

SCHEDULES

SCHEDULE 3

MORATORIUMS IN GREAT BRITAIN: FURTHER AMENDMENTS

Insolvency Act 1986

- 13 Before section 175 (and before the italic heading “Preferential debts” above that section) insert—

“Moratorium: order of priority of payment of debts

174A Moratorium debts etc: priority

- (1) This section applies where proceedings for the winding up of a company are begun before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the company under Part A1.
- (2) In the winding up, the following are payable out of the company’s assets (in the order of priority shown) in preference to all other claims—
 - (a) any prescribed fees or expenses of the official receiver acting in any capacity in relation to the company;
 - (b) moratorium debts and priority pre-moratorium debts.
- (3) In subsection (2)(b) “priority pre-moratorium debt” means—
 - (a) any pre-moratorium debt that is payable in respect of—
 - (i) the monitor’s remuneration or expenses,
 - (ii) goods or services supplied during the moratorium,
 - (iii) rent in respect of a period during the moratorium, or
 - (iv) wages or salary arising under a contract of employment, so far as relating to a period of employment before or during the moratorium,
 - (b) any pre-moratorium debt that—
 - (i) consists of a liability to make a redundancy payment, and
 - (ii) fell due before or during the moratorium, and
 - (c) any pre-moratorium debt that—
 - (i) arises under a contract or other instrument involving financial services,
 - (ii) fell due before or during the moratorium, and
 - (iii) is not relevant accelerated debt (see subsection (4)).
- (4) For the purposes of subsection (3)(c)—

“relevant accelerated debt” means any pre-moratorium debt that fell due during the relevant period by reason of the operation of,

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- or the exercise of rights under, an acceleration or early termination clause in a contract or other instrument involving financial services;
 “the relevant period” means the period—
- (a) beginning with the day on which the statement under section A6(1)(e) is made, and
 - (b) ending with the last day of the moratorium.
- (5) The rules may make provision as to the order in which the debts mentioned in subsection (2)(b) rank among themselves in a case where the assets of the company are insufficient to meet them in full.
 - (6) The Secretary of State may by regulations made by statutory instrument amend this section for the purposes of changing the definition of “moratorium debt” or “priority pre-moratorium debt” in this section.
 - (7) Regulations under subsection (6) may make consequential, supplementary, incidental or transitional provision or savings.
 - (8) A statutory instrument containing regulations under subsection (6) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
 - (9) For the purposes of this section proceedings for the winding up of a company are begun when—
 - (a) a winding-up petition is presented, or
 - (b) a resolution for voluntary winding up is passed.
 - (10) Any rules made under section A18(4) (meaning of supply of goods or services) apply also for the purposes of subsection (3)(a)(ii) of this section.
 - (11) In this section—

“acceleration or early termination clause”, in relation to a contract or other instrument involving financial services, means a provision of the contract or other instrument—

 - (a) under which, on the happening of an event—
 - (i) a debt or other liability falls due earlier than it otherwise would, or
 - (ii) a debt or other liability is terminated and replaced by another debt or liability, or
 - (b) which confers on a party a right which, if exercised, will result in —
 - (i) a debt or other liability falling due earlier than it otherwise would, or
 - (ii) a debt or other liability being terminated and replaced by another debt or liability;

“contract or other instrument involving financial services” has the same meaning as it has for the purposes of section A18 (see Schedule ZA2);

“monitor’s remuneration or expenses” has the meaning given by section A18;

“moratorium debt” has the meaning given by section A53;

“pre-moratorium debt” has the meaning given by section A53;

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“redundancy payment” has the meaning given by section A18;
“wages or salary” has the meaning given by section A18.”