

2020 No. 198

COURT OF SESSION

SHERIFF COURT

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

<i>Made</i>	- - - -	<i>30th June 2020</i>
<i>Laid before the Scottish Parliament</i>		<i>1st July 2020</i>
<i>Coming into force</i>	- -	<i>2nd July 2020</i>

The Court of Session makes this Act of Sederunt under the powers conferred by sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014^(a) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Company Insolvency Rules Amendment) (Insolvency) 2020.

(2) It comes into force on 2nd July 2020.

(3) A certified copy is to be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session 1994

2.—(1) The Rules of the Court of Session 1994^(b) are amended in accordance with this paragraph.

(2) In rule 74.1(2) (application and interpretation of this Chapter)^(c), after the definition of “the Act of 2011”^(d) insert—

““the Act of 2020” means the Corporate Insolvency and Governance Act 2020^(e)”.

(3) In rule 74.3B (decision making)^(f), in paragraphs (1) and (2), after “in relation to any” insert “moratorium”.

(4) After rule 74.3B insert—

^(a) 2014 asp 18.

^(b) 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.

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

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

^(e) 2020 c.12.

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

“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)(a) or A11 (extension by directors with creditor consent); and
- (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.

(a) 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).

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)(a), after paragraph (1)(b)(iii) insert—

“(iiia) confirmation that it is not the subject of a moratorium;”.

(6) In rule 74.22 (intimation, service and advertisement under this Part), before paragraph (1) insert—

“(A1) An application for an order under paragraph 20(3) of schedule 10 of the Act of 2020 (application to disapply suspension of court rules that require or permit inspection of petition or proceedings) must be made by note in the process of the petition.”.

Amendment of Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986

3.—(1) The Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986(b) is amended in accordance with this paragraph.

(2) In rule 3(1) (interpretation)(c), after the definition of “the Act of 2011”(d) insert—

““the Act of 2020” means the Corporate Insolvency and Governance Act 2020(e);”.

(3) After rule 3B (expenses)(f) insert—

“PART AI MORATORIUMS

Moratoriums – general

3C.—(1) A moratorium to be obtained by lodging the relevant documents in court must be—

- (a) lodged in the offices of the court;
- (b) marked by the sheriff clerk with the time and date on which they are lodged and a certified copy provided to the directors.

(a) Rule 74.21 was amended by S.S.I. 2007/449.
(b) S.I. 1986/2297, last amended by S.S.I. 2019/247.
(c) Rule 3(1) was last amended by S.S.I. 2019/81.
(d) The definition of “the Act of 2011” was inserted by S.S.I. 2013/171.
(e) 2020 c.12.
(f) Rule 3B was inserted by S.S.I. 2008/223.

- (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)(a) or A11 (extension by directors with creditor consent); and
 - (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

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).

(a) 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).

Moratoriums – challenge to monitor’s remuneration

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.”.

(4) In rule 19 (intimation, service and advertisement)(**a**), before paragraph (1) insert—

“(A1) An application for an order under paragraph 20(3) of schedule 10 of the Act of 2020 (application to disapply suspension of court rules that require or permit inspection of petition or proceedings) must be made by note in the process of the petition.”.

(5) In rule 18(1) (petitions to wind up a company)(**b**), after paragraph (b)(iii) insert—

“(iv) confirmation that it is not the subject of a moratorium;”.

(6) In rule 31 (application) for “Parts I” substitute “Parts AI”.

(7) In rule 31AB (decision making)(**c**), in paragraphs (1) and (2), after “in relation to any” insert “moratorium,”.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
30th June 2020

(a) Rule 19 was amended by S.S.I. 2003/388.
(b) Rule 18(1) was amended by S.S.I. 2008/223.
(c) Rule 31AB was inserted by S.S.I. 2019/81.

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt amends the court rules in Chapter 74 of the Rules of the Court of Session 1994 and the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986.

The court rules are amended in consequence of the provisions of the Corporate Insolvency and Governance Act 2020 (c.12) (“the 2020 Act”). The 2020 Act makes amendments to the Insolvency Act 1986 (c.45) to remove Schedule A1 and enact a new Part A1 concerned with moratoriums on corporate insolvency proceedings. A moratorium may be obtained either by lodging certain documents with the court or, in some cases, by formal application to the court. A number of ancillary court remedies are created and the amendments to the court rules make provision for how they are to be sought from the court.

The 2020 Act also temporarily amends the law in relation to liquidation so that where a liquidation petition is lodged which falls within paragraph 20 of schedule 10 of the 2020 Act, court rules which require or permit notice, publication, advertisement or inspection of the petition or proceedings do not apply until the court makes a determination under paragraph 20(2). Provision is made in paragraph 20(3) of schedule 10 for the court to disapply paragraph 20(2) so far as relating to inspection of the petition or proceedings. The court rules are accordingly amended to provide that such an application is to be made by note in the process of the petition.

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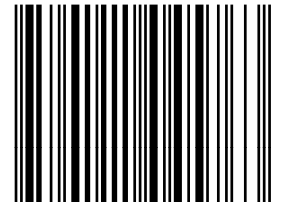
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, the Queen’s Printer for Scotland.

£6.90

S202006301008 07/2020 19585

<http://www.legislation.gov.uk/id/ssi/2020/198>

ISBN 978-0-11-104576-3



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