



# Insolvency Act 1986

## 1986 CHAPTER 45

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

#### MORATORIUM

### [<sup>F1</sup>CHAPTER 8

#### MISCELLANEOUS AND GENERAL

##### 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)**)

*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).

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- (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.
- (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 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

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(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—

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- (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.

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### *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—

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- (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
    - (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;

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- “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.

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

- C1 S. A54(1) modified (temp.) (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), Sch. 4 paras. 13, 53 (with ss. 2(2), 5(2), Sch. 4 para. 1)

*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.]

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