

## [<sup>F1</sup>SCHEDULE 1A

### Supplementary provision on moratoriums

**F1** Sch. 1A inserted (30.9.2021) by The Co-operative and Community Benefit Societies (Administration) (Amendment) Order 2021 (S.I. 2021/1048), arts. 1(1), 2(4)

## PART 2

### England and Wales

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

**2.** A notice or statement under section A6(1), A8(2), A10(1), A11(1) or A13(2) of the 1986 Act 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 relevant CCBS to which it relates.

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

**3.—(1)** A notice or statement under section A6(1), A10(1), A11(1) or A13(2) of the 1986 Act 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 1986 Act must be authenticated by the monitor.

(3) Rule 1.5 of the England and Wales Insolvency Rules applies for the purposes of authentication under this paragraph.

#### **Notice that members of the committee wish to obtain a moratorium**

**4.** A notice under section A6(1)(a) of the 1986 Act must state—

- (a) the relevant CCBS's address for service, and
- (b) the court (and where applicable, the division or district registry of that court) or hearing centre in which the documents are to be filed under section A3 or the application under section A4 or A5 is to be made.

#### **Proposed monitor's statement and consent to act**

**5.—(1)** A statement under section A6(1)(b) of the 1986 Act 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 relevant CCBS,
- (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 relevant CCBS, and
- (d) a statement that the proposed monitor consents to act as monitor in relation to the relevant CCBS.

*Changes to legislation: There are currently no known outstanding effects for the The Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014, PART2. (See end of Document for details)*

(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**

6. Each statement under section A6(1)(b) to (e) of the 1986 Act 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 filed with the court (or, if the documents are filed on different days, the last of those days).

**Notice by monitor where moratorium comes into force**

- 7. A notice under section A8(2) of the 1986 Act 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 members of the committee wish to extend a moratorium**

- 8. A notice under section A10(1)(a) or A11(1)(a) of the 1986 Act must state—
  - (a) the relevant CCBS’s address for service, and
  - (b) the court (and where applicable, the division or district registry of that court) or hearing centre in which the notice is to be filed.

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

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

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

10. Each statement under section A10(1)(b) to (d) or A11(1)(b) to (e) of the 1986 Act 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 filed with the court (or, if the documents are filed on different days, the last of those days).

**Obtaining creditor consent: qualifying decision procedure**

11.—(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 1986 Act—

- (a) Part 15 of the England and Wales Insolvency Rules (decision making), apart from rule 15.8(3)(f) and (g),
- (b) Part 16 of the England and Wales Insolvency Rules (proxies), apart from rule 16.7.

(2) In its application by virtue of sub-paragraph (1), Part 15 has effect subject to the modifications set out in paragraphs 12 to 16.

12. Rule 15.11 of the England and Wales Insolvency Rules (notice of decision procedures etc) has effect as if, before the first entry in the table, there were inserted—

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“moratorium	decision of pre- the pre-moratorium 5 days”
	moratorium creditors creditors
	under section A12 of
	the Act

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**13.** Rule 15.28 of the England and Wales 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 proof of the debt claimed in accordance with paragraph (3) including any calculation for the purposes of rule 15.31 or 15.32,
- (b) the proof was received by the convener—
  - (i) not later than the decision date, or in the case of a meeting, 4pm on the business day before the meeting, or
  - (ii) in the case of a meeting, later than the time given in sub-paragraph (i) where the chair is content to accept the proof, and
- (c) the proof has been admitted for the purposes of entitlement to vote.”.

**14.** Rule 15.31 of the England and Wales 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.”.

**15.** Rule 15.32 of the England and Wales Insolvency Rules (calculation of voting rights: special cases) 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 relevant CCBS 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 relevant CCBS coming into force.”.

**16.** Rule 15.34 of the England and Wales 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.

*Changes to legislation: There are currently no known outstanding effects for the The Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014, PART2. (See end of Document for details)*

(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**

17.—(1) An application by the members of the committee of a relevant CCBS for the extension of a moratorium under section A13 of the 1986 Act must state—

- (a) that it is made under that section,
- (b) the length of the extension sought,
- (c) identification details for the relevant CCBS to which the application relates,
- (d) the relevant CCBS’s address for service, and
- (e) the court (and where applicable, the division or district registry of that court) or hearing centre in which the application is made.

(2) The application must be authenticated by or on behalf of the members of the committee.

(3) Rule 1.5 of the England and Wales Insolvency Rules applies for the purposes of authentication under sub-paragraph (2).

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

18. 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**

19.—(1) A notice under section A17(1) of the 1986 Act 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 relevant CCBS to which it relates, and
- (b) the provision by virtue of which the moratorium was extended or came to an end.

20.—(1) A notice under section A17(2) or (3) of the 1986 Act 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 relevant CCBS to which it relates.

(3) A notice under section A17(2) or (3) of the 1986 Act that is given to the FCA must be authenticated by or on behalf of the monitor.

(4) Rule 1.5 of the England and Wales Insolvency Rules applies for the purposes of authentication under sub-paragraph (3).

**21.** Where a moratorium comes to an end under section A16 of the 1986 Act because the relevant CCBS 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 relevant CCBS 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.

**22.—(1)** A notice under section A17(4) of the 1986 Act must be given within the period of 3 business days beginning with the day on which the notice under section A38(1) of that Act is filed with the court.

(2) The notice under section A17(4) of that Act must be accompanied by the notice that the monitor has filed with the court under section A38(1) of that Act.

#### **Notification by members of the committee of insolvency proceedings etc**

**23.—(1)** A notice under section A24(1) of the 1986 Act 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 1986 Act must be given within the period of 3 days beginning with the day on which the duty to give the notice arises.

#### **Notice of termination of moratorium**

**24.—(1)** A notice under section A38(1) of the 1986 Act must be filed with 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 relevant CCBS 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 (and where applicable, the division or district registry of that court) or hearing centre in which the notice is to be filed.
- (3) The notice must be authenticated by or on behalf of the monitor.
- (4) Rule 1.5 of the England and Wales Insolvency Rules applies for the purposes of authentication under sub-paragraph (3).

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### **Termination of moratorium under section A38(1)(d) of the 1986 Act**

**25.** For the purposes of deciding whether to bring a moratorium to an end under section A38(1)(d) of the 1986 Act 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**

**26.—**(1) A statement under section A39(4) of the 1986 Act 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 relevant CCBS,
- (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 relevant CCBS, and
- (d) a statement that the proposed monitor consents to act as monitor in relation to the relevant CCBS.

(2) The statement must be made within the period of 5 days ending with the day on which it is filed with 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**

**27.—**(1) A notice under section A39(8) of the 1986 Act must state—

- (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 relevant CCBS 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 1.5 of the England and Wales Insolvency Rules applies for the purposes of authentication under sub-paragraph (2).

### **Challenge to monitor’s remuneration**

**28.—**(1) An administrator or liquidator of a relevant CCBS may apply to the court on the ground that remuneration charged by the monitor in relation to a prior moratorium for the relevant CCBS under Part A1 of the 1986 Act 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,

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- (b) order the monitor to repay some or all of the remuneration, or
- (c) make such other order as it thinks fit.

(4) The costs 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 actions of the members of the committee: qualifying decision procedure**

**29.** Where the court makes an order by virtue of section A44(4)(c) of the 1986 Act requiring a decision of a relevant CCBS's creditors, the following provisions of the England and Wales 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 15 (decision making),
- (b) Part 16 (proxies).

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

**30.**—(1) Where section 174A of the 1986 Act 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.

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

#### **Priority of moratorium debts etc in subsequent administration**

**31.**—(1) Where paragraph 64A(1) of Schedule B1 to the 1986 Act 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 1986 Act.

#### **Prescribed format of documents**

**32.** Rule 1.4 of the England and Wales Insolvency Rules (requirement for writing and form of documents) applies for the purposes of Part A1 of the 1986 Act.

**33.**—(1) The following provisions of the England and Wales Insolvency Rules apply, so far as relevant, to any requirement imposed by a provision of this Part of this Schedule—

- (a) rule 1.8 (prescribed format of documents), and
- (b) rule 1.9(1) (variations from prescribed contents).

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(2) Their application by virtue of sub-paragraph (1), a reference in rule 1.8 or 1.9(1) 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**

**34.** The following provisions of Chapter 9 of Part 1 of the England and Wales Insolvency Rules apply for the purposes of proceedings under Part A1 of the 1986 Act as if rule 1.36(1) included a reference to such proceedings—

- (a) rule 1.36(2) (delivery to registrar of companies),
- (b) rule 1.40 (delivery of documents to authorised recipients),
- (c) rule 1.41 (delivery of documents to joint office-holders),
- (d) rule 1.42 (postal delivery of documents),
- (e) rule 1.43 (delivery by document exchange),
- (f) rule 1.44 (personal delivery of documents),
- (g) rule 1.45 (electronic delivery of documents).

**Applications to court**

**35.—**(1) The provisions of the England and Wales Insolvency Rules specified in the Table apply, so far as relevant, for the purposes of proceedings under—

- (a) Part A1 of the 1986 Act,
- (b) this Part of this Schedule.

(2) In their application by virtue of sub-paragraph (1), the provisions listed in the Table have effect with—

- (a) the modification set out in sub-paragraph (3),
- (b) the modifications specified in the Table, and
- (c) any other necessary modifications.

(3) The modification is that any reference to Part 1 of the 1986 Act includes a reference to Part A1 of that Act and this Part of this Schedule.

(4) This is the Table referred to in sub-paragraphs (1) and (2)—

<i>Insolvency Rules</i>	<i>Topic</i>	<i>Modifications</i>
Rule 1.35	Standard contents and authentication of application	
Rules 12.1 and 12.2	Court rules and practice to apply etc	
Rule 12.3 and Schedule 6	Commencement of proceedings	
Rules 12.7 to 12.11 and 12.13	Making applications to court: general	Rule 12.9 has effect as if, in relation to a relevant CCBS, it also required the application to be served on the Financial Conduct Authority
Rules 12.27 to 12.29	Obtaining information and evidence	Rule 12.29(3) has effect as if it included a reference to the monitor in relation to a moratorium



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<i>Insolvency Rules</i>	<i>Topic</i>	<i>Modifications</i>
Rules 12.30, 12.31, 12.33 and 12.35 to 12.38	Transfer of proceedings	(a) Rule 12.36(2) has effect as if the list of office-holders included the monitor in relation to a moratorium,  (b) Rule 12.37(2) and (3) have effect as if the list of provisions included section A39 of the Insolvency Act 1986
Rules 12.39 and 12.40	The court file	
Rules 12.41, 12.42(5), 12.47, 12.48 and 12.50	Costs	Rule 12.48(2) has effect as if it required the applicant to serve a sealed copy of the application on the monitor and the relevant CCBS to which the moratorium relates
Rule 12.51	Enforcement of court orders	
Rules 12.58, 12.59 and 12.61 and Schedule 10	Appeals	
Rules 12.63 to 12.65	Court orders, formal defects and shorthand writers	
Schedule 4, paragraphs 1, 4, 5 and 6		These paragraphs of Schedule 4 apply only for the purposes of the rules applied by this Table

#### **Identification details for a relevant CCBS**

**36.** Where a provision of this Part of this Schedule requires a document to contain identification details for a relevant CCBS, the following information must be given—

- (a) the relevant CCBS’s registered name, and
- (b) its registered number.

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

**37.** 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.

#### **Meaning of “The England and Wales Insolvency Rules”**

**38.** In this Part of this Schedule “the England and Wales Insolvency Rules” means the Insolvency (England and Wales) Rules 2016 as they had effect on 30th September 2021.]

**Changes to legislation:**

There are currently no known outstanding effects for the The Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014, PART2.