
EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Insolvency (Scotland) (Company Voluntary Arrangement and Administration) Rules 2018 (SI 2018/1082) (“the 2018 Rules”) 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”) and the repeal of Schedule A1 to that 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. In addition, section 2 of CIGA 2020 repealed Schedule A1 to the 1986 Act. Schedule A1 contained provisions for a different form of moratorium which was, in effect, superseded by the coming into force of the new Part A1 moratorium.

These Rules are in four 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 inserts a new Part into the 2018 Rules setting out the detailed procedures for the conduct of the moratorium; in particular, it specifies the content and timing of the various notifications that are required to be given in connection with the obtaining, coming into force, extension and termination of the moratorium.

Part 3 of these Rules makes consequential amendments to Parts 1 to 5 of the 2018 Rules. These consequential amendments deal with matter such as: the notifications that must be given where a company enters another form of insolvency procedure during a moratorium; the identification of debts incurred during a moratorium which are required to under the 1986 Act to have priority in subsequent insolvency procedures; and matters relating to decision making procedures during a moratorium.

Part 4 of these Rules introduces Schedules 1 and 2. Those Schedules make minor and consequential textual amendments to the 2018 Rules. Schedule 1 makes a minor amendments to various provisions in the Rules which are intended to be of general application to insert a reference to moratoriums, while Schedule 2 removes references in the 2018 Rules to Schedule A1 of the 1986 Act which are no longer needed following the repeal of Schedule A1.

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.