

2021 No. 1048

CO-OPERATIVE SOCIETIES

COMMUNITY BENEFIT SOCIETIES

**The Co-operative and Community Benefit Societies
(Administration) (Amendment) Order 2021**

Made - - - -at 10.45 a.m. on 15th September 2021

Laid before Parliament at 3.30 p.m. on 15th September 2021

Coming into force - - - 30th September 2021

The Treasury, under section 118 of the Co-operative and Community Benefit Societies Act 2014^(a), and the Secretary of State, under section 277 of the Enterprise Act 2002^(b) make the following Order.

The Secretary of State concurs in the making of this Order under section 118 of the Co-operative and Community Benefit Societies Act 2014.

Citation, commencement and extent

1.—(1) This Order may be cited as the Co-operative and Community Benefit Societies (Administration) (Amendment) Order 2021 and comes into force on 30th September 2021.

(2) Any amendment made by this Order has the same extent as the provision being amended.

Amendment of the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014

2.—(1) The Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014^(c) is amended as follows.

(2) In Article 2—

(a) after paragraph (2), insert—

“(2A) Schedule 1A applies in relation to a proposal by the members of the committee of a relevant CCBS for a moratorium under Part A1 of the 1986 Act (as applied in relation to a relevant CCBS), and—

(a) the courts in England and Wales have jurisdiction to wind up the relevant CCBS,
or

(a) 2014 c. 14. Section 118 was amended by paragraph 52 of Schedule 3 and paragraph 50 of Schedule 9 to the Corporate Insolvency and Governance Act 2020 (c. 12).

(b) 2002 c. 40.

(c) S.I. 2014/229; relevant amending instrument is S.I. 2020/744.

- (b) a sheriff court in Scotland has jurisdiction to wind up the relevant CCBS.”,
- (b) omit paragraph (5).
- (3) In Article 11, omit paragraph (6).
- (4) After Schedule 1, insert—

“SCHEDULE 1A

Article 2(2A)

Supplementary provision on moratoriums

PART 1

General provision

Interpretation

1.—(1) In this Schedule, and in the provisions applied by this Schedule (“the applied provisions”)—

- (a) a reference to Part A1 or any provision of Part A1, 4 or 6 of the 1986 Act is a reference to that Part or provision as applied in relation to a relevant CCBS,
- (b) an expression defined in the 1986 Act which is not modified by this Schedule, has the meaning given in the 1986 Act,
- (c) a reference to an administrative receiver is a reference to an administrative receiver within the meaning given in Part A1 of the 1986 Act in relation to a relevant CCBS whose registered office is in England or Wales,
- (d) a reference to the articles of a company is a reference to the rules of a relevant CCBS,
- (e) a reference to a class of creditors includes a reference to a single class of members of a relevant CCBS that consists of the member depositors of the CCBS, but only insofar as the member depositors are owed amounts in respect of deposits,
- (f) a reference to a company includes a reference to a relevant CCBS,
- (g) a reference to a relevant CCBS’s creditors, or to a company’s creditors, other than in reference to a class of creditors, does not include a reference to a member of a relevant CCBS to whom an amount is owed by the CCBS if, but only in so far as, the amount concerned is owed in respect of the member’s shares,
- (h) a reference to the directors of a company is a reference to the members of the committee of a relevant CCBS,
- (i) a reference to a floating charge is a reference to a floating charge within the meaning given in Part A1 in relation to a relevant CCBS whose registered office is in England or Wales or Scotland,
- (j) a reference to a meeting of a relevant CCBS or of a company, or of the members of a relevant CCBS or of a company, is a reference to a general meeting of a relevant CCBS and, in relation to a CCBS whose rules allow the members to appoint delegates for meetings of the CCBS or its members, includes a reference to a general meeting for which delegates have been appointed,
- (k) a reference to an officer of a company is a reference to an officer of a relevant CCBS, and
- (l) a reference to the registrar of companies is a reference to the FCA.

(2) An expression used in this Schedule, which is not modified by this Schedule, is to be construed as if this Schedule were contained in Part A1 of the 1986 Act.

(3) Section A54(1) of the 1986 Act has effect as if for the definition of “the court” there were substituted—

““the court” in relation to a relevant CCBS, means a court having jurisdiction to wind up the relevant CCBS;”.

(4) The applied provisions have effect as if they provided that a person appointed for the purpose by the FCA is entitled—

- (a) to attend any meeting of creditors of a relevant CCBS summoned for the purposes of Part A1 of the 1986 Act, as applied in relation to a relevant CCBS, and
- (b) to make representations as to any matter for decision at such a meeting.

(5) The applied provisions have effect with the modifications set out in this Schedule, and any other necessary modification.

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.

(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—

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

(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).

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,
- (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).

(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
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	Appeals	

and Schedule 10 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(a) as they had effect on 30th September 2021.

PART 3

Scotland

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

39. 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

40.—(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 1.6 of the Scottish Insolvency Rules applies for the purposes of authentication under this paragraph.

(a) S.I. 2016/1024, to which there are amendments not relevant to this instrument.

Notice that members of the committee wish to obtain a moratorium

41. 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 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

42.—(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.

(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

43. 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 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

44. 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

45. 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,
- (b) the court in which the notice is to be lodged.

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

46. 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

47. 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 lodged in the court (or, if the documents are lodged on different days, the last of those days).

Obtaining creditor consent: qualifying decision procedure

48.—(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 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 49 to 53.

49. 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 A12 of the Act	the pre-moratorium creditors	5 days”
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50. 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.”.

51. 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.”.

52. 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 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.”.

53. 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

54.—(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 in which the application is made.

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

(3) Rule 1.6 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

55. 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

56.—(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.

57.—(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 1.6 of the Scottish Insolvency Rules applies for the purposes of authentication under sub-paragraph (3).

58. 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.

59.—(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) 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 members of the committee of insolvency proceedings etc

60.—(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

61.—(1) A notice under section A38(1) of the 1986 Act 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 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 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 1986 Act

62. 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

63.—(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 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

64.—(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 1.6 of the Scottish Insolvency Rules applies for the purposes of authentication under sub-paragraph (2).

Challenge to monitor’s remuneration

65.—(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,
- (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 actions of the members of the committee: qualifying decision procedure

66. 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 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

67.—(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

68.—(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

69. Rule 1.5 of the Scottish Insolvency Rules (requirement for writing and form of documents) applies for the purposes of Part A1 of the 1986 Act.

70.—(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—

- (a) rule 1.9 (prescribed format of documents), and
- (b) 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

71. 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 1986 Act as if rule 1.32(1) included a reference to such proceedings—

- (a) rule 1.32(2) and (3) (delivery to registrar of companies),
- (b) rule 1.36 (delivery of documents to authorised recipients),
- (c) rule 1.37 (delivery of documents to joint office-holders),
- (d) rule 1.38 (postal delivery of documents),
- (e) rule 1.39 (delivery by document exchange),
- (f) rule 1.40 (personal delivery of documents),
- (g) rule 1.41 (electronic delivery of documents).

Identification details for a relevant CCBS

72. 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

73. 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 Scottish Insolvency Rules”

74. In this Part of this Schedule “the Scottish Insolvency Rules” means the Insolvency (Scotland) (Voluntary Arrangements and Administration) Rules 2018^(a) as they had effect on 30th September 2021.”.

(5) In Schedule 4—

- (a) in Part 1, in paragraph 1, in the definition of “applied provisions” omit paragraph (c), and
- (b) omit Part 4.

14th September 2021

Callanan
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

At 10.45 a.m. on 15th September 2021
Treasury

Alan Mak
Maggie Throup
Two of the Lords Commissioners of Her Majesty's

I concur

14th September 2021

Callanan
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

(a) S.S.I. 2018/1082, to which there are amendments not relevant to this instrument.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 (S.I. 2014/229) (“the 2014 Order”), inserting a new Schedule to make supplementary provision in consequence of the application of Part A1 of the Insolvency Act 1986 (c. 45) (moratorium) in relation to certain co-operative and community benefit societies (“relevant CCBS”).

Part 1 of the new Schedule (Schedule 1A) contains the interpretative provisions, and ensures that the court dealing with a moratorium, whether in England and Wales, or in Scotland, will be the court that has jurisdiction to wind up the relevant CCBS.

Part 2 of Schedule 1A makes provision in relation to England and Wales. Provision is made about the content and timing of the notice to obtain and extend a moratorium, the proposed monitor’s statement and consent to act (including those of a replacement or additional monitor), the monitor’s notice to the relevant CCBS’s creditors and the Financial Conduct Authority when the moratorium comes into force and the notices required for a change in the end date of the moratorium. Rules 1.4, 1.8 and 1.9 of the Insolvency (England and Wales) Rules 2016 (S.I. 2016/1024) (“the Rules”) are applied regarding the format of documents in so far as they are relevant to any requirement imposed by provisions in Part 2 of the Schedule, and rule 1.5 of the Rules applies where documents are required to be authenticated. Specified rules contained in Chapter 9 of Part 1 of the Rules are applied in relation to the delivery of documents. In respect of applications to court, the provisions of the Civil Procedure Rules and any related Practice Directions apply for the purposes of proceedings under Part A1 of the Insolvency Act 1986 (the moratorium) together with rule 1.35 and specified and modified rules from Part 12 of the Rules.

In addition, Part 2 of Schedule 1A draws on the relevant rules in Parts 15 and 16 of the Rules (with modifications) to apply the qualifying decision-making procedure (see section 246ZE of the Insolvency Act 1986), voting rights and majority rules when members of the committee of the relevant CCBS are seeking creditors’ consent to extend the moratorium. The notice period to be given to the monitor before entering insolvency proceedings, and the contents of the monitor’s notice to the court to end the moratorium are specified.

Part 2 of the Schedule also sets the priority of moratorium debts in a subsequent administration or winding up and sets a time limit on when a challenge can be made to a monitor’s fees by a subsequent administrator or liquidator. Information that must be used to identify and contact both the relevant CCBS and the monitor are listed. In deciding whether to bring the moratorium to an end, the monitor must disregard any debts that are likely to be paid within 5 days, and any debts which the creditor has agreed to defer until a later date.

Part 3 of Schedule 1A makes equivalent provision in relation to Scotland, through the application of the relevant provisions in the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 (S.S.I. 2018/1082).

An impact assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sectors, is foreseen. A de minimis impact assessment is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

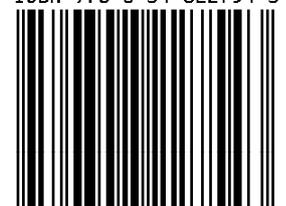
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