
STATUTORY INSTRUMENTS

2021 No. 1025

**The Insolvency (Scotland) (Receivership
and Winding up) (Amendment) Rules 2021**

PART 2

Miscellaneous amendments of the Insolvency Rules

Amendment of Part 4 of the Insolvency Rules

6.—(1) Rule 4.4 (additional requirements as to statement of affairs) is amended as follows.

(2) In paragraph (1), after “must also contain” insert “the following and, in addition, when paragraph (1B) applies, the information specified in that paragraph”.

(3) After paragraph (1) insert—

“(1A) Paragraph (1B) applies if a moratorium under Part A1 of the Act is, or has been, in force for the company at any time within the period of 12 weeks ending with the day on which the resolution for a voluntary winding up is passed.

(1B) Where this paragraph applies—

(a) the statement of affairs must identify which of the debts owed by the company are:

(i) moratorium debts; or

(ii) priority pre-moratorium debts

within the meaning given in section 174A(1).

(b) paragraph (1)(c)(iv) has effect as if the reference to preferential creditors included references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A.

(c) paragraph (1)(d)(i),(ii) and (vii) have effect as if the reference to preferential debts included references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A.”.

7.—(1) Rule 4.20 (appointment by creditors or by the company) is amended as follows.

(2) After paragraph (9) insert—

“(10) In the case of a voluntary winding up where, immediately before the company goes into liquidation, a moratorium under Part A1 of the Act is in force for that company, the liquidator must deliver notice of their appointment to the monitor⁽²⁾ and such notice must be given within the period of 14 days beginning with the day on which liquidator is appointed.”.

8.—(1) Rule 4.22 (appointment by the court (section 100(3) or 108)) is amended as follows—

(1) Section 174A was inserted by paragraph 13 of Schedule 3 to the Corporate Insolvency and Governance Act 2020.

(2) “Monitor” in relation to a moratorium has the meaning given in section A54.

(2) After paragraph (6) insert—

“(7) In the case of a voluntary winding up where, immediately before the company goes into liquidation, a moratorium under Part A1 of the Act is in force for that company, the liquidator must deliver such notice of their appointment to the monitor and such notice must be given within the period of 14 days beginning with the day on which liquidator is appointed.”.

Amendment of Part 5 of the Insolvency Rules

9.—(1) Rule 5.5 (order of appointment of provisional liquidator- delivery of copy) is amended as follows.

(2) After paragraph (b) insert—

“(ba) where a moratorium under Part A1 of the Act is in force for the company, the monitor.”.

10.—(1) Rule 5.10 (termination of appointment) is amended as follows.

(2) After paragraph (5)(a) insert—

“(aa) if a moratorium under Part A1 of the Act is in force for the company, the monitor;”.

11.—(1) Rule 5.13 (statement of affairs: contents and delivery) is amended as follows.

(2) In paragraph (1) after “contain” insert “the following, and where paragraph (1B) applies, the information specified in that paragraph”.

(3) After paragraph (1) insert—

“(1A) Paragraph (1B) applies if a moratorium under Part A1 of the Act is or has been in force for the company at any time within the period of 12 weeks ending with the day on which the winding up petition is presented.

(1B) Where this paragraph applies the statement of affairs must contain the following—

- (a) the matters specified in paragraph (1)(a) to (e) and (g); and
- (b) the information specified in paragraph (1)(f) but with the effect specified in paragraph (1C).

(1C) Where paragraph (1B) applies—

- (a) the summary of the liabilities of the company must, in addition, set out which of the debts owed by the company are—
 - (i) moratorium debts; or
 - (ii) priority pre-moratorium debts

within the meaning given by section 174A; and

- (b) sub-paragraph 1(e)(iv) has effect as if the reference to preferential creditors included references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A.
- (c) paragraph (1)(f)(i), (ii) and (vii) has effect as if the reference to preferential debts included references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A.”.

Amendment of Part 7 of the Insolvency Rules

12.—(1) After rule 7.27 insert—

“Priority of moratorium debts in a subsequent winding up

7.27A.—(1) Where section 174A applies, the moratorium debts and priority 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)(3), the supplier would not have had to make that supply;
- (b) wages or salary(4) arising under a contract of employment;
- (c) other debts or other liabilities apart from the monitor’s remuneration or expenses; and
- (d) the monitor’s remuneration or expenses.”.

13.—(1) Rule 7.28 (order of priority of expenses of liquidation) is amended as follows.

(2) After paragraph (1) insert—

“(1A) The costs of an application by the liquidator under rule 1A.24 of The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018(5) are to be treated as an expense of the liquidation unless the court orders otherwise.”.

14.—(1) Rule 7.31 (estate to be distributed in respect of the accounting periods) is amended as follows.

(2) After paragraph (7) insert—

“(7A) Where section 174A of the Act applies, paragraph (7)(b) shall have effect as if the reference to preferential debts included references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A. ”.

(3) Section 223B was inserted by section 14 of the Corporate Insolvency and Governance Act 2020.

(4) “wages or salary” has the same meaning as in section A18 of the Act.

(5) [S.I. 2018/1082](#).