to comply with subsection (1) or (2), any director who did not have a reasonable excuse for the failure commits an offence.

### *Restrictions on transactions*

#### **A25 Restrictions on obtaining credit**

- (1) During a moratorium, the company may not obtain credit to the extent of £500 or more from a person unless the person has been informed that a moratorium is in force in relation to the company.
- (2) The reference to the company obtaining credit includes—
  - (a) the company entering into a conditional sale agreement in accordance with which goods are to be sold to the company,
  - (b) the company entering into any other form of hire-purchase agreement under which goods are to be bailed (in Scotland, hired) to the company, and
  - (c) the company being paid in advance (whether in money or otherwise) for the supply of goods or services.
- (3) If a company contravenes subsection (1)—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the obtaining of the credit commits an offence.

#### **A26 Restrictions on grant of security etc**

- (1) During a moratorium, the company may grant security over its property only if the monitor consents.
- (2) The monitor may give consent under subsection (1) only if the monitor thinks that the grant of security will support the rescue of the company as a going concern.



- (3) In deciding whether to give consent under subsection (1), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.
- (4) If the company grants security over its property during the moratorium otherwise than as authorised by subsection (1)—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the grant of the security commits an offence.
- (5) For the consequences of a company granting security over its property in contravention of subsection (1), see also section A23.
- (6) The monitor may not give consent under this section if the granting of security is an offence under section A27.

### **A27 Prohibition on entering into market contracts etc**

- (1) If a company enters into a transaction to which this section applies during a moratorium for the company—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the company to enter into the transaction commits an offence.
- (2) A company enters into a transaction to which this section applies if it—
  - (a) enters into a market contract,
  - (b) enters into a financial collateral arrangement,
  - (c) gives a transfer order,
  - (d) grants a market charge or a system-charge, or
  - (e) provides any collateral security.
- (3) Where during the moratorium a company enters into a transaction to which this section applies, nothing done by or in pursuance of the transaction is to be treated as done in contravention of any of sections A19, A21, A25, A26 and A28 to A32.

- (4) In this section—

“collateral security” has the same meaning as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979);

“financial collateral arrangement” has the same meaning as in the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226);

“market charge” has the same meaning as in Part 7 of the Companies Act 1989;

“market contract” has the same meaning as in Part 7 of the Companies Act 1989;

“system-charge” has the meaning given by the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469);

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“transfer order” has the same meaning as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.

### *Restrictions on payments and disposal of property*

#### **A28 Restrictions on payment of certain pre-moratorium debts**

- (1) During a moratorium, the company may make one or more relevant payments to a person that (in total) exceed the specified maximum amount only if—
  - (a) the monitor consents,
  - (b) the payment is in pursuance of a court order, or
  - (c) the payment is required by section [A31\(3\)](#) or [A32\(3\)](#).
- (2) In subsection (1)—
 

“relevant payments” means payments in respect of pre-moratorium debts for which the company has a payment holiday during the moratorium (see section [A18](#));

“specified maximum amount” means an amount equal to the greater of—

  - (a) £5000, and
  - (b) 1% of the value of the debts and other liabilities owed by the company to its unsecured creditors when the moratorium began, to the extent that the amount of such debts and liabilities can be ascertained at that time.
- (3) The monitor may give consent under subsection (1)(a) only if the monitor thinks that it will support the rescue of the company as a going concern.
- (4) In deciding whether to give consent under subsection (1)(a), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.
- (5) If the company makes a payment to which subsection (1) applies otherwise than as authorised by that subsection—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the payment commits an offence.

#### **A29 Restrictions on disposal of property**

- (1) During a moratorium, the company may dispose of its property only if authorised by subsection (2) or (5).
- (2) In the case of property that is not subject to a security interest, the company may dispose of the property if—
  - (a) the disposal is made in the ordinary way of the company’s business,
  - (b) the monitor consents, or
  - (c) the disposal is in pursuance of a court order.
- (3) The monitor may give consent under subsection (2)(b) only if the monitor thinks that it will support the rescue of the company as a going concern.

- (4) In deciding whether to give consent under subsection (2)(b), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.
- (5) In the case of property that is subject to a security interest, the company may dispose of the property if the disposal is in accordance with—
  - (a) section A31(1), or
  - (b) the terms of the security.
- (6) If the company disposes of its property during the moratorium otherwise than as authorised by this section—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the disposal commits an offence.

### **A30 Restrictions on disposal of hire-purchase property**

- (1) During a moratorium, the company may dispose of any goods in the possession of the company under a hire-purchase agreement only if the disposal is in accordance with —
  - (a) section A32(1), or
  - (b) the terms of the agreement.
- (2) If the company disposes of goods in the possession of the company under a hire-purchase agreement otherwise than as authorised by subsection (1)—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the disposal commits an offence.

### *Disposals of property free from charges etc*

### **A31 Disposal of charged property free from charge**

- (1) During a moratorium, the company may, with the permission of the court, dispose of property which is subject to a security interest as if it were not subject to the security interest.
- (2) The court may give permission under subsection (1) only if the court thinks that it will support the rescue of the company as a going concern.
- (3) Where the court gives permission under subsection (1) other than in relation to a floating charge, the company must apply the following towards discharging the sums secured—
  - (a) the net proceeds of disposal of the property, and
  - (b) any money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the property in the open market by a willing vendor.
- (4) Where the permission relates to two or more security interests, the condition in subsection (3) requires the application of money in the order of the priorities of the security interests.

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- (5) Where property subject to a floating charge is disposed of under subsection (1), the holder of the floating charge has the same priority in respect of acquired property as they had in respect of the property disposed of.
- (6) In subsection (5) “acquired property” means property of the company which directly or indirectly represents the property disposed of.
- (7) Where the court makes an order giving permission under subsection (1), the directors must, within the period of 14 days beginning with the date of the order, send a copy of it to the registrar of companies.
- (8) If the directors fail to comply with subsection (7), any director who did not have a reasonable excuse for the failure commits an offence.
- (9) Where property in Scotland is disposed of under subsection (1), the company must grant to the donee an appropriate document of transfer or conveyance of the property, and—
- (a) that document, or
  - (b) recording, intimation or registration of that document (where recording, intimation or registration of the document is a legal requirement for completion of title to the property),
- has the effect of disencumbering the property of or, as the case may be, freeing the property from, the security interest.
- (10) If a company fails to comply with subsection (3) or (9)—
- (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the failure commits an offence.
- (11) Subsection (1) does not apply in relation to any property which is subject to a financial collateral arrangement, a market charge, a system-charge or a collateral security (as defined by section A27).

### **A32 Disposal of hire-purchase property**

- (1) During a moratorium, the company may, with the permission of the court, dispose of goods which are in the possession of the company under a hire-purchase agreement as if all of the rights of the owner under the agreement were vested in the company.
- (2) The court may give permission under subsection (1) only if the court thinks that it will support the rescue of the company as a going concern.
- (3) Where the court gives permission under subsection (1), the company must apply the following towards discharging the sums payable under the hire-purchase agreement—
- (a) the net proceeds of disposal of the goods, and
  - (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the goods in the open market by a willing vendor.
- (4) If a company fails to comply with subsection (3)—
- (a) the company commits an offence, and

- (b) any officer of the company who without reasonable excuse authorised or permitted the failure commits an offence.
- (5) Where the court makes an order giving permission under subsection (1), the directors must, within the period of 14 days beginning with the date of the order, send a copy of it to the registrar of companies.
- (6) If the directors fail to comply with subsection (5), any director who did not have a reasonable excuse for the failure commits an offence.
- (7) In Scotland, where goods in the possession of the company under a hire-purchase agreement are disposed of under subsection (1), the disposal has the effect of extinguishing, as against the disponent, all rights of the owner of the goods under the agreement.

*Effect of contravention of certain provisions of Chapter*

**A33 Contravention of certain requirements imposed under this Chapter**

The fact that a company contravenes section A19 or any of sections A25 to A32 does not—

- (a) make any transaction void or unenforceable, or
- (b) affect the validity of any other thing.

**CHAPTER 5**

THE MONITOR

**A34 Status of monitor**

The monitor in relation to a moratorium is an officer of the court.

**A35 Monitoring**

- (1) During a moratorium, the monitor must monitor the company's affairs for the purpose of forming a view as to whether it remains likely that the moratorium will result in the rescue of the company as a going concern.
- (2) In forming the view mentioned in subsection (1), the monitor is entitled to rely on information provided by the company, unless the monitor has reason to doubt its accuracy.

**A36 Provision of information to monitor**

- (1) The monitor may require the directors of the company to provide any information required by the monitor for the purpose of carrying out the monitor's functions.
- (2) The directors must comply with a requirement to provide information as soon as practicable.

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- (3) For the potential consequences of failing to comply with a requirement to provide information, see section [A38](#).

### **A37 Application by monitor for directions**

The monitor in relation to a moratorium may apply to the court for directions about the carrying out of the monitor's functions.

### **A38 Termination of moratorium by monitor**

- (1) The monitor must bring a moratorium to an end by filing a notice with the court if—
- (a) the monitor thinks that the moratorium is no longer likely to result in the rescue of the company as a going concern,
  - (b) the monitor thinks that the objective of rescuing the company as a going concern has been achieved,
  - (c) the monitor thinks that, by reason of a failure by the directors to comply with a requirement under section [A36](#), the monitor is unable properly to carry out the monitor's functions, or
  - (d) the monitor thinks that the company is unable to pay any of the following that have fallen due—
    - (i) moratorium debts;
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see section [A18](#)).
- (2) The rules may provide for debts that are to be disregarded for the purposes of subsection (1)(d).
- (3) On the filing with the court of a notice under subsection (1), the moratorium comes to an end.
- (4) The rules may make provision about the timing of a notice required to be given under subsection (1).
- (5) The Secretary of State may by regulations amend this section for the purposes of changing the circumstances in which the monitor must bring a moratorium to an end under subsection (1).
- (6) Regulations under subsection (5) are subject to the affirmative resolution procedure.
- (7) See also section [A17](#) (obligations to notify change in end of moratorium).

### **A39 Replacement of monitor or appointment of additional monitor**

- (1) The court may make an order authorising the appointment of a qualified person to act as the monitor in relation to a moratorium instead of, or in addition to, a person who already acts as the monitor.
- (2) The court may make an order providing that a person ceases to act as the monitor in relation to a moratorium.

- (3) An order under subsection (1) or (2) may be made only on an application by the directors or the monitor.
- (4) The court may make an order authorising the appointment of a monitor under subsection (1) only if the person has provided the court with a statement that the person—
  - (a) is a qualified person, and
  - (b) consents to act as the monitor in relation to the moratorium.
- (5) Where it is proposed that more than one person should act as the monitor in relation to the moratorium, the statement under subsection (4) must specify—
  - (a) which functions (if any) are to be exercised by the persons acting jointly, and
  - (b) which functions (if any) are to be exercised by any or all of the persons.
- (6) The rules may make provision about the date on which the statement under subsection (4) must be made.
- (7) Where the court makes an order under subsection (1) or (2) the person begins to act as the monitor, or ceases to act as the monitor, in relation to the moratorium at the time specified in, or determined in accordance with, the order (“the relevant time”).
- (8) As soon as reasonably practicable after the relevant time, the monitor must notify the following of the effect of the order—
  - (a) the registrar of companies,
  - (b) every creditor of the company of whose claim the monitor is aware,
  - (c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
  - (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by section 126 of the Pensions Act 2004, the Board of the Pension Protection Fund.
- (9) If the monitor without reasonable excuse fails to comply with subsection (8), the monitor commits an offence.

#### **A40 Application of Part where two or more persons act as monitor**

- (1) Where two or more persons act jointly as the monitor—
  - (a) a reference in this Act to the monitor is a reference to those persons acting jointly;
  - (b) where an offence of omission is committed by the monitor, each of the persons appointed to act jointly—
    - (i) commits the offence, and
    - (ii) may be proceeded against and punished individually.
- (2) Where persons act jointly in respect of only some of the functions of the monitor, subsection (1) applies only in relation to those functions.

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- (3) Where two or more persons act concurrently as the monitor a reference in this Act to the monitor is a reference to any of the persons appointed (or any combination of them).

#### **A41 Presumption of validity**

An act of the monitor is valid in spite of a defect in the monitor's appointment or qualification.

## **CHAPTER 6**

### **CHALLENGES**

#### **A42 Challenge to monitor's actions**

- (1) Any of the persons specified below may apply to the court on the ground that an act, omission or decision of the monitor during a moratorium has unfairly harmed the interests of the applicant.
- (2) The persons who may apply are—
- (a) a creditor, director or member of the company, or
  - (b) any other person affected by the moratorium.
- (3) An application under subsection (1) may be made during the moratorium or after it has ended.
- (4) On an application under subsection (1) the court may—
- (a) confirm, reverse or modify any act or decision of the monitor,
  - (b) give the monitor directions, or
  - (c) make such other order as it thinks fit (but may not, under this paragraph, order the monitor to pay any compensation).
- (5) Where an application under subsection (1) relates to a failure by the monitor to bring the moratorium to an end under section A38(1), an order under subsection (4) may, in particular, bring the moratorium to an end and make such consequential provision as the court thinks fit.
- (6) Where an application under subsection (1) relates to the monitor bringing a moratorium to an end under section A38(1), an order under subsection (4) may, in particular, provide that the moratorium is not to be taken into account for the purposes of paragraph 2(1)(b) of Schedule ZA1 (company not eligible for moratorium if moratorium in force within previous 12 months).
- (7) In making an order under subsection (4) the court must have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.
- (8) See also section A17 (obligations to notify change in end of moratorium).



### **A43 Challenges to monitor remuneration in insolvency proceedings**

- (1) The rules may confer on an administrator or liquidator of a company the right to apply to the court on the ground that remuneration charged by the monitor in relation to a prior moratorium for the company was excessive.
- (2) Rules under subsection (1) may (among other things) make provision as to—
  - (a) time limits;
  - (b) disposals available to the court;
  - (c) the treatment of costs (or, in Scotland, the expenses) of the application in the administration or winding up.

### **A44 Challenge to directors' actions**

- (1) A creditor or member of a company may apply to the court for an order under this section on the ground that—
  - (a) during a moratorium, the company's affairs, business and property are being or have been managed by the directors in a manner which has unfairly harmed the interests of its creditors or members generally or of some part of its creditors or members (including at least the applicant), or
  - (b) any actual or proposed act or omission of the directors during a moratorium causes or would cause such harm.
- (2) An application under subsection (1) may be made during the moratorium or after it has ended.
- (3) On an application under subsection (1) the court may make such order as it thinks fit.
- (4) An order under subsection (3) may in particular—
  - (a) regulate the management by the directors of the company's affairs, business and property during the remainder of the moratorium,
  - (b) require the directors to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant has complained they have omitted to do,
  - (c) require a decision of the company's creditors to be sought (using a qualifying decision procedure) on such matters as the court may direct, or
  - (d) bring the moratorium to an end and make such consequential provision as the court thinks fit.
- (5) In making an order under subsection (3) the court must have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.
- (6) See also section A17 (obligations to notify change in end of moratorium).

### **A45 Challenge brought by Board of the Pension Protection Fund**

- (1) This section applies where—
  - (a) a moratorium—

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- (i) is in force in relation to a company that is an employer in respect of an eligible scheme, or
  - (ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and
  - (b) the trustees or managers of the scheme are a creditor of the company.
- (2) The Board of the Pension Protection Fund may make any application under section [A42\(1\)](#) or [A44\(1\)](#) that could be made by the trustees or managers as a creditor.
- (3) For the purposes of such an application, any reference in section [A42\(1\)](#) or [A44\(1\)](#) to the interests of the applicant is to be read as a reference to the interests of the trustees or managers as a creditor.
- (4) In this section “eligible scheme” has the meaning given by section 126 of the Pensions Act 2004.

## CHAPTER 7

### OFFENCES: GENERAL

#### **A46 Offence of fraud etc during or in anticipation of moratorium**

- (1) An officer of a company commits an offence if, during a moratorium for the company or at any time within the period of 12 months ending with the day on which a moratorium for the company comes into force, the officer—
- (a) does any of the things mentioned in subsection (2), or
  - (b) was privy to the doing by others of any of the things mentioned in subsection (2)(c), (d) and (e).
- (2) Those things are—
- (a) concealing any part of the company’s property to the value of £500 or more, or concealing any debt due to or from the company,
  - (b) fraudulently removing any part of the company’s property to the value of £500 or more,
  - (c) concealing, destroying, mutilating or falsifying any document affecting or relating to the company’s property or affairs,
  - (d) making any false entry in any document affecting or relating to the company’s property or affairs,
  - (e) fraudulently parting with, altering or making any omission in any document affecting or relating to the company’s property or affairs, or
  - (f) pawning, pledging or disposing of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company’s business).
- (3) It is a defence—
- (a) for a person charged with an offence under subsection (1) in respect of any of the things mentioned in subsection (2)(a) or (f) to prove that the person had no intent to defraud, and

- (b) for a person charged with an offence under subsection (1) in respect of any of the things mentioned in subsection (2)(c) or (d) to prove that the person had no intent to conceal the state of affairs of the company or to defeat the law.
- (4) Where a person pawns, pledges or disposes of any property of a company in circumstances which amount to an offence under subsection (1), every person who takes in pawn or pledge, or otherwise receives, the property commits an offence if the person knows it to be pawned, pledged or disposed of in circumstances which—
- (a) amount to an offence under subsection (1), or
  - (b) would, if a moratorium were obtained for the company within the period of 12 months beginning with the day on which the pawning, pledging or disposal took place, amount to an offence under subsection (1).
- (5) In this section, “officer” includes a shadow director.

#### **A47 Offence of false representation etc to obtain a moratorium**

- (1) An officer of a company commits an offence if, for the purpose of obtaining a moratorium for the company or an extension of a moratorium for the company, the officer—
- (a) makes any false representation, or
  - (b) fraudulently does, or omits to do, anything.
- (2) Subsection (1) applies even if no moratorium or extension is obtained.
- (3) In this section, “officer” includes a shadow director.

#### **A48 Prosecution of delinquent officers of company**

- (1) This section applies where a moratorium has been obtained for a company.
- (2) If it appears to the monitor that any past or present officer of the company has committed an offence in connection with the moratorium, the monitor must forthwith—
- (a) report the matter to the appropriate authority, and
  - (b) provide the appropriate authority with such information and give the authority such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the monitor and relating to the matter in question) as the authority requires.
- (3) In subsection (2), “the appropriate authority”—
- (a) in the case of a company registered in England and Wales, means the Secretary of State,
  - (b) in the case of a company registered in Scotland, means the Lord Advocate, and
  - (c) in the case of an unregistered company means—
    - (i) if it has a principal place of business in England and Wales but not Scotland, the Secretary of State,

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- (ii) if it has a principal place of business in Scotland but not England and Wales, the Lord Advocate,
  - (iii) if it has a principal place of business in both England and Wales and Scotland, the Secretary of State and the Lord Advocate, and
  - (iv) if it does not have a principal place of business in England and Wales or Scotland, the Secretary of State.
- (4) Where a matter is reported to the Secretary of State under subsection (2), the Secretary of State may, for the purpose of investigating the matter and such other matters relating to the affairs of the company as appear to the Secretary of State to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of the Companies Act 1985.
- (5) For the purpose of such an investigation any obligation imposed on a person by any provision of the Companies Acts to produce documents or give information to, or otherwise to assist, inspectors so appointed is to be regarded as an obligation similarly to assist the Secretary of State in the Secretary of State's investigation.
- (6) Where a question is put to a person in exercise of the powers conferred by subsection (4), the person's answer may be used in evidence against them.
- (7) However, in criminal proceedings in which the person is charged with an offence other than a false statement offence—
  - (a) no evidence relating to the answer may be adduced, and
  - (b) no question relating to it may be asked,by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of the person.
- (8) In subsection (7) “false statement offence” means—
  - (a) an offence under section 2 or 5 of the Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or
  - (b) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).
- (9) Where a prosecuting authority institutes criminal proceedings following any report under subsection (2), the monitor, and every officer and agent of the company past and present (other than the defendant or defender), must give the authority all assistance in connection with the prosecution which they are reasonably able to give.
- (10) For this purpose—
  - “agent” includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company;
  - “prosecuting authority” means the Director of Public Prosecutions, the Lord Advocate or the Secretary of State.

- (11) The court may, on the application of the prosecuting authority, direct a person who has failed to comply with subsection (9) to comply with it.

## CHAPTER 8

### MISCELLANEOUS AND GENERAL

#### *Special rules for certain kinds of company etc*

#### **A49 Regulated companies: modifications to this Part**

- (1) For the purposes of sections A3 and A4 as they apply in relation to a regulated company, section A6(1) has effect as if the documents listed there included a reference to the written consent of the appropriate regulator to the appointment of the proposed monitor.
- (2) The remaining provisions of this section apply in relation to a moratorium for a regulated company.
- (3) Any notice under section A8(2), A17(2) to (4) or A39(8) must also be sent by the monitor to the appropriate regulator.
- (4) The directors must give the appropriate regulator notice of any qualifying decision procedure by which a decision of the company's creditors is sought for the purposes of section A12(2) or A44(4)(c).
- (5) If the directors fail to comply with subsection (4), any director who did not have a reasonable excuse for the failure commits an offence.
- (6) The appropriate regulator, or a person appointed by the appropriate regulator, may in the way provided for by the rules, participate (but not vote) in any qualifying decision procedure by which a decision of the company's creditors is sought for the purposes of this Part.
- (7) The appropriate regulator is entitled to be heard on any application to the court for permission under section A31(1) or A32(1) (disposal of charged property, etc).
- (8) The court may make an order under section A39(1) only if the appropriate regulator has given its written consent to the appointment of the proposed monitor.
- (9) The persons who may apply to the court under section A39(3), A42(1) or A44(1) include the appropriate regulator.
- (10) If a person other than a regulator applies to the court under section A39(3), A42(1) or A44(1) the appropriate regulator is entitled to be heard on the application.
- (11) If either regulator makes an application to the court under section A39(3), A42(1) or A44(1) in relation to a PRA-regulated company, the other regulator is entitled to be heard on the application.

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- (12) This section does not affect any right that the appropriate regulator has (apart from this section) as a creditor of a regulated company.
- (13) In this section—
- “the appropriate regulator” means—
- (a) where the regulated company is a PRA-regulated company, each of the Financial Conduct Authority and the Prudential Regulation Authority, and
  - (b) where the regulated company is not a PRA-regulated company, the Financial Conduct Authority;
- “PRA-authorized person” has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000;
- “PRA-regulated company” means a regulated company which—
- (a) is, or has been, a PRA-authorized person,
  - (b) is, or has been, an appointed representative within the meaning given by section 39 of the Financial Services and Markets Act 2000, whose principal (or one of whose principals) is, or was, a PRA-authorized person, or
  - (c) is carrying on, or has carried on, a PRA-regulated activity (within the meaning of section 22A of that Act) in contravention of the general prohibition;
- “regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section;
- “regulated company” means a company which—
- (a) is, or has been, an authorized person within the meaning given by section 31 of the Financial Services and Markets Act 2000,
  - (b) is, or has been, an appointed representative within the meaning given by section 39 of that Act, or
  - (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition within the meaning given by section 19 of that Act;
- “regulator” means the Financial Conduct Authority or the Prudential Regulation Authority.
- (14) The Secretary of State may by regulations amend this section for the purposes of changing the definition of “regulated company” in subsection (13).
- (15) Regulations under subsection (14) are subject to the affirmative resolution procedure.

#### **A50 Power to modify this Part etc in relation to certain companies**

- (1) The Secretary of State may by regulations make provision under the law of England and Wales or Scotland—
- (a) to modify this Part as it applies in relation to a company for which there is a special administration regime, or
  - (b) in connection with the interaction between this Part and any other insolvency procedure in relation to such a company.

- (2) The Welsh Ministers may by regulations make provision under the law of England and Wales—
- (a) to modify this Part as it applies in relation to a company that is a social landlord registered under Part 1 of the Housing Act 1996, or
  - (b) make provision in connection with the interaction between this Part and any other insolvency procedure in relation to such a company.
- (3) The Scottish Ministers may by regulations make provision under the law of Scotland—
- (a) to modify this Part as it applies in relation to a company that is a social landlord registered under Part 2 of the Housing (Scotland) Act 2010 (asp 17), or
  - (b) make provision in connection with the interaction between this Part and any other insolvency procedure in relation to such a company.
- (4) The Secretary of State may, by regulations, make any provision under the law of England and Wales, Scotland or Northern Ireland that appears to the Secretary of State to be appropriate in view of provision made under subsection (1), (2) or (3).
- (5) The power in subsection (1), (2), (3) or (4) may, in particular, be used to amend, repeal, revoke or otherwise modify any provision made by an enactment.
- (6) Regulations under subsection (1) or (4) are subject to the affirmative resolution procedure.
- (7) A statutory instrument containing regulations under subsection (2) may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of Senedd Cymru.
- (8) Regulations made by the Scottish Ministers under subsection (3) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
- (9) In this section—
- “insolvency procedure” includes—
- (a) in relation to subsection (1)(b), the provision made by sections 143A to 159 of the Housing and Regeneration Act 2008;
  - (b) in relation to subsection (2)(b), the provision made by sections 39 to 50 of the Housing Act 1996;
  - (c) in relation to subsection (3)(b), the provision made by Part 7 of the Housing (Scotland) Act 2010;
- “ordinary administration” means the insolvency procedure provided for by Schedule B1;
- “special administration regime” means provision made by an enactment for an insolvency procedure that—
- (a) is similar or corresponds to ordinary administration, and
  - (b) provides for the administrator to have one or more special objectives instead of or in addition to the objectives of ordinary administration.



**A51 Power to make provision in connection with pension schemes**

- (1) The Secretary of State may by regulations provide that, in a case where—
  - (a) a moratorium—
    - (i) is in force in relation to a company that is an employer in respect of an eligible scheme, or
    - (ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and
  - (b) the trustees or managers of the scheme are a creditor of the company, the Board of the Pension Protection Fund may exercise any of the following rights.
- (2) The rights are those which are exercisable by the trustees or managers as a creditor of the company under or by virtue of—
  - (a) section A12, or
  - (b) a court order under section A44(4)(c).
- (3) Regulations under subsection (1) may provide that the Board may exercise any such rights—
  - (a) to the exclusion of the trustees or managers of the scheme, or
  - (b) in addition to the exercise of those rights by the trustees or managers of the scheme.
- (4) Regulations under subsection (1)—
  - (a) may specify conditions that must be met before the Board may exercise any such rights;
  - (b) may provide for any such rights to be exercisable by the Board for a specified period;
  - (c) may make provision in connection with any such rights ceasing to be so exercisable at the end of such a period.
- (5) Regulations under subsection (1) are subject to the affirmative resolution procedure.
- (6) In this section “eligible scheme” has the meaning given by section 126 of the Pensions Act 2004.

*Floating charges***A52 Void provisions in floating charge documents**

- (1) A provision in an instrument creating a floating charge is void if it provides for the obtaining of a moratorium, or anything done with a view to obtaining a moratorium, to be—
  - (a) an event causing the floating charge to crystallise,
  - (b) an event causing restrictions which would not otherwise apply to be imposed on the disposal of property by the company, or
  - (c) a ground for the appointment of a receiver.



- (2) The reference in subsection (1) to anything done with a view to obtaining a moratorium includes any preliminary decision or investigation.
- (3) In subsection (1) “receiver” includes a manager and a person who is appointed both receiver and manager.
- (4) Subsection (1) does not apply to a provision in an instrument creating a floating charge that is—
  - (a) a collateral security (as defined by section A27);
  - (b) a market charge (as defined by section A27);
  - (c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));
  - (d) a system-charge (as defined by section A27).

#### *Interpretation of this Part*

#### **A53 Meaning of “pre-moratorium debt” and “moratorium debt”**

- (1) In this Part “pre-moratorium debt”, in relation to a company for which a moratorium is or has been in force, means—
  - (a) any debt or other liability to which the company becomes subject before the moratorium comes into force, or
  - (b) any debt or other liability to which the company has become or may become subject during the moratorium by reason of any obligation incurred before the moratorium comes into force,but this is subject to subsection (3).
- (2) In this Part “moratorium debt”, in relation to a company for which a moratorium is or has been in force, means—
  - (a) any debt or other liability to which the company becomes subject during the moratorium, other than by reason of an obligation incurred before the moratorium came into force, or
  - (b) any debt or other liability to which the company has become or may become subject after the end of the moratorium by reason of an obligation incurred during the moratorium,but this is subject to subsection (3).
- (3) For the purposes of this Part—
  - (a) a liability in tort or delict is a “pre-moratorium debt” if either—
    - (i) the cause of action has accrued before the moratorium comes into force, or
    - (ii) all the elements necessary to establish the cause of action exist before the moratorium comes into force except for actionable damage;
  - (b) a liability in tort or delict is a “moratorium debt” if it does not fall within paragraph (a) and either—
    - (i) the cause of action has accrued during the moratorium, or

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- (ii) all the elements necessary to establish the cause of action exist before the moratorium comes to an end except for actionable damage.
- (4) The Secretary of State may by regulations amend this section for the purposes of changing the definition of “pre-moratorium debt” or “moratorium debt” in this Part.
- (5) Regulations under subsection (4) are subject to the affirmative resolution procedure.

#### **A54 Interpretation of this Part: general**

- (1) In this Part—

“company” means—

- (a) a company registered under the Companies Act 2006 in England and Wales or Scotland, or
- (b) an unregistered company that may be wound up under Part 5 of this Act;

“the court” means such court as is prescribed;

“eligible”, in relation to a company, has the meaning given by Schedule ZA1;

“employer”, in relation to a pension scheme—

- (a) in sections [A8\(2\)\(c\)](#), [A17\(8\)\(c\)](#) and [A39\(8\)\(c\)](#), means an employer within the meaning of section 318(1) of the Pensions Act 2004;
- (b) elsewhere in this Part, has the same meaning that it has for the purposes of Part 2 of the Pensions Act 2004 (see section 318(1) and (4) of that Act);

“enactment” includes an Act of the Scottish Parliament and an instrument made under such an Act;

“hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement;

“liability” means (subject to subsection (2)) a liability to pay money or money’s worth, including any liability under an enactment, a liability for breach of trust, any liability in contract, tort, delict or bailment, and any liability arising out of an obligation to make restitution;

“money purchase scheme” has the meaning given by section 181(1) of the Pension Schemes Act 1993;

“the monitor”, in relation to a moratorium, means the person who has the functions of the monitor in relation to the moratorium (see also section [A40](#) for cases where two or more persons act as the monitor);

“moratorium” means a moratorium under this Part;

“moratorium debt” has the meaning given by section [A53](#);

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;

“pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;

“pre-moratorium debt” has the meaning given by section [A53](#);

“qualified person” means a person qualified to act as an insolvency practitioner;

“unable to pay its debts”—

- (a) in relation to a registered company, has the same meaning as in Part 4 (see section 123);
  - (b) in relation to an unregistered company, has the same meaning as in Part 5 (see sections 222 to 224).
- (2) For the purposes of references in any provision of this Part to a debt or liability it is immaterial whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.
- (3) In this Part references to filing a document with the court are, in relation to a court in Scotland, references to lodging it in court.
- (4) The Secretary of State may by regulations amend this section for the purposes of changing the definition of “qualified person” in subsection (1).
- (5) Regulations under subsection (4) are subject to the affirmative resolution procedure.

### *Regulations*

#### **A55 Regulations**

- (1) Regulations under this Part may make—
  - (a) different provision for different purposes;
  - (b) consequential, supplementary, incidental or transitional provision or savings.
- (2) Regulations under this Part are to be made by statutory instrument, unless they are made by the Scottish Ministers.
- (3) Where regulations of the Secretary of State under this Part are subject to “the affirmative resolution procedure”, they may not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.”
- (2) Schedule 1 inserts into the Insolvency Act 1986 a new Schedule ZA1 (eligible companies).
- (3) Schedule 2 inserts into the Insolvency Act 1986 a new Schedule ZA2 (contracts involving financial services).

## **2 Moratoriums in Great Britain: further amendments and transition**

- (1) Schedule 3 contains consequential and other amendments to do with moratoriums under new Part A1 of the Insolvency Act 1986.
- (2) Nothing in this Act affects the operation of the Insolvency Act 1986, or any other enactment, in relation to a moratorium under Schedule A1 to that Act which comes into force before the repeal of that Schedule by Schedule 3 to this Act.

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- (3) Subsection (2) is without prejudice to the operation of section 16 of the Interpretation Act 1978 (general savings).

### 3 Moratoriums in Great Britain: temporary modifications

Schedule 4 makes temporary modifications to Part A1 of the Insolvency Act 1986 (moratorium) and other temporary provision in connection with that Part.

### 4 Moratoriums in Northern Ireland

- (1) In the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), immediately before Part 2 (and after the heading before Parts 2 to 7) insert—

#### “PART 1A

#### MORATORIUM

#### CHAPTER 1

#### INTRODUCTORY

#### 13A Overview

- (1) This Part contains provision that enables an eligible company, in certain circumstances, to obtain a moratorium, giving it various protections from creditors set out in this Part.
- (2) In this Chapter Article 13AA introduces Schedule ZA1 (which defines what is meant by an “eligible” company).
- (3) Chapter 2 sets out how an eligible company may obtain a moratorium.
- (4) Chapter 3 sets out for how long a moratorium has effect.
- (5) Chapter 4 sets out the effects of a moratorium on the company and its creditors.
- (6) Chapter 5 contains provision about the monitor.
- (7) Chapter 6 contains provision about challenges.
- (8) Chapter 7 contains provision about certain offences.
- (9) Chapter 8 contains miscellaneous and general provision, including—
  - (a) special provision for certain kinds of company;
  - (b) definitions for the purposes of this Part;
  - (c) provision about regulations under this Part.

#### 13AA Eligible companies

Schedule ZA1 contains provision for determining whether a company is an eligible company for the purposes of this Part.

## CHAPTER 2

### OBTAINING A MORATORIUM

#### 13B Obtaining a moratorium by filing documents at High Court

- (1) This Article applies to an eligible company that—
  - (a) is not subject to an outstanding winding-up petition, and
  - (b) is not an overseas company.
- (2) The directors of the company may obtain a moratorium for the company by filing the relevant documents with the High Court (for the relevant documents, see Article 13BC).
- (3) For the purposes of this Chapter a company is “subject to an outstanding winding-up petition” if—
  - (a) a petition for the winding up of the company has been presented, and
  - (b) the petition has not been withdrawn or determined.

#### 13BA Obtaining a moratorium for company subject to winding-up petition

- (1) This Article applies to an eligible company that is subject to an outstanding winding-up petition.
- (2) The directors of the company may apply to the High Court for a moratorium for the company.
- (3) The application must be accompanied by the relevant documents (for the relevant documents, see Article 13BC).
- (4) On hearing the application the Court may—
  - (a) make an order that the company should be subject to a moratorium, or
  - (b) make any other order which the Court thinks appropriate.
- (5) The Court may make an order under paragraph (4)(a) only if it is satisfied that a moratorium for the company would achieve a better result for the company’s creditors as a whole than would be likely if the company were wound up (without first being subject to a moratorium).

#### 13BB Obtaining a moratorium for other overseas companies

- (1) This Article applies to an eligible company that—
  - (a) is not subject to an outstanding winding-up petition, and
  - (b) is an overseas company.
- (2) The directors of the company may apply to the High Court for a moratorium for the company.
- (3) The application must be accompanied by the relevant documents (for the relevant documents, see Article 13BC).
- (4) On hearing the application the Court may—

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- (a) make an order that the company should be subject to a moratorium, or
- (b) make any other order which the Court thinks appropriate.

### 13BC The relevant documents

- (1) For the purposes of this Chapter, “the relevant documents” are—
  - (a) a notice that the directors wish to obtain a moratorium,
  - (b) a statement from a qualified person (“the proposed monitor”) that the person—
    - (i) is a qualified person, and
    - (ii) consents to act as the monitor in relation to the proposed moratorium,
  - (c) a statement from the proposed monitor that the company is an eligible company,
  - (d) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its debts, and
  - (e) a statement from the proposed monitor that, in the proposed monitor’s view, it is likely that a moratorium for the company would result in the rescue of the company as a going concern.
- (2) Where it is proposed that more than one person should act as the monitor in relation to the proposed moratorium—
  - (a) each of them must make a statement under paragraph (1)(b), (c) and (e), and
  - (b) the statement under paragraph (1)(b) must specify—
    - (i) which functions (if any) are to be exercised by the persons acting jointly, and
    - (ii) which functions (if any) are to be exercised by any or all of the persons.
- (3) The rules may make provision about the date on which a statement comprised in the relevant documents must be made.
- (4) Regulations may amend this Article for the purposes of adding to the list of documents in paragraph (1).
- (5) Regulations may not be made under paragraph (4) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

### 13BD Beginning of moratorium and appointment of monitor

- (1) A moratorium for a company comes into force at the time at which—
  - (a) in the case of a company to which Article 13B applies, the relevant documents are filed with the High Court under paragraph (2) of that Article;
  - (b) in the case of a company to which Article 13BA applies, an order is made under Article 13BA(4)(a);
  - (c) in the case of a company to which Article 13BB applies, an order is made under Article 13BB(4)(a).

- (2) On the coming into force of a moratorium, the person or persons who made the statement mentioned in Article 13BC(1)(b) become the monitor in relation to the moratorium.

### 13BE Obligations to notify where moratorium comes into force

- (1) As soon as reasonably practicable after a moratorium for a company comes into force, the directors must notify the monitor of that fact.
- (2) As soon as reasonably practicable after receiving a notice under paragraph (1), the monitor must notify the following that a moratorium for the company has come into force—
  - (a) the registrar,
  - (b) every creditor of the company of whose claim the monitor is aware,
  - (c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
  - (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005, the Board of the Pension Protection Fund.
- (3) A notice under paragraph (2) must specify—
  - (a) when the moratorium came into force, and
  - (b) when, subject to any alteration under or by virtue of any of the provisions mentioned in Article 13C(3) or (4), the moratorium will come to an end.
- (4) If the directors fail to comply with paragraph (1), any director who did not have a reasonable excuse for the failure commits an offence.
- (5) If the monitor without reasonable excuse fails to comply with paragraph (2), the monitor commits an offence.

## CHAPTER 3

### LENGTH OF MORATORIUM

#### *Initial period*

### 13C End of the moratorium

- (1) A moratorium ends at the end of the initial period unless it is extended, or comes to an end sooner, under or by virtue of a provision mentioned in paragraph (3) or (4).
- (2) In this Chapter “the initial period”, in relation to a moratorium, means the period of 20 business days beginning with the business day after the day on which the moratorium comes into force.

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- (3) For provision under or by virtue of which a moratorium is or may be extended, see—
- Article 13CA (extension by directors without creditor consent);
  - Article 13CB (extension by directors with creditor consent);
  - Article 13CD (extension by High Court on application of directors);
  - Article 13CE (extension while proposal for CVA pending);
  - Article 13CF (extension by High Court in course of other proceedings).
- (4) For provision under or by virtue of which the moratorium is or may be terminated, see—
- Article 13CG (termination on entry into insolvency procedure etc);
  - Article 13ED (termination by monitor);
  - Article 13F or 13FB (termination by High Court).
- (5) A moratorium may not be extended under a provision mentioned in paragraph (3) once it has come to an end.
- (6) Where the application of two or more of the provisions mentioned in paragraphs (3) and (4) would produce a different length of moratorium, the provision that applies last is to prevail (irrespective of whether that results in a shorter or longer moratorium).

### *Extension of moratorium*

#### **13CA Extension by directors without creditor consent**

- (1) During the initial period, but after the first 15 business days of that period, the directors may extend the moratorium by filing with the High Court—
- (a) a notice that the directors wish to extend the moratorium,
  - (b) a statement from the directors that all of the following that have fallen due have been paid or otherwise discharged—
    - (i) moratorium debts, and
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see Article 13D),
  - (c) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its pre-moratorium debts, and
  - (d) a statement from the monitor that, in the monitor’s view, it is likely that the moratorium will result in the rescue of the company as a going concern.
- (2) The rules may make provision about the date on which a statement mentioned in paragraph (1) must be made.
- (3) On the filing with the Court of the documents mentioned in paragraph (1), the moratorium is extended so that it ends at the end of the period—
- (a) beginning immediately after the initial period ends, and
  - (b) ending with the 20th business day after the initial period ends.



### 13CB Extension by directors with creditor consent

- (1) At any time after the first 15 business days of the initial period the directors may, if they have obtained creditor consent, extend the moratorium by filing with the High Court—
  - (a) a notice that the directors wish to extend the moratorium,
  - (b) a statement from the directors that all of the following that have fallen due have been paid or otherwise discharged—
    - (i) moratorium debts, and
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see Article 13D),
  - (c) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its pre-moratorium debts,
  - (d) a statement from the monitor that, in the monitor’s view, it is likely that the moratorium will result in the rescue of the company as a going concern, and
  - (e) a statement from the directors that creditor consent has been obtained, and of the revised end date for which that consent was obtained.
- (2) The rules may make provision about the date on which a statement mentioned in paragraph (1) must be made.
- (3) On the filing with the Court of the documents mentioned in paragraph (1), the moratorium is extended so that it ends with the revised end date mentioned in the statement under paragraph (1)(e).
- (4) A moratorium may be extended under this Article more than once.

### 13CC Creditor consent for the purposes of Article 13CB

- (1) References in Article 13CB to creditor consent are to the consent of pre-moratorium creditors to a revised end date for the moratorium.
- (2) The decision as to consent is to be made at a meeting of pre-moratorium creditors.
- (3) A meeting under paragraph (2)—
  - (a) is to be held at such time, date and place as the directors think fit, and
  - (b) is to be conducted in accordance with the rules.
- (4) The revised end date must be a date before the end of the period of one year beginning with the first day of the initial period.
- (5) In this Article “pre-moratorium creditor” means a creditor in respect of a pre-moratorium debt—
  - (a) for which the company has a payment holiday during the moratorium (see Article 13D), and
  - (b) which has not been paid or otherwise discharged.
- (6) In determining for the purposes of paragraph (5) what counts as a pre-moratorium debt for which the company has a payment holiday during the

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moratorium, Articles 13D(3) and 13HD(1)(b) apply as if the references to the moratorium were to the moratorium as proposed to be extended.

- (7) Regulations may amend this Article for the purposes of changing the definition of “pre-moratorium creditor”.
- (8) Regulations may not be made under paragraph (7) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

### 13CD Extension by High Court on application of directors

- (1) At any time after the first 15 business days of the initial period, the directors may apply to the High Court for an order that the moratorium be extended.
- (2) The application must be accompanied by—
  - (a) a statement from the directors that all of the following that have fallen due have been paid or otherwise discharged—
    - (i) moratorium debts, and
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see Article 13D),
  - (b) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its pre-moratorium debts,
  - (c) a statement from the directors as to whether pre-moratorium creditors (as defined by Article 13CC(5) and (6)) have been consulted about the application and if not why not, and
  - (d) a statement from the monitor that, in the monitor’s view, it is likely that the moratorium will result in the rescue of the company as a going concern.
- (3) The rules may make provision about the date on which a statement mentioned in paragraph (2) must be made.
- (4) On hearing the application the Court may—
  - (a) make an order that the moratorium be extended to such date as is specified in the order, or
  - (b) make any other order which the Court thinks appropriate.
- (5) In deciding whether to make an order under paragraph (4)(a) the Court must, in particular, consider the following—
  - (a) the interests of pre-moratorium creditors, as defined by Article 13CC(5) and (6), and
  - (b) the likelihood that the extension of the moratorium will result in the rescue of the company as a going concern.
- (6) Paragraph (7) applies where—
  - (a) an application under this Article is made, and
  - (b) apart from that paragraph, the moratorium would end at a time before the application has been disposed of.
- (7) The moratorium—
  - (a) does not end at the time mentioned in paragraph (6)(b), and
  - (b) instead, ends—

- (i) in a case in which the Court makes an order under paragraph (4)(a), in accordance with the order;
- (ii) otherwise, when the application is withdrawn or disposed of.

(8) A moratorium may be extended under this Article more than once.

### 13CE Extension while proposal for CVA pending

- (1) Paragraph (2) applies where—
  - (a) at any time, the directors make a proposal under Part 2 (company voluntary arrangements), and
  - (b) apart from that paragraph, the moratorium would end at a time before the proposal is disposed of.
- (2) The moratorium—
  - (a) does not end at the time mentioned in paragraph (1)(b), and
  - (b) instead, ends when the proposal is disposed of.
- (3) For the purposes of this Article a proposal under Part 2 is “disposed of” when any of the following takes place—
  - (a) the company and its creditors both decide under Article 17 not to approve the voluntary arrangement contained in the proposal;
  - (b) the decisions taken by the company and its creditors under Article 17 differ, and—
    - (i) the period for making an application under Article 17A(3) expires and either no application has been made within that period or any application made within that period has been withdrawn, or
    - (ii) an application is made under Article 17A(3) and that application is disposed of, or it is withdrawn after the expiry of the period for making an application under Article 17A(3);
  - (c) the voluntary arrangement contained in the proposal takes effect under Article 18;
  - (d) the proposal is withdrawn.

### 13CF Extension by High Court in the course of other proceedings

- (1) Paragraph (2) applies where—
  - (a) an application is made under section 896 or 901C(1) of the Companies Act 2006 (arrangements and reconstructions: court order for holding of meeting) in respect of a company, and
  - (b) during proceedings before the High Court in connection with the application, a moratorium for the company is in force.
- (2) The High Court may make an order that the moratorium be extended to such date as is specified in the order.

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### *Early termination on certain grounds*

#### **13CG Company enters into insolvency procedure etc**

- (1) A moratorium comes to an end at any time at which the company—
  - (a) enters into a compromise or arrangement (see paragraph (2)), or
  - (b) enters into a relevant insolvency procedure (see paragraph (3)).
- (2) For the purposes of this Article a company enters into a compromise or arrangement if an order under section 899 or 901F of the Companies Act 2006 (court sanction for compromise or arrangement) comes into effect in relation to the company.
- (3) For the purposes of this Article a company enters into a relevant insolvency procedure if—
  - (a) a voluntary arrangement takes effect under Article 18 in relation to the company,
  - (b) the company enters administration (within the meaning of Schedule B1 (see paragraph 2(2)(b) of that Schedule)),
  - (c) paragraph 45 of Schedule B1 (administration: interim moratorium) begins to apply in relation to the company, or
  - (d) the company goes into liquidation (see Article 6).

### *Obligations to notify change in end of moratorium*

#### **13CH Obligations to notify change in end of moratorium**

- (1) The table imposes obligations on the directors of a company to notify the monitor where a moratorium for the company is extended or comes to an end.

	<i>Where a moratorium is extended or comes to an end under or by virtue of the following provision</i>	<i>the directors must</i>
1	Article 13CA	Notify the monitor of the extension.
2	Article 13CB	Notify the monitor of the extension and of the revised end date.
3	Article 13CD(4)	Notify the monitor of the extension and provide the monitor with the court order under Article 13CD(4).
4	Article 13CD(7)(a)	Notify the monitor of the extension.
5	Article 13CD(7)(b)(ii)	Notify the monitor that the moratorium has come to an end and of the date that it ended.
6	Article 13CE(2)(a)	Notify the monitor of the extension.
7	Article 13CE(2)(b)	Notify the monitor that the moratorium has come to an end and of the date that it ended.

	<i>Where a moratorium is extended or comes to an end under or by virtue of the following provision</i>	<i>the directors must</i>
8	Article 13CF	Notify the monitor of the extension and provide the monitor with any court order under Article 13CF.
9	Article 13CG	Notify the monitor that the moratorium has come to an end.
10	Article 13F	Notify the monitor that the moratorium has come to an end and provide the monitor with the court order under Article 13F.
11	Article 13FB	Notify the monitor that the moratorium has come to an end and provide the monitor with the court order under Article 13FB.

- (2) After receiving a notice under paragraph (1), other than a notice under entry 4 or 6 of the table, the monitor must notify the relevant persons of when the moratorium ended or, subject to any alteration under or by virtue of any of the provisions mentioned in Article 13C(3) or (4), the moratorium will come to an end.
- (3) After receiving a notice under entry 4 or 6 of the table, the monitor must notify the relevant persons.
- (4) If a moratorium comes to an end under Article 13ED (termination by monitor), the monitor must notify the company and the relevant persons of when the moratorium ended.
- (5) The rules may—
- (a) make further provision about the timing of a notice required to be given under this Article;
  - (b) require a notice to be accompanied by other documents.
- (6) If the directors fail to comply with paragraph (1), any director who did not have a reasonable excuse for the failure commits an offence.
- (7) If the monitor without reasonable excuse fails to comply with any of paragraphs (2) to (4), the monitor commits an offence.
- (8) In this Article “the relevant persons” means—
- (a) the registrar,
  - (b) every creditor of the company of whose claim the monitor is aware,
  - (c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
  - (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005, the Board of the Pension Protection Fund.

## CHAPTER 4

### EFFECTS OF MORATORIUM

#### *Introductory*

#### 13D Overview and construction of references to payment holidays

- (1) This Chapter makes provision about the main effects of a moratorium for a company.
- (2) The provision made by this Chapter includes restrictions on the enforcement or payment of the debts that are defined by paragraph (3) as pre-moratorium debts for which a company has a payment holiday during a moratorium.
- (3) In this Part a reference to pre-moratorium debts for which a company has a payment holiday during a moratorium is to its pre-moratorium debts that have fallen due before the moratorium, or that fall due during the moratorium, except in so far as they consist of amounts payable in respect of—
  - (a) the monitor’s remuneration or expenses,
  - (b) goods or services supplied during the moratorium,
  - (c) rent in respect of a period during the moratorium,
  - (d) wages or salary arising under a contract of employment,
  - (e) redundancy payments, or
  - (f) debts or other liabilities arising under a contract or other instrument involving financial services.
- (4) The rules may make provision as to what is, or is not, to count as the supply of goods or services for the purposes of paragraph (3)(b).
- (5) Regulations may amend this Article for the purposes of changing the list in paragraph (3).
- (6) Regulations may not be made under paragraph (5) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (7) In this Article—
  - “contract or other instrument involving financial services” has the meaning given by Schedule ZA2;
  - “monitor’s remuneration or expenses” does not include remuneration in respect of anything done by a proposed monitor before the moratorium begins;
  - “redundancy payment” means—
    - (a) a redundancy payment under Part 11 of the Employment Rights Act 1996 or Part 12 of the Employment Rights (Northern Ireland) Order 1996, or
    - (b) a payment made to a person who agrees to the termination of their employment in circumstances where they would have been entitled to a redundancy payment under that Part if dismissed;

“wages or salary” includes—

- (a) a sum payable in respect of a period of holiday (for which purpose the sum is to be treated as relating to the period by reference to which the entitlement to holiday accrued),
- (b) a sum payable in respect of a period of absence through illness or other good cause,
- (c) a sum payable in lieu of holiday, and
- (d) a contribution to an occupational pension scheme.

### *Publicity about moratorium*

#### **13DA Publicity about moratorium**

- (1) During a moratorium, the company must, in any premises—
  - (a) where business of the company is carried on, and
  - (b) to which customers of the company or suppliers of goods or services to the company have access,display, in a prominent position so that it may easily be read by such customers or suppliers, a notice containing the required information.
- (2) During a moratorium, any websites of the company must state the required information.
- (3) During a moratorium, every business document issued by or on behalf of the company must state the required information.
- (4) For the purposes of paragraphs (1), (2) and (3), “the required information” is—
  - (a) that a moratorium is in force in relation to the company, and
  - (b) the name of the monitor.
- (5) If paragraph (1), (2) or (3) is contravened—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the contravention commits an offence.
- (6) In this Article “business document” means—
  - (a) an invoice,
  - (b) an order for goods or services,
  - (c) a business letter, and
  - (d) an order form,whether in hard copy, electronic or any other form.

### *Effect on creditors etc*

#### **13DB Restrictions on insolvency proceedings etc**

- (1) During a moratorium—
  - (a) no petition may be presented for the winding up of the company, except by the directors,

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- (b) no resolution may be passed for the voluntary winding up of the company under Article 70(1)(a),
  - (c) a resolution for the voluntary winding up of the company under Article 70(1)(b) may be passed only if the resolution is recommended by the directors,
  - (d) no order may be made for the winding up of the company, except on a petition by the directors,
  - (e) no administration application may be made in respect of the company, except by the directors,
  - (f) no notice of intention to appoint an administrator of the company under paragraph 15 or 23(1) of Schedule B1 may be filed with the High Court,
  - (g) no administrator of the company may be appointed under paragraph 15 or 23(1) of Schedule B1, and
  - (h) no administrative receiver of the company may be appointed.
- (2) Paragraph (1)(a) does not apply to an excepted petition; and paragraph (1)(d) does not apply to an order on an excepted petition.
- (3) For these purposes, “excepted petition” means a petition under—
- (a) Article 104A, 104B or 104C, or
  - (b) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.

### 13DC Restrictions on enforcement and legal proceedings

- (1) During a moratorium—
- (a) a landlord or other person to whom rent is payable may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company, except with the permission of the High Court,
  - (b) no steps may be taken to enforce any security over the company’s property except—
    - (i) steps to enforce a collateral security charge (within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979)),
    - (ii) steps to enforce security created or otherwise arising under a financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226)), or
    - (iii) steps taken with the permission of the High Court,
  - (c) no steps may be taken to repossess goods in the company’s possession under any hire-purchase agreement, except with the permission of the High Court, and
  - (d) no legal process (including legal proceedings, enforcement and distress) may be instituted, carried out or continued against the company or its property except—
    - (i) employment tribunal proceedings or any legal process arising out of such proceedings,
    - (ii) proceedings, not within paragraph (i), involving a claim between an employer and a worker, or



- (iii) a legal process instituted, carried out or continued with the permission of the High Court.
- (2) An application may not be made for permission under paragraph (1) for the purposes of enforcing a pre-moratorium debt for which the company has a payment holiday during the moratorium.
- (3) An application may not be made for permission under paragraph (1)(b), (c) or (d) with a view to obtaining—
  - (a) the crystallisation of a floating charge, or
  - (b) the imposition, by virtue of provision in an instrument creating a floating charge, of any restriction on the disposal of any property of the company.
- (4) Permission of the High Court under paragraph (1) may be given subject to conditions.
- (5) Paragraph (1)(b)(iii) is subject to Article 13DE(1).
- (6) In this Article—
  - “agency worker” has the meaning given by Article 15(2) of the Employment Relations (Northern Ireland) Order 1999;
  - “employer”—
    - (a) in relation to an agency worker, has the meaning given by Article 15(2) of the Employment Relations (Northern Ireland) Order 1999;
    - (b) otherwise, has the meaning given by Article 3(4) of the Employment Rights (Northern Ireland) Order 1996;
  - “worker” means an individual who is—
    - (a) a worker within the meaning of Article 3(3) of the Employment Rights (Northern Ireland) Order 1996, or
    - (b) an agency worker.

### 13DD Floating charges

- (1) This Article applies where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force.
- (2) During the moratorium, the holder of the floating charge may not give any notice which would have the effect of—
  - (a) causing the floating charge to crystallise, or
  - (b) causing the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of property of the company.
- (3) No other event occurring during the moratorium is to have the effect mentioned in paragraph (2)(a) or (b).
- (4) Paragraph (5) applies where—
  - (a) the holder of a floating charge (“the chargee”) is prevented by paragraph (2) from giving a notice mentioned there during the moratorium, and

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- (b) under the terms of the floating charge, the time for giving such a notice ends during the moratorium or before the chargee is given notice of the end of the moratorium under Article 13CH.
- (5) The chargee may give notice later than is required under the terms of the floating charge, but only if the chargee does so as soon as is practicable after—
- (a) the end of the moratorium, or
  - (b) if later, the day on which the chargee is notified of the end of the moratorium.
- (6) Where—
- (a) paragraph (3) prevents an event which occurs during the moratorium from having the effect mentioned there, and
  - (b) the holder of the floating charge gives notice of the event to the company as soon as is practicable after—
    - (i) the end of the moratorium, or
    - (ii) if later, the day on which the chargee is notified of the end of the moratorium,
- the event is to be treated as if it had occurred when the notice was given.
- (7) This Article does not apply in relation to a floating charge that is—
- (a) a collateral security (as defined by Article 13DI);
  - (b) a market charge (as defined by Article 13DI);
  - (c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));
  - (d) a system-charge (as defined by Article 13DI).

### **13DE Enforcement of security granted during moratorium**

- (1) Security granted by a company during a moratorium in relation to the company may be enforced only if the monitor consented to the grant of security under Article 13DH.
- (2) See also Article 13DC(1)(b), which restricts enforcement during a moratorium.

### *Notification of insolvency proceedings*

### **13DF Duty of directors to notify monitor of insolvency proceedings etc**

- (1) The directors of a company must notify the monitor before taking any of the following steps during a moratorium—
  - (a) presenting a petition for the winding up of the company;
  - (b) making an administration application in respect of the company;
  - (c) appointing an administrator under paragraph 23(2) of Schedule B1.
- (2) The directors of a company must notify the monitor if, during a moratorium for the company, they recommend that the company passes a resolution for voluntary winding up under Article 70(1)(b).

- (3) The rules may make provision about the timing of a notice required to be given under paragraph (1) or (2).
- (4) If the directors fail to comply with paragraph (1) or (2), any director who did not have a reasonable excuse for the failure commits an offence.

#### *Restrictions on transactions*

### **13DG Restrictions on obtaining credit**

- (1) During a moratorium, the company may not obtain credit to the extent of £500 or more from a person unless the person has been informed that a moratorium is in force in relation to the company.
- (2) The reference to the company obtaining credit includes—
  - (a) the company entering into a conditional sale agreement in accordance with which goods are to be sold to the company,
  - (b) the company entering into any other form of hire-purchase agreement under which goods are to be bailed to the company, and
  - (c) the company being paid in advance (whether in money or otherwise) for the supply of goods or services.
- (3) If a company contravenes paragraph (1)—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the obtaining of the credit commits an offence.

### **13DH Restrictions on grant of security etc**

- (1) During a moratorium, the company may grant security over its property only if the monitor consents.
- (2) The monitor may give consent under paragraph (1) only if the monitor thinks that the grant of security will support the rescue of the company as a going concern.
- (3) In deciding whether to give consent under paragraph (1), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.
- (4) If the company grants security over its property during the moratorium otherwise than as authorised by paragraph (1)—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the grant of the security commits an offence.
- (5) For the consequences of a company granting security over its property in contravention of paragraph (1), see also Article 13DE.
- (6) The monitor may not give consent under this Article if the granting of security is an offence under Article 13DI.

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### **13DI Prohibition on entering into market contracts etc**

- (1) If a company enters into a transaction to which this Article applies during a moratorium for the company—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the company to enter into the transaction commits an offence.
- (2) A company enters into a transaction to which this Article applies if it—
  - (a) enters into a market contract,
  - (b) enters into a financial collateral arrangement,
  - (c) gives a transfer order,
  - (d) grants a market charge or a system-charge, or
  - (e) provides any collateral security.
- (3) Where during the moratorium a company enters into a transaction to which this Article applies, nothing done by or in pursuance of the transaction is to be treated as done in contravention of any of Articles 13DA, 13DC, 13DG, 13DH and 13DJ to 13DN.
- (4) In this Article—
 

“collateral security” has the same meaning as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979);

“financial collateral arrangement” has the same meaning as in the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226);

“market charge” has the same meaning as in Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990;

“market contract” has the same meaning as in Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990;

“system-charge” has the meaning given by the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (S.R. 1996/252);

“transfer order” has the same meaning as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979).

#### *Restrictions on payments and disposal of property*

### **13DJ Restrictions on payment of certain pre-moratorium debts**

- (1) During a moratorium, the company may make one or more relevant payments to a person that (in total) exceed the specified maximum amount only if—
  - (a) the monitor consents,
  - (b) the payment is in pursuance of a court order, or
  - (c) the payment is required by Article 13DM(3) or 13DN(3).
- (2) In paragraph (1)—

“relevant payments” means payments in respect of pre-moratorium debts for which the company has a payment holiday during the moratorium (see Article 13D);

“specified maximum amount” means an amount equal to the greater of—

- (a) £5000, and
  - (b) 1% of the value of the debts and other liabilities owed by the company to its unsecured creditors when the moratorium began, to the extent that the amount of such debts and liabilities can be ascertained at that time.
- (3) The monitor may give consent under paragraph (1)(a) only if the monitor thinks that it will support the rescue of the company as a going concern.
  - (4) In deciding whether to give consent under paragraph (1)(a), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.
  - (5) If the company makes a payment to which paragraph (1) applies otherwise than as authorised by that paragraph—
    - (a) the company commits an offence, and
    - (b) any officer of the company who without reasonable excuse authorised or permitted the payment commits an offence.

### 13DK Restrictions on disposal of property

- (1) During a moratorium, the company may dispose of its property only if authorised by paragraph (2) or (5).
- (2) In the case of property that is not subject to a security interest, the company may dispose of the property if—
  - (a) the disposal is made in the ordinary way of the company’s business,
  - (b) the monitor consents, or
  - (c) the disposal is in pursuance of a court order.
- (3) The monitor may give consent under paragraph (2)(b) only if the monitor thinks that it will support the rescue of the company as a going concern.
- (4) In deciding whether to give consent under paragraph (2)(b), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.
- (5) In the case of property that is subject to a security interest, the company may dispose of the property if the disposal is in accordance with—
  - (a) Article 13DM(1), or
  - (b) the terms of the security.
- (6) If the company disposes of its property during the moratorium otherwise than as authorised by this Article—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the disposal commits an offence.

**13DL Restrictions on disposal of hire-purchase property**

- (1) During a moratorium, the company may dispose of any goods in the possession of the company under a hire-purchase agreement only if the disposal is in accordance with —
  - (a) Article 13DN(1), or
  - (b) the terms of the agreement.
- (2) If the company disposes of goods in the possession of the company under a hire-purchase agreement otherwise than as authorised by paragraph (1)—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the disposal commits an offence.

*Disposals of property free from charges etc***13DM Disposal of charged property free from charge**

- (1) During a moratorium, the company may, with the permission of the High Court, dispose of property which is subject to a security interest as if it were not subject to the security interest.
- (2) The Court may give permission under paragraph (1) only if the Court thinks that it will support the rescue of the company as a going concern.
- (3) Where the Court gives permission under paragraph (1) other than in relation to a floating charge, the company must apply the following towards discharging the sums secured—
  - (a) the net proceeds of disposal of the property, and
  - (b) any money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the property in the open market by a willing vendor.
- (4) Where the permission relates to two or more security interests, the condition in paragraph (3) requires the application of money in the order of the priorities of the security interests.
- (5) Where property subject to a floating charge is disposed of under paragraph (1), the holder of the floating charge has the same priority in respect of acquired property as they had in respect of the property disposed of.
- (6) In paragraph (5) “acquired property” means property of the company which directly or indirectly represents the property disposed of.
- (7) Where the Court makes an order giving permission under paragraph (1), the directors must, within the period of 14 days beginning with the date of the order, send a copy of it to the registrar.
- (8) If the directors fail to comply with paragraph (7), any director who did not have a reasonable excuse for the failure commits an offence.
- (9) If a company fails to comply with paragraph (3)—

- (a) the company commits an offence, and
- (b) any officer of the company who without reasonable excuse authorised or permitted the failure commits an offence.

(10) Paragraph (1) does not apply in relation to any property which is subject to a financial collateral arrangement, a market charge, a system-charge or a collateral security (as defined by Article 13DI).

### 13DN Disposal of hire-purchase property

- (1) During a moratorium, the company may, with the permission of the High Court, dispose of goods which are in the possession of the company under a hire-purchase agreement as if all of the rights of the owner under the agreement were vested in the company.
- (2) The Court may give permission under paragraph (1) only if the Court thinks that it will support the rescue of the company as a going concern.
- (3) Where the Court gives permission under paragraph (1), the company must apply the following towards discharging the sums payable under the hire-purchase agreement—
  - (a) the net proceeds of disposal of the goods, and
  - (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the goods in the open market by a willing vendor.
- (4) If a company fails to comply with paragraph (3)—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the failure commits an offence.
- (5) Where the Court makes an order giving permission under paragraph (1), the directors must, within the period of 14 days beginning with the date of the order, send a copy of it to the registrar.
- (6) If the directors fail to comply with paragraph (5), any director who did not have a reasonable excuse for the failure commits an offence.

### *Effect of contravention of certain provisions of Chapter*

### 13DO Contravention of certain requirements imposed under this Chapter

The fact that a company contravenes Article 13DA or any of Articles 13DG to 13DN does not—

- (a) make any transaction void or unenforceable, or
- (b) affect the validity of any other thing.

## CHAPTER 5

### THE MONITOR

#### 13E Status of monitor

The monitor in relation to a moratorium is an officer of the High Court.

#### 13EA Monitoring

- (1) During a moratorium, the monitor must monitor the company's affairs for the purpose of forming a view as to whether it remains likely that the moratorium will result in the rescue of the company as a going concern.
- (2) In forming the view mentioned in paragraph (1), the monitor is entitled to rely on information provided by the company, unless the monitor has reason to doubt its accuracy.

#### 13EB Provision of information to monitor

- (1) The monitor may require the directors of the company to provide any information required by the monitor for the purpose of carrying out the monitor's functions.
- (2) The directors must comply with a requirement to provide information as soon as practicable.
- (3) For the potential consequences of failing to comply with a requirement to provide information, see Article 13ED.

#### 13EC Application by monitor for directions

The monitor in relation to a moratorium may apply to the High Court for directions about the carrying out of the monitor's functions.

#### 13ED Termination of moratorium by monitor

- (1) The monitor must bring a moratorium to an end by filing a notice with the High Court if—
  - (a) the monitor thinks that the moratorium is no longer likely to result in the rescue of the company as a going concern,
  - (b) the monitor thinks that the objective of rescuing the company as a going concern has been achieved,
  - (c) the monitor thinks that, by reason of a failure by the directors to comply with a requirement under Article 13EB, the monitor is unable properly to carry out the monitor's functions, or
  - (d) the monitor thinks that the company is unable to pay any of the following that have fallen due—
    - (i) moratorium debts;



- (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see Article 13D).
- (2) The rules may provide for debts that are to be disregarded for the purposes of paragraph (1)(d).
- (3) On the filing with the Court of a notice under paragraph (1), the moratorium comes to an end.
- (4) The rules may make provision about the timing of a notice required to be given under paragraph (1).
- (5) Regulations may amend this Article for the purposes of changing the circumstances in which the monitor must bring a moratorium to an end under paragraph (1).
- (6) Regulations may not be made under paragraph (5) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (7) See also Article 13CH (obligations to notify change in end of moratorium).

### 13EE Replacement of monitor or appointment of additional monitor

- (1) The High Court may make an order authorising the appointment of a qualified person to act as the monitor in relation to a moratorium instead of, or in addition to, a person who already acts as the monitor.
- (2) The High Court may make an order providing that a person ceases to act as the monitor in relation to a moratorium.
- (3) An order under paragraph (1) or (2) may be made on only an application by the directors or the monitor.
- (4) The Court may make an order authorising the appointment of a monitor under paragraph (1) only if the person has provided the Court with a statement that the person—
  - (a) is a qualified person, and
  - (b) consents to act as the monitor in relation to the moratorium.
- (5) Where it is proposed that more than one person should act as the monitor in relation to the moratorium, the statement under paragraph (4) must specify—
  - (a) which functions (if any) are to be exercised by the persons acting jointly, and
  - (b) which functions (if any) are to be exercised by any or all of the persons.
- (6) The rules may make provision about the date on which the statement under paragraph (4) must be made.
- (7) Where the Court makes an order under paragraph (1) or (2) the person begins to act as the monitor, or ceases to act as the monitor, in relation to the moratorium at the time specified in, or determined in accordance with, the order (“the relevant time”).

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- (8) As soon as reasonably practicable after the relevant time, the monitor must notify the following of the effect of the order—
- (a) the registrar,
  - (b) every creditor of the company of whose claim the monitor is aware,
  - (c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
  - (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005, the Board of the Pension Protection Fund.
- (9) If the monitor without reasonable excuse fails to comply with paragraph (8), the monitor commits an offence.

### 13EF Application of Part where two or more persons act as monitor

- (1) Where two or more persons act jointly as the monitor—
- (a) a reference in this Order to the monitor is a reference to those persons acting jointly;
  - (b) where an offence of omission is committed by the monitor, each of the persons appointed to act jointly—
    - (i) commits the offence, and
    - (ii) may be proceeded against and punished individually.
- (2) Where persons act jointly in respect of only some of the functions of the monitor, paragraph (1) applies only in relation to those functions.
- (3) Where two or more persons act concurrently as the monitor a reference in this Order to the monitor is a reference to any of the persons appointed (or any combination of them).

### 13EG Presumption of validity

An act of the monitor is valid in spite of a defect in the monitor's appointment or qualification.

## CHAPTER 6

### CHALLENGES

#### 13F Challenge to monitor's actions

- (1) Any of the persons specified below may apply to the High Court on the ground that an act, omission or decision of the monitor during a moratorium has unfairly harmed the interests of the applicant.
- (2) The persons who may apply are—
- (a) a creditor, director or member of the company, or
  - (b) any other person affected by the moratorium.

- (3) An application under paragraph (1) may be made during the moratorium or after it has ended.
- (4) On an application under paragraph (1) the Court may—
  - (a) confirm, reverse or modify any act or decision of the monitor,
  - (b) give the monitor directions, or
  - (c) make such other order as it thinks fit (but may not, under this subparagraph, order the monitor to pay any compensation).
- (5) Where an application under paragraph (1) relates to a failure by the monitor to bring the moratorium to an end under Article 13ED(1), an order under paragraph (4) may, in particular, bring the moratorium to an end and make such consequential provision as the Court thinks fit.
- (6) Where an application under paragraph (1) relates to the monitor bringing a moratorium to an end under Article 13ED(1), an order under paragraph (4) may, in particular, provide that the moratorium is not to be taken into account for the purposes of paragraph 2(1)(b) of Schedule ZA1 (company not eligible for moratorium if moratorium in force within previous 12 months).
- (7) In making an order under paragraph (4) the Court must have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.
- (8) See also Article 13CH (obligations to notify change in end of moratorium).

### 13FA Challenges to monitor remuneration in insolvency proceedings

- (1) The rules may confer on an administrator or liquidator of a company the right to apply to the High Court on the ground that remuneration charged by the monitor in relation to a prior moratorium for the company was excessive.
- (2) Rules under paragraph (1) may (among other things) make provision as to—
  - (a) time limits;
  - (b) disposals available to the Court;
  - (c) the treatment of costs of the application in the administration or winding up.

### 13FB Challenge to directors' actions

- (1) A creditor or member of a company may apply to the High Court for an order under this Article on the ground that—
  - (a) during a moratorium, the company's affairs, business and property are being or have been managed by the directors in a manner which has unfairly harmed the interests of its creditors or members generally or of some part of its creditors or members (including at least the applicant), or
  - (b) any actual or proposed act or omission of the directors during a moratorium causes or would cause such harm.
- (2) An application under paragraph (1) may be made during the moratorium or after it has ended.

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- (3) On an application under paragraph (1) the Court may make such order as it thinks fit.
- (4) An order under paragraph (3) may in particular—
  - (a) regulate the management by the directors of the company’s affairs, business and property during the remainder of the moratorium,
  - (b) require the directors to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant has complained they have omitted to do,
  - (c) require the summoning of a meeting of the company’s creditors for the purpose of considering such matters as the Court may direct, or
  - (d) bring the moratorium to an end and make such consequential provision as the Court thinks fit.
- (5) In making an order under paragraph (3) the Court must have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.
- (6) See also Article 13CH (obligations to notify change in end of moratorium).

### **13FC Challenge brought by Board of the Pension Protection Fund**

- (1) This Article applies where—
  - (a) a moratorium—
    - (i) is in force in relation to a company that is an employer in respect of an eligible scheme, or
    - (ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and
  - (b) the trustees or managers of the scheme are a creditor of the company.
- (2) The Board of the Pension Protection Fund may make any application under Article 13F(1) or 13FB(1) that could be made by the trustees or managers as a creditor.
- (3) For the purposes of such an application, any reference in Article 13F(1) or 13FB(1) to the interests of the applicant is to be read as a reference to the interests of the trustees or managers as a creditor.
- (4) In this Article “eligible scheme” has the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005.

## **CHAPTER 7**

### **OFFENCES: GENERAL**

#### **13G Offence of fraud etc during or in anticipation of moratorium**

- (1) An officer of a company commits an offence if, during a moratorium for the company or at any time within the period of 12 months ending with the day on which a moratorium for the company comes into force, the officer—

- (a) does any of the things mentioned in paragraph (2), or
  - (b) was privy to the doing by others of any of the things mentioned in paragraph (2)(c), (d) and (e).
- (2) Those things are—
- (a) concealing any part of the company’s property to the value of £500 or more, or concealing any debt due to or from the company,
  - (b) fraudulently removing any part of the company’s property to the value of £500 or more,
  - (c) concealing, destroying, mutilating or falsifying any document affecting or relating to the company’s property or affairs,
  - (d) making any false entry in any document affecting or relating to the company’s property or affairs,
  - (e) fraudulently parting with, altering or making any omission in any document affecting or relating to the company’s property or affairs, or
  - (f) pawning, pledging or disposing of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company’s business).
- (3) It is a defence—
- (a) for a person charged with an offence under paragraph (1) in respect of any of the things mentioned in paragraph (2)(a) or (f) to prove that the person had no intent to defraud, and
  - (b) for a person charged with an offence under paragraph (1) in respect of any of the things mentioned in paragraph (2)(c) or (d) to prove that the person had no intent to conceal the state of affairs of the company or to defeat the law.
- (4) Where a person pawns, pledges or disposes of any property of a company in circumstances which amount to an offence under paragraph (1), every person who takes in pawn or pledge, or otherwise receives, the property commits an offence if the person knows it to be pawned, pledged or disposed of in circumstances which—
- (a) amount to an offence under paragraph (1), or
  - (b) would, if a moratorium were obtained for the company within the period of 12 months beginning with the day on which the pawning, pledging or disposal took place, amount to an offence under paragraph (1).
- (5) In this Article, “officer” includes a shadow director.

### **13GA Offence of false representation etc to obtain a moratorium**

- (1) An officer of a company commits an offence if, for the purpose of obtaining a moratorium for the company or an extension of a moratorium for the company, the officer—
- (a) makes any false representation, or
  - (b) fraudulently does, or omits to do, anything.
- (2) Paragraph (1) applies even if no moratorium or extension is obtained.

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*Status: This is the original version (as it was originally enacted).*

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- (3) In this Article, “officer” includes a shadow director.

### **13GB Prosecution of delinquent officers of company**

- (1) This Article applies where a moratorium has been obtained for a company.
- (2) If it appears to the monitor that any past or present officer of the company has committed an offence in connection with the moratorium, the monitor must forthwith—
- (a) report the matter to the Department, and
  - (b) provide the Department with such information and give it such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the monitor and relating to the matter in question) as it requires.
- (3) Where a matter is reported to the Department under paragraph (2), the Department may, for the purpose of investigating the matter and such other matters relating to the affairs of the company as appear to the Department to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of the Companies Act 1985.
- (4) For the purpose of such an investigation any obligation imposed on a person by any provision of the Companies Acts to produce documents or give information to, or otherwise to assist, inspectors so appointed is to be regarded as an obligation similarly to assist the Department in its investigation.
- (5) Where a question is put to a person in exercise of the powers conferred by paragraph (3), the person’s answer may be used in evidence against them.
- (6) However, in criminal proceedings in which the person is charged with an offence other than a false statement offence—
- (a) no evidence relating to the answer may be adduced, and
  - (b) no question relating to it may be asked,
- by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of the person.
- (7) In paragraph (6) “false statement offence” means an offence under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 ([S.I. 1979/1714 \(N.I. 19\)](#)) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).
- (8) Where the Director of Public Prosecutions for Northern Ireland institutes criminal proceedings following any report under paragraph (2), the monitor, and every officer and agent of the company past and present (other than the defendant), must give the Director all assistance in connection with the prosecution which they are reasonably able to give.
- (9) For this purpose “agent” includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

- (10) The High Court may, on the application of the Director of Public Prosecutions for Northern Ireland, direct a person who has failed to comply with paragraph (8) to comply with it.

## CHAPTER 8

### MISCELLANEOUS AND GENERAL

#### *Special rules for certain kinds of company etc*

#### **13H Regulated companies: modifications to this Part**

- (1) For the purposes of Articles 13B and 13BA as they apply in relation to a regulated company, Article 13BC(1) has effect as if the documents listed there included a reference to the written consent of the appropriate regulator to the appointment of the proposed monitor.
- (2) The remaining provisions of this Article apply in relation to a moratorium for a regulated company.
- (3) Any notice under Article 13BE(2), 13CH(2) to (4) or 13EE(8) must also be sent by the monitor to the appropriate regulator.
- (4) The directors must give the appropriate regulator notice of any meeting of the company's creditors that is to be held for the purposes of Article 13CC(2) or 13FB(4)(c).
- (5) If the directors fail to comply with paragraph (4), any director who did not have a reasonable excuse for the failure commits an offence.
- (6) The appropriate regulator, or a person appointed by the appropriate regulator, may in the way provided for by the rules, participate (but not vote) in any meeting of the company's creditors that is held for the purposes of this Part.
- (7) The appropriate regulator is entitled to be heard on any application to the High Court for permission under Article 13DM(1) or 13DN(1) (disposal of charged property, etc.).
- (8) The High Court may make an order under Article 13EE(1) only if the appropriate regulator has given its written consent to the appointment of the proposed monitor.
- (9) The persons who may apply to the High Court under Article 13EE(3), 13F(1) or 13FB(1) include the appropriate regulator.
- (10) If a person other than a regulator applies to the High Court under Article 13EE(3), 13F(1) or 13FB(1) the appropriate regulator is entitled to be heard on the application.
- (11) If either regulator makes an application to the High Court under Article 13EE(3), 13F(1) or 13FB(1) in relation to a PRA-regulated company, the other regulator is entitled to be heard on the application.



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(12) This Article does not affect any right that the appropriate regulator has (apart from this Article) as a creditor of a regulated company.

(13) In this Article—

“the appropriate regulator” means—

- (a) where the regulated company is a PRA-regulated company, each of the Financial Conduct Authority and the Prudential Regulation Authority, and
- (b) where the regulated company is not a PRA-regulated company, the Financial Conduct Authority;

“PRA-authorised person” has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000;

“PRA-regulated company” means a regulated company which—

- (a) is, or has been, a PRA-authorised person,
- (b) is, or has been, an appointed representative within the meaning given by section 39 of the Financial Services and Markets Act 2000, whose principal (or one of whose principals) is, or was, a PRA-authorised person, or
- (c) is carrying on, or has carried on, a PRA-regulated activity (within the meaning of section 22A of that Act) in contravention of the general prohibition;

“regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section;

“regulated company” means a company which—

- (a) is, or has been, an authorised person within the meaning given by section 31 of the Financial Services and Markets Act 2000,
- (b) is, or has been, an appointed representative within the meaning given by section 39 of that Act, or
- (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition within the meaning given by section 19 of that Act;

“regulator” means the Financial Conduct Authority or the Prudential Regulation Authority.

(14) Regulations may amend this Article for the purposes of changing the definition of “regulated company” in paragraph (13).

(15) Regulations may not be made under paragraph (14) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

### **13HA Power to modify this Part etc in relation to certain companies**

(1) Regulations may—

- (a) modify this Part as it applies in relation to a company for which there is a special administration regime, or
- (b) make provision in connection with the interaction between this Part and any other insolvency procedure in relation to such a company.



- (2) The power in paragraph (1) may, in particular, be used to amend, repeal, revoke or otherwise modify any statutory provision.
- (3) In this Article—
- “ordinary administration” means the insolvency procedure provided for by Schedule B1;
  - “special administration regime” means provision made by any statutory provision for an insolvency procedure that—
    - (a) is similar or corresponds to ordinary administration, and
    - (b) provides for the administrator to have one or more special objectives instead of or in addition to the objectives of ordinary administration.
- (4) Regulations may not be made under paragraph (1) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

### **13HB Power to make provision in connection with pension schemes**

- (1) A Northern Ireland department may by regulations provide that, in a case where—
- (a) a moratorium—
    - (i) is in force in relation to a company that is an employer in respect of an eligible scheme, or
    - (ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and
  - (b) the trustees or managers of the scheme are a creditor of the company, the Board of the Pension Protection Fund may exercise any of the following rights.
- (2) The rights are those which are exercisable by the trustees or managers as a creditor of the company under or by virtue of—
- (a) Article 13CC, or
  - (b) a court order under Article 13FB(4)(c).
- (3) Regulations under paragraph (1) may provide that the Board may exercise any such rights—
- (a) to the exclusion of the trustees or managers of the scheme, or
  - (b) in addition to the exercise of those rights by the trustees or managers of the scheme.
- (4) Regulations under paragraph (1)—
- (a) may specify conditions that must be met before the Board may exercise any such rights;
  - (b) may provide for any such rights to be exercisable by the Board for a specified period;
  - (c) may make provision in connection with any such rights ceasing to be so exercisable at the end of such a period.

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- (5) Regulations may not be made under paragraph (1) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (6) In this Article “eligible scheme” has the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005.

### *Floating charges*

#### 13HC Void provisions in floating charge documents

- (1) A provision in an instrument creating a floating charge is void if it provides for the obtaining of a moratorium, or anything done with a view to obtaining a moratorium, to be—
  - (a) an event causing the floating charge to crystallise,
  - (b) an event causing restrictions which would not otherwise apply to be imposed on the disposal of property by the company, or
  - (c) a ground for the appointment of a receiver.
- (2) The reference in paragraph (1) to anything done with a view to obtaining a moratorium includes any preliminary decision or investigation.
- (3) In paragraph (1) “receiver” includes a manager and a person who is appointed both receiver and manager.
- (4) Paragraph (1) does not apply to a provision in an instrument creating a floating charge that is—
  - (a) a collateral security (as defined by Article 13DI);
  - (b) a market charge (as defined by Article 13DI);
  - (c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));
  - (d) a system-charge (as defined by Article 13DI).

### *Interpretation of this Part*

#### 13HD Meaning of “pre-moratorium debt” and “moratorium debt”

- (1) In this Part “pre-moratorium debt”, in relation to a company for which a moratorium is or has been in force, means—
  - (a) any debt or other liability to which the company becomes subject before the moratorium comes into force, or
  - (b) any debt or other liability to which the company has become or may become subject during the moratorium by reason of any obligation incurred before the moratorium comes into force,
 but this is subject to paragraph (3).
- (2) In this Part “moratorium debt”, in relation to a company for which a moratorium is or has been in force, means—

- (a) any debt or other liability to which the company becomes subject during the moratorium, other than by reason of an obligation incurred before the moratorium came into force, or
  - (b) any debt or other liability to which the company has become or may become subject after the end of the moratorium by reason of an obligation incurred during the moratorium,
- but this is subject to paragraph (3).
- (3) For the purposes of this Part—
- (a) a liability in tort is a “pre-moratorium debt” if either—
    - (i) the cause of action has accrued before the moratorium comes into force, or
    - (ii) all the elements necessary to establish the cause of action exist before the moratorium comes into force except for actionable damage;
  - (b) a liability in tort is a “moratorium debt” if it does not fall within subparagraph (a) and either—
    - (i) the cause of action has accrued during the moratorium, or
    - (ii) all the elements necessary to establish the cause of action exist before the moratorium comes to an end except for actionable damage.
- (4) Regulations may amend this Article for the purposes of changing the definition of “pre-moratorium debt” and “moratorium debt” in this Part.
- (5) Regulations may not be made under paragraph (4) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

### 13HE Interpretation of this Part: general

- (1) In this Part—
- “company” means—
- (a) a company registered under the Companies Act 2006 in Northern Ireland, or
  - (b) an unregistered company that may be wound up under Part 6 of this Order;
- “eligible”, in relation to a company, has the meaning given by Schedule ZA1;
- “employer”, in relation to a pension scheme—
- (a) in Articles 13BE(2)(c), 13CH(8)(c) and 13EE(8)(c), means an employer within the meaning of Article 2(2) of the Pensions (Northern Ireland) Order 2005;
  - (b) elsewhere in this Part, has the same meaning that it has for the purposes of Part 3 of the Pensions (Northern Ireland) Order 2005 (see Article 2(2) and (5) of that Order);
- “hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement;
- “money purchase scheme” has the meaning given by section 176(1) of the Pension Schemes (Northern Ireland) Act 1993;

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“the monitor”, in relation to a moratorium, means the person who has the functions of the monitor in relation to the moratorium (see also Article 13EF for cases where two or more persons act as the monitor);

“moratorium” means a moratorium under this Part;

“moratorium debt” has the meaning given by Article 13HD;

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993;

“pension scheme” has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993;

“pre-moratorium debt” has the meaning given by Article 13HD;

“qualified person” means a person qualified to act as an insolvency practitioner;

“unable to pay its debts”—

(a) in relation to a registered company, has the same meaning as in Part 5 (see Article 103);

(b) in relation to an unregistered company, has the same meaning as in Part 6 (see Articles 186 to 188).

(2) Regulations may amend this Article for the purposes of changing the definition of “qualified person” in paragraph (1).

(3) Regulations may not be made under paragraph (2) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

### *Regulations*

#### **13HF Regulations**

Regulations made in the exercise of any power conferred by this Part may make consequential, supplementary, incidental or transitional provision or savings.”

(2) Schedule 5 inserts into the Insolvency (Northern Ireland) Order 1989 a new Schedule ZA1 (eligible companies).

(3) Schedule 6 inserts into the Insolvency (Northern Ireland) Order 1989 a new Schedule ZA2 (contracts involving financial services).

## **5 Moratoriums in Northern Ireland: further amendments and transition**

(1) Schedule 7 contains consequential and other amendments to do with moratoriums under new Part 1A of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

(2) Nothing in this Act affects the operation of the Insolvency (Northern Ireland) Order 1989, or any other statutory provision, in relation to a moratorium under Schedule A1 to that Order which comes into force before the repeal of that Schedule by Schedule 7 to this Act.

(3) Subsection (2) is without prejudice to the operation of section 16 of the Interpretation Act 1978 (general savings).

- (4) In this section “statutory provision” has the meaning given by section 1(f) of the [Interpretation Act \(Northern Ireland\) 1954 \(c. 33 \(N.I.\)\)](#).

## **6 Moratoriums in Northern Ireland: temporary modifications**

Schedule 8 makes temporary modifications to Part 1A of the Insolvency (Northern Ireland) Order 1989 (moratorium) and other temporary provision in connection with that Part.