



# Insolvency Act 1986

## 1986 CHAPTER 45

### [<sup>F1</sup>PART A1

#### MORATORIUM

### [<sup>F1</sup>CHAPTER 6

#### CHALLENGES

#### Textual Amendments

- F1** Pt. A1 inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), **ss. 1(1), 49(1)** (with **ss. 2(2), 5(2)**)

#### **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).

*Status: Point in time view as at 15/03/2024.*

*Changes to legislation: Insolvency Act 1986, Chapter 6 is up to date with all changes known to be in force on or before 30 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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.

#### **Modifications etc. (not altering text)**

- C1** [S. A43](#) applied (with modifications) (E.W.) (15.3.2024) by [The Water Industry \(Special Administration\) Regulations 2024 \(S.I. 2024/205\)](#), regs. 2(2), **5(1)** (with reg. 64)

#### **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—

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- (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—
    - (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.]

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