

## SCHEDULES

### SCHEDULE 4

#### MORATORIUMS IN GREAT BRITAIN: TEMPORARY PROVISION

#### PART 4

#### TEMPORARY RULES: SCOTLAND

##### *Introductory*

- 52 Paragraphs 53 to 90 cease to have effect at the end of the relevant period, subject to paragraph 3.

##### *Definition of “the court”*

- 53 Section A54(1) of the Insolvency Act 1986 has effect as if for the definition of “the court” there were substituted—  
““the court”, in relation to a company, means a court having jurisdiction to wind up the company;”.

##### *Content of documents relating to the obtaining or extending of a moratorium: general*

- 54 A notice or statement under section A6(1), A8(2), A10(1), A11(1) or A13(2) of the Insolvency Act 1986 must state—
- (a) the provision under which it is given or made,
  - (b) the nature of the notice or statement,
  - (c) the date of the notice or statement, and
  - (d) the identification details for the company to which it relates.

##### *Authentication of documents relating to obtaining or extending moratorium: general*

- 55 (1) A notice or statement under section A6(1), A10(1), A11(1) or A13(2) of the Insolvency Act 1986 must be authenticated by or on behalf of the person giving the notice or making the statement.
- (2) A notice under section A8(2)(a) of the Insolvency Act 1986 must be authenticated by the monitor.
- (3) Rule 1.6 of the Scottish Insolvency Rules applies for the purposes of authentication under this paragraph.

##### *Notice that directors wish to obtain a moratorium*

- 56 A notice under section A6(1)(a) of the Insolvency Act 1986 must state—

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- (a) the company’s address for service, and
- (b) the court in which the documents are to be lodged under section A3 or the application under section A4 or A5 is to be made.

*Proposed monitor’s statement and consent to act*

- 57 (1) A statement under section A6(1)(b) of the Insolvency Act 1986 must be headed “Proposed monitor’s statement and consent to act” and must contain the following—
- (a) a certificate that the proposed monitor is qualified to act as an insolvency practitioner in relation to the company,
  - (b) the proposed monitor’s IP number,
  - (c) the name of the relevant recognised professional body which is the source of the proposed monitor’s authorisation to act in relation to the company, and
  - (d) a statement that the proposed monitor consents to act as monitor in relation to the company.
- (2) In this paragraph “IP number” means the number assigned to an office-holder as an insolvency practitioner by the Secretary of State.

*Timing of statements for obtaining moratorium*

- 58 Each statement under section A6(1)(b) to (e) of the Insolvency Act 1986 must be made within the period of 5 days ending with the day on which the documents under section A6(1)(a) to (e) are lodged in the court (or, if the documents are lodged on different days, the last of those days).

*Notice by monitor where moratorium comes into force*

- 59 A notice under section A8(2) of the Insolvency Act 1986 must—
- (a) state that it is given by the monitor acting in that capacity, and
  - (b) state the name and contact details of the monitor.

*Notice that directors wish to extend a moratorium*

- 60 A notice under section A10(1)(a) or A11(1)(a) of the Insolvency Act 1986 must state—
- (a) the company’s address for service,
  - (b) the court in which the notice is to be lodged.

*Extension under section A10 or A11 of the Insolvency Act 1986: notices and statements*

- 61 A statement by the monitor under section A10(1)(d) or A11(1)(d) of the Insolvency Act 1986 must contain contact details of the monitor.

*Timing of statements for extension under section A10 or A11*

- 62 Each statement under section A10(1)(b) to (d) or A11(1)(b) to (e) of the Insolvency Act 1986 must be made within the period of 3 days ending with the day on which the documents under section A10(1)(a) to (d) or A11(1)(a) to (e) are lodged in the court (or, if the documents are lodged on different days, the last of those days).

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*Obtaining creditor consent: qualifying decision procedure*

- 63 (1) The following apply, so far as relevant, for the purposes of a decision to consent to a revised end date for a moratorium under section [A12](#) of the Insolvency Act 1986—
- (a) Part 5 of the Scottish Insolvency Rules (decision making), apart from rule 5.8(3)(f) and (g);
  - (b) Part 6 of the Scottish Insolvency Rules (proxies), apart from rule 6.7.

- (2) In its application by virtue of sub-paragraph (1), Part 5 has effect subject to the modifications set out in paragraphs [64](#) to [68](#).

- 64 Rule 5.11 of the Scottish Insolvency Rules (notice of decision procedures etc) has effect as if, before the first entry in the table, there were inserted—

“moratorium	decision of pre-moratorium creditors under section <a href="#">A12</a> of the Act	the pre-moratorium creditors	5 days”.
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- 65 Rule 5.26 of the Scottish Insolvency Rules (creditors’ voting rights) has effect as if, before paragraph (1), there were inserted—

“(A1) A pre-moratorium creditor is entitled to vote in a decision procedure under section [A12](#) of the Act only if—

- (a) the creditor has delivered to the convener a statement of claim and documentary evidence of debt, including any calculation for the purposes of rule 5.28 or 5.29,
- (b) the statement of claim and documentary evidence of debt were received by the convener not later than the decision date, or in the case of a meeting, at or before the meeting, and
- (c) the statement of claim and documentary evidence of debt has been admitted for the purposes of entitlement to vote.”

- 66 Rule 5.28 of the Scottish Insolvency Rules (calculation of voting rights) has effect as if—

- (a) before paragraph (1) there were inserted—

“(A1) In relation to a decision to consent to a revised end date for a moratorium under section [A12](#) of the Act votes are calculated according to the amount of each creditor’s claim at the decision date.”;

- (b) after paragraph (2) there were inserted—

“(2A) But in relation to a decision to consent to a revised end date for a moratorium under section [A12](#) of the Act, a debt of an unliquidated or unascertained amount is to be valued at £1 for the purposes of voting unless the convener or chair or an appointed person decides to put a higher value on it.”;

- (c) in paragraph (6), after sub-paragraph (b) there were inserted—

“(c) where the decision relates to whether to consent to a revised end date for a moratorium under section [A12](#) of the Act.”

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- 67 Rule 5.29 of the Scottish Insolvency Rules (calculation of voting rights: hire-purchase agreements) has effect as if, before paragraph (1), there were inserted—
- “(A1) In relation to a decision to consent to a revised end date for a moratorium under section A12 of the Act, a pre-moratorium creditor under a hire-purchase agreement is entitled to vote in respect of the amount of the debt due and payable by the company at the decision date.
- (B1) In calculating the amount of any debt for the purpose of paragraph (A1), no account is to be taken of any amount attributable to the exercise of any right under the relevant agreement so far as the right has become exercisable solely by virtue of a moratorium for the company coming into force.”
- 68 Rule 5.31 of the Scottish Insolvency Rules (requisite majorities) has effect as if, before paragraph (1), there were inserted—
- “(A1) Subject to paragraph (B1), a decision to consent to a revised end date for a moratorium under section A12 of the Act is made if, of those voting—
- (a) a majority (in value) of the pre-moratorium creditors who are secured creditors vote in favour of the proposed decision, and
- (b) a majority (in value) of the pre-moratorium creditors who are unsecured creditors vote in favour of the proposed decision.
- (B1) But a decision to consent to a revised end date for a moratorium under section A12 of the Act is not made if, of those voting either—
- (a) a majority of the pre-moratorium creditors who are unconnected secured creditors vote against the proposed end date, or
- (b) a majority of the pre-moratorium creditors who are unconnected unsecured creditors vote against the proposed end date.
- (C1) For the purposes of paragraph (B1)—
- (a) a creditor is unconnected unless the convener or chair decides that the creditor is connected, and
- (b) the total value of the unconnected creditors is the total value of those unconnected creditors whose claims have been admitted for voting.”

*Content of application to the court for extension of moratorium*

- 69 (1) An application by the directors of a company for the extension of a moratorium under section A13 of the Insolvency Act 1986 must state—
- (a) that it is made under that section,
- (b) the length of the extension sought,
- (c) identification details for the company to which the application relates,
- (d) the company’s address for service, and
- (e) the court in which the application is made.
- (2) The application must be authenticated by or on behalf of the directors.
- (3) Rule 1.6 of the Scottish Insolvency Rules applies for the purposes of authentication under sub-paragraph (2).

*Timing of statements accompanying application to court for extension of moratorium*

- 70 A statement under section [A13\(2\)](#) must be made within the period of 3 days ending with the day on which the application under that section is made.

*Notices about change in end of moratorium*

- 71 (1) A notice under section [A17\(1\)](#) of the Insolvency Act 1986 must be given within the period of 5 days beginning with the day on which the duty to give the notice arises.

(2) The notice must state—

- (a) the name of the company to which it relates, and
- (b) the provision by virtue of which the moratorium was extended or came to an end.

- 72 (1) A notice under section [A17\(2\)](#) or [\(3\)](#) of the Insolvency Act 1986 must be given within the period of 5 days beginning with the day on which the duty to give the notice arises.

(2) The notice must state—

- (a) the provision under which it is given,
- (b) the nature of the notice,
- (c) the date of the notice,
- (d) that it is given by the monitor acting in that capacity,
- (e) the name and contact details of the monitor, and
- (f) the identification details for the company to which it relates.

(3) A notice under section [A17\(2\)](#) or [\(3\)](#) of the Insolvency Act 1986 that is given to the registrar of companies must be authenticated by or on behalf of the monitor.

(4) Rule 1.6 of the Scottish Insolvency Rules applies for the purposes of authentication under sub-paragraph [\(3\)](#).

- 73 Where a moratorium comes to an end under section [A16](#) of the Insolvency Act 1986 because the company has entered into a relevant insolvency procedure within the meaning of that section, the notices under section [A17\(1\)](#) and [\(2\)](#) must state—

- (a) the date on which the company entered into the relevant insolvency procedure, and
- (b) the name and contact details of the supervisor of the voluntary arrangement, the administrator or the liquidator.

- 74 (1) A notice under section [A17\(4\)](#) of the Insolvency Act 1986 must be given within the period of 3 business days beginning with the day on which the notice under section [A38\(1\)](#) is lodged in the court.

(2) The notice under section [A17\(4\)](#) of that Act must be accompanied by the notice that the monitor has lodged in the court under section [A38\(1\)](#) of that Act.

*Notification by directors of insolvency proceedings etc*

- 75 (1) A notice under section [A24\(1\)](#) of the Insolvency Act 1986 must be given before the period of 3 days ending with the day on which the step mentioned there is taken.

(2) A notice under section [A24\(2\)](#) of the Insolvency Act 1986 must be given within the period of 3 days beginning with the day on which the duty to give the notice arises.

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*Notice of termination of moratorium*

- 76 (1) A notice under section [A38\(1\)](#) of the Insolvency Act 1986 must be lodged in the court as soon as practicable after the duty in that subsection arises.
- (2) The notice must state—
- (a) the provision under which it is given,
  - (b) the nature of the notice,
  - (c) the date of the notice,
  - (d) the name and contact details of the monitor,
  - (e) the identification details for the company to which it relates,
  - (f) the grounds on which the moratorium is being terminated,
  - (g) the monitor’s reasons for concluding that those grounds are made out,
  - (h) the date on which the monitor concluded that those grounds were made out, and
  - (i) the court in which the notice is to be lodged.
- (3) The notice must be authenticated by or on behalf of the monitor.
- (4) Rule 1.6 of the Scottish Insolvency Rules applies for the purposes of authentication under sub-paragraph (3).

*Termination of moratorium under section [A38\(1\)\(d\)](#) of the Insolvency Act 1986*

- 77 For the purposes of deciding whether to bring a moratorium to an end under section [A38\(1\)\(d\)](#) of the Insolvency Act 1986 the monitor must disregard—
- (a) any debts that the monitor has reasonable grounds for thinking are likely to be paid within 5 days of the decision, and
  - (b) any debts in respect of which the creditor has agreed to defer payment until a time that is later than the decision.

*Replacement of monitor or additional monitor: statement and consent to act*

- 78 (1) A statement under section [A39\(4\)](#) of the Insolvency Act 1986 must be headed “Proposed monitor’s statement and consent to act” and must contain the following—
- (a) a certificate that the proposed monitor is qualified to act as an insolvency practitioner in relation to the company,
  - (b) the proposed monitor’s IP number,
  - (c) the name of the relevant recognised professional body which is the source of the proposed monitor’s authorisation to act in relation to the company, and
  - (d) a statement that the proposed monitor consents to act as monitor in relation to the company.
- (2) The statement must be made within the period of 5 days ending with the day on which it is lodged in the court.
- (3) In this paragraph “IP number” means the number assigned to an office-holder as an insolvency practitioner by the Secretary of State.

*Replacement of monitor or additional monitor: notification*

- 79 (1) A notice under section [A39\(8\)](#) of the Insolvency Act 1986 must state—

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- (a) the provision under which it is given,
  - (b) the nature of the notice,
  - (c) the date of the notice,
  - (d) the identification details for the company to which it relates,
  - (e) that it is given by the monitor acting in that capacity, and
  - (f) the name and contact details of the monitor.
- (2) The notice must be authenticated by the monitor.
- (3) Rule 1.6 of the Scottish Insolvency Rules applies for the purposes of authentication under sub-paragraph (2).

#### *Challenge to monitor's remuneration*

- 80 (1) An administrator or liquidator of a company may apply to the court on the ground that remuneration charged by the monitor in relation to a prior moratorium for the company under Part A1 of the Insolvency Act 1986 was excessive.
- (2) An application under this paragraph may not be made after the end of the period of 2 years beginning with the day after the moratorium ends.
- (3) On an application under this paragraph the court may—
- (a) dismiss the application,
  - (b) order the monitor to repay some or all of the remuneration, or
  - (c) make such other order as it thinks fit.
- (4) The expenses of an application under this paragraph are, unless the court orders otherwise, to be paid as an expense of the administration or liquidation.

#### *Challenge to directors' actions: qualifying decision procedure*

- 81 Where the court makes an order by virtue of section A44(4)(c) of the Insolvency Act 1986 requiring a decision of a company's creditors, the following provisions of the Scottish Insolvency Rules apply for the purposes of that decision to the extent set out in the court's order and subject to any modifications set out in the court's order—
- (a) Part 5 (decision making);
  - (b) Part 6 (proxies).

#### *Priority of moratorium debts etc in subsequent winding up*

- 82 (1) Where section 174A of the Insolvency Act 1986 applies, the moratorium debts and pre-moratorium debts mentioned in subsection (2)(b) of that section are payable in the following order of priority—
- (a) amounts payable in respect of goods or services supplied during the moratorium under a contract where, but for section 233B(3) or (4) of that Act, the supplier would not have had to make that supply;
  - (b) wages or salary arising under a contract of employment;
  - (c) other debts or other liabilities apart from the monitor's remuneration or expenses;
  - (d) the monitor's remuneration or expenses.

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- (2) In this paragraph “wages or salary” has the same meaning as in section A18 of the Insolvency Act 1986.

*Priority of moratorium debts etc in subsequent administration*

- 83 (1) Where paragraph 64A(1) of Schedule B1 to the Insolvency Act 1986 applies, the moratorium debts and pre-moratorium debts mentioned in paragraph 64A(2) of that Schedule are payable in the following order of priority—
- (a) amounts payable in respect of goods or services supplied during the moratorium under a contract where, but for section 233B(3) or (4) of that Act, the supplier would not have had to make that supply;
  - (b) wages or salary arising under a contract of employment;
  - (c) other debts or other liabilities apart from the monitor’s remuneration or expenses;
  - (d) the monitor’s remuneration or expenses.
- (2) In this paragraph “wages or salary” has the same meaning as in section A18 of the Insolvency Act 1986.

*Prescribed format of documents*

- 84 Rule 1.5 of the Scottish Insolvency Rules (requirement for writing and form of documents) applies for the purposes of Part A1 of the Insolvency Act 1986.
- 85 (1) The following provisions of the Scottish Insolvency Rules apply, so far as relevant, to any requirement imposed by a provision of this Part of this Schedule—
- rule 1.9 (prescribed format of documents), and
  - rule 1.10 (variations from prescribed contents).
- (2) In their application by virtue of sub-paragraph (1), a reference in rule 1.9 or 1.10 to the requirements of a rule is to be read as a reference to the requirements of the provision of this Part of this Schedule.

*Delivery of documents*

- 86 The following provisions of Chapter 9 of Part 1 of the Scottish Insolvency Rules apply for the purposes of proceedings under Part A1 of the Insolvency Act 1986 as if rule 1.32(1) included a reference to such proceedings—
- rule 1.32(2) to (3) (delivery to registrar of companies);
  - rule 1.36 (delivery of documents to authorised recipients);
  - rule 1.37 (delivery of documents to joint office-holders);
  - rule 1.38 (postal delivery of documents);
  - rule 1.39 (delivery by document exchange);
  - rule 1.40 (personal delivery of documents);
  - rule 1.41 (electronic delivery of documents).

*Identification details for a company*

- 87 (1) Where a provision of this Part of this Schedule requires a document to contain identification details for a company that is registered under the Companies Act 2006 in Scotland, the following information must be given—



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- (a) the company’s registered name;
  - (b) its registered number;
- (2) Where a provision of this Part of this Schedule requires a document to contain identification details for a company that has registered particulars under section 1046(1) of the Companies Act 2006 (registered overseas companies), the following information must be given—
- (a) the name registered by the company under section 1047 of that Act,
  - (b) the number under which it is registered, and
  - (c) the country or territory in which it is incorporated.
- (3) Where a provision of this Part of this Schedule requires a document to contain identification details for an unregistered company that does not come within subparagraph (2) the following information must be given—
- (a) the company’s name, and
  - (b) the postal address of any principal place of business.

*Contact details of a monitor or other office-holder*

- 88 Where a provision of this Part of this Schedule requires a document to contain contact details of a monitor or other office-holder, the following information must be given—
- (a) a postal address for the monitor or office-holder, and
  - (b) either an email address, or a telephone number, through which the monitor may be contacted.

*“The Scottish Insolvency Rules”*

- 89 In this Part of this Schedule “the Scottish Insolvency Rules” means the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 ([S.I. 2018/1082](#)).

*Interpretation: general*

- 90 Expressions used in this Part of this Schedule are to be construed as if this Part of this Schedule were contained in Part A1 of the Insolvency Act 1986.