
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 324

**Act of Sederunt (Rules of the Court of Session
1994 and Sheriff Court Company Insolvency
Rules Amendment) (Insolvency) 2021**

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

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

(2) For rule 3C (moratoriums – general)⁽²⁾ substitute—

“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 of them so marked 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) Where the court grants an application mentioned in paragraphs (2), (6)(c) or (d), the sheriff clerk must provide forthwith a certified copy of the interlocutor to the applicant.

(4) An extension of a moratorium under section A10 (extension by directors without creditor consent)⁽³⁾ or A11 (extension by directors with creditor consent) of the Act of 1986, to be obtained by lodging the documents mentioned in section A10(1) or A11(1), respectively, and a notice of extension, 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 of them so marked provided to the directors.

(5) Termination of a moratorium by the monitor under section A38(1) (termination of moratorium by monitor) of the Act of 1986, to be obtained by lodging the notice mentioned in that subsection and copy notice mentioned in rule 1A.20(2)(a)(i) of the Insolvency (CVAA) Rules (notice bringing the moratorium to an end (section A28))⁽⁴⁾, must be—

- (a) lodged in the offices of the court;

(1) [S.I. 1986/2297](#), last amended by [S.S.I. 2020/440](#).

(2) Rules 3C to 3E were inserted by [S.S.I. 2020/198](#).

(3) 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).

(4) Rule 1A.20 was inserted by [S.I. 2021/1026](#).

(b) marked by the sheriff clerk with the time and date on which they are lodged and a certified copy of them so marked provided to the monitor.

(6) Paragraph (7) applies to an application to the court under—

- (a) section A13(1) (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.

(7) 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.

(8) An application to the court under section A13(1) of the Act of 1986 must be marked by the sheriff clerk with the time and date on which it is lodged and a certified copy of the application so marked provided to the directors.

Moratoriums — service

3CA. Unless the court otherwise directs, there must be included in the order for service a requirement to serve the petition or, as the case may be, note—

- (a) on the company and the monitor, where the application is made under section A21(1) or A42(1);
- (b) on the holder of the security interest and the monitor, where the application is made under section A31(1);
- (c) on the owner of the property and the monitor, where the application is made under section A32(1);
- (d) on the company, where the application is made under section A37;
- (e) on the monitor where the application is made by the directors, or on the directors where the application is made by the monitor, under section A39(1) or (2);
- (f) on the directors and the monitor, where the application is made under section A43(1) or A44(1),

of the Act of 1986.”.

(3) In rule 3E (moratoriums – challenge to monitor’s remuneration), for “paragraph 80 of schedule 4 of the Act of 2020 (challenge to monitor’s remuneration)” substitute “rule 1A.24 of

the Insolvency (CVAA) Rules (challenges to monitor’s remuneration in subsequent insolvency proceedings)(5)”.

(4) In Part IV (winding up of companies registered under the Companies Acts and of unregistered companies), before rule 18 (petitions to wind up a company)(6) insert—

“Applications to disapply restrictions on winding-up petitions

17A.—(1) An application under paragraph 1(9) of schedule 10 of the Act of 2020 (restriction on winding-up petitions)(7) must be made by petition.

(2) Rule 19 applies to a petition under paragraph (1).”.

(5) In rule 19 (intimation, service and advertisement)(8), omit paragraph (A1).

(6) In rule 31AB (decision making)(9), in paragraph (1)(c), for “rule 5.22” substitute “rules 5.22 and 5.22A(10)”.

(5) Rule 1A.24 was inserted by S.I. 2021/1026.

(6) Rule 18 was amended by S.S.I. 2020/198 and S.S.I. 2020/440.

(7) Schedule 10 of the Corporate Insolvency and Governance Act 2020 (c.12) was substituted by S.I. 2021/1029.

(8) Rule 19(A1) was inserted by S.S.I. 2020/198.

(9) Rule 31AB was inserted by S.S.I. 2020/81 and amended by S.S.I. 2020/198.

(10) Rule 5.22A was inserted by S.I. 2021/1026.