

2021 No. 1025

INSOLVENCY, SCOTLAND

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

<i>Made</i>	- - - -	<i>8th September 2021</i>
<i>Laid before Parliament</i>		<i>9th September 2021</i>
<i>Coming into force</i>	- -	<i>1st October 2021</i>

The Secretary of State makes the following Rules in exercise of the powers conferred by section 411(1)(b) of the Insolvency Act 1986(a).

PART 1

Introductory provision

Citation, commencement and interpretation

1. These Rules may be cited as the Insolvency (Scotland) (Receivership and Winding up) (Amendment) Rules 2021 and come into force on 1st October 2021.

2. In these Rules the “Insolvency Rules” means the Insolvency (Scotland) (Receivership and Winding up) Rules 2018(b).

Extent

3. These Rules extend to Scotland only.

Saving provisions

4.—(1) This rule applies where before 1 October 2021—

- (a) a moratorium under Part A1 of the Insolvency Act 1986 has come into force; or
- (b) in the case of a moratorium for a company to which either section A4 or A5 of the Insolvency Act 1986(c) applies, an application has been made to the court.

(2) Where this rule applies—

- (a) the amendments made by Part 2 of these Rules do not apply; and

(a) 1986 c. 45.

(b) S.S.I. 2018/347; those Rules have been amended but the amendments are not relevant for the purposes of these Rules.

(c) Sections A4 and A5 were inserted by section 1 of the Corporate Insolvency and Governance Act 2020.

- (b) Part 4 of Schedule 4 to the Corporate Insolvency and Governance Act 2020^(a) continues to have effect

in relation to that moratorium.

5. Nothing in Part 2 of these Rules affects the operation of the Insolvency Rules in relation to a moratorium under Schedule A1 to the Insolvency Act 1986 which has come into force before 1st October 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^(b).

(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^(c) 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—

(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.”.

(a) 2020 c. 12; Schedule 4 has been amended but those amendments are not relevant for the purposes of these Rules.

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

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

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)(a), the supplier would not have had to make that supply;

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

- (b) wages or salary^(a) 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^(b) 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. ”.

Callanan

Parliamentary Under Secretary of State

Department of Business, Energy and Industrial Strategy

8th September 2021

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Insolvency (Scotland) (Receivership and Winding Up) Rules 2018 (S.S.I. 2018/347) in connection with the introduction of the new moratorium procedure (“the moratorium”) in Part A1 of the Insolvency Act 1986 (c. 45) (“the 1986 Act”).

Section 1 of the Corporate Insolvency and Governance Act 2020 (c.12) (“CIGA 2020”) inserted a new Part A1 into the 1986 Act. Part A1 provides for a moratorium which, in summary, enables an eligible company to obtain certain protections from creditors. Schedule 4 to CIGA 2020 contains temporary rules for the purpose of the moratorium. These temporary rules were enacted so that the moratorium could be given immediate effect pending the making of these Rules.

These Rules are in two Parts. Part 1 contains introductory provisions dealing with the coming into force and territorial extent of the Rules. Rules 4 and 5 make saving provision for cases where a moratorium (or a moratorium under Schedule A1 to the 1986 Act) is in effect (or, in certain cases, an application for a moratorium has been made) at the time these Rules come into force. If that is the position then the amendments made by these Rules do not apply; instead the rules that apply at the time that the moratorium first came into effect (or when the application for the moratorium was made) continue to apply for the lifetime of that moratorium.

Part 2 of these Rules makes consequential amendments to Parts 4, 5 and 7 of the 2018 Rules. These consequential amendments deal with the notifications that must be given where a company enters a winding up during a moratorium procedure and the identification of debts incurred during a moratorium which are required under the 1986 Act to have priority in subsequent winding up.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. An explanatory memorandum has been published alongside this instrument at www.legislation.gov.uk.

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

(b) S.I. 2018/1082.

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