
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 198

**Act of Sederunt (Rules of the Court of Session
1994 and Sheriff Court Company Insolvency
Rules Amendment) (Insolvency) 2020**

Amendment of the Rules of the Court of Session 1994

- 2.—(1) The Rules of the Court of Session 1994(1) are amended in accordance with this paragraph.
- (2) In rule 74.1(2) (application and interpretation of this Chapter)(2), after the definition of “the Act of 2011”(3) insert—
- ““the Act of 2020” means the Corporate Insolvency and Governance Act 2020(4);”.
- (3) In rule 74.3B (decision making)(5), in paragraphs (1) and (2), after “in relation to any” insert “moratorium,”.
- (4) After rule 74.3B insert—

**“PART IA
MORATORIUMS**

Moratoriums - general

- 74.3C.**—(1) A moratorium to be obtained by lodging the relevant documents in court must be—
- (a) lodged in the Petition Department; and
 - (b) marked by the clerk of session receiving them with the time and date on which they are lodged and a certified copy provided to the directors.
- (2) An application to the court for a moratorium must be made—
- (a) where the eligible company is subject to an outstanding winding-up petition, by note in the process of that petition; or
 - (b) in all other cases, by petition.
- (3) Paragraph (1) applies to—
- (a) the obtaining of an extension of a moratorium under sections A10 (extension by directors without creditor consent)(6) or A11 (extension by directors with creditor consent); and

(1) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443), last amended by S.S.I. 2020/166.

(2) Rule 74.1(2) was last amended by S.S.I. 2019/81.

(3) The definition of “the Act of 2011” was inserted by S.S.I. 2013/162.

(4) 2020 c.12.

(5) Rule 74.3B was inserted by S.S.I. 2019/81.

(6) Sections A1 to A53 of the Insolvency Act 1986 (c.45) were inserted as a new Part A1 of that Act by section 1(1) of the Corporate Insolvency and Governance Act 2020 (c.12).

Status: Point in time view as at 01/10/2021.

Changes to legislation: There are currently no known outstanding effects for the Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Company Insolvency Rules Amendment) (Insolvency) 2020, Section 2. (See end of Document for details)

- (b) the termination of a moratorium by the monitor under section A38(1) (termination of moratorium by monitor),
of the Act of 1986, as it does to the obtaining of a moratorium.
- (4) Paragraph (5) applies to an application to the court under—
- (a) section A13 (extension by court on application of directors);
 - (b) section A21(1) (restrictions on enforcement and legal proceedings);
 - (c) section A31(1) (disposal of charged property free from charge);
 - (d) section A32(1) (disposal of hire-purchase property);
 - (e) section A37 (application by monitor for directions);
 - (f) section A39(1) or (2) (replacement of monitor or appointment of additional monitor);
 - (g) section A42(1) (challenge to monitor’s actions);
 - (h) rules under section A43(1) (challenges to monitor remuneration in insolvency proceedings);
 - (i) section A44(1) (challenge to directors’ actions),
- of the Act of 1986.
- (5) Where this paragraph applies, an application to the court must be made—
- (a) where the eligible company is subject to an outstanding winding-up petition, by note in the process of that petition;
 - (b) where the application for the moratorium was made by petition, by note in the process of that petition; or
 - (c) in all other cases, by petition.

Moratoriums – regulated companies

74.3D. An application under any of the following sections of the Act of 1986 in relation to a regulated company is to be intimated to the appropriate regulator (as those persons are defined in section A49(13) of that Act (regulated companies: modifications to this Part))—

- (a) section A31(1);
- (b) section A32(1);
- (c) section A39(1);
- (d) section A42(1);
- (e) section A44(1).

Moratoriums – challenge to monitor’s remuneration

74.3E. An application to the court under paragraph 80 of schedule 4 of the Act of 2020 (challenge to monitor’s remuneration) must be made—

- (a) where the company is in administration or being wound-up by the court, by note in the process of those insolvency proceedings; or
- (b) in all other cases, by petition.”.

- (5) In rule 74.21(1) (petition to wind up a company(7), after paragraph (1)(b)(iii) insert—
“(iia) confirmation that it is not the subject of a moratorium;”.

(7) Rule 74.21 was amended by [S.S.I. 2007/449](#).

F1(6)

F1 Para. 2(6) revoked (1.10.2021) by the [Act of Sederunt \(Rules of the Court of Session 1994 and Sheriff Court Company Insolvency Rules Amendment\) \(Insolvency\) 2021 \(S.S.I. 2021/324\)](#), paras. 1(2), [4](#)

Commencement Information

I1 Para. 2 in force at 2.7.2020, see [para. 1\(2\)](#)

Status:

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