



# Corporate Insolvency and Governance Act 2020

CHAPTER 12

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Explanatory Notes have been produced to assist in the  
understanding of this Act and are available separately

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# Corporate Insolvency and Governance Act 2020

## CHAPTER 12

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# Corporate Insolvency and Governance Act 2020

## 2020 CHAPTER 12

An Act to make provision about companies and other entities in financial difficulty; and to make temporary changes to the law relating to the governance and regulation of companies and other entities.

[25th June 2020]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Moratorium*

#### **1 Moratoriums in Great Britain**

- (1) In the Insolvency Act 1986, before Part 1 (but within the First Group of Parts) insert—

#### **“PART A1**

#### MORATORIUM

#### CHAPTER 1

#### INTRODUCTORY

#### **A1 Overview**

- (1) This Part contains provision that enables an eligible company, in certain circumstances, to obtain a moratorium, giving it various protections from creditors set out in this Part.

- (2) In this Chapter section A2 introduces Schedule ZA1 (which defines what is meant by an “eligible” company).
- (3) Chapter 2 sets out how an eligible company may obtain a moratorium.
- (4) Chapter 3 sets out for how long a moratorium has effect.
- (5) Chapter 4 sets out the effects of a moratorium on the company and its creditors.
- (6) Chapter 5 contains provision about the monitor.
- (7) Chapter 6 contains provision about challenges.
- (8) Chapter 7 contains provision about certain offences.
- (9) Chapter 8 contains miscellaneous and general provision, including –
  - (a) special provision for certain kinds of company;
  - (b) definitions for the purposes of this Part;
  - (c) provision about regulations under this Part.

## **A2 Eligible companies**

Schedule ZA1 contains provision for determining whether a company is an eligible company for the purposes of this Part.

## **CHAPTER 2**

### **OBTAINING A MORATORIUM**

## **A3 Obtaining a moratorium by filing or lodging documents at court**

- (1) This section applies to an eligible company that –
  - (a) is not subject to an outstanding winding-up petition, and
  - (b) is not an overseas company.
- (2) The directors of the company may obtain a moratorium for the company by filing the relevant documents with the court (for the relevant documents, see section A6).
- (3) For the purposes of this Chapter a company is “subject to an outstanding winding-up petition” if –
  - (a) a petition for the winding up of the company has been presented, and
  - (b) the petition has not been withdrawn or determined.

## **A4 Obtaining a moratorium for company subject to winding-up petition**

- (1) This section applies to an eligible company that is subject to an outstanding winding-up petition.
- (2) The directors of the company may apply to the court for a moratorium for the company.
- (3) The application must be accompanied by the relevant documents (for the relevant documents, see section A6).
- (4) On hearing the application the court may –



- (a) make an order that the company should be subject to a moratorium, or
  - (b) make any other order which the court thinks appropriate.
- (5) The court may make an order under subsection (4)(a) only if it is satisfied that a moratorium for the company would achieve a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being subject to a moratorium).

#### **A5 Obtaining a moratorium for other overseas companies**

- (1) This section applies to an eligible company that—
- (a) is not subject to an outstanding winding-up petition, and
  - (b) is an overseas company.
- (2) The directors of the company may apply to the court for a moratorium for the company.
- (3) The application must be accompanied by the relevant documents (for the relevant documents, see section A6).
- (4) On hearing the application the court may—
- (a) make an order that the company should be subject to a moratorium, or
  - (b) make any other order which the court thinks appropriate.

#### **A6 The relevant documents**

- (1) For the purposes of this Chapter, “the relevant documents” are—
- (a) a notice that the directors wish to obtain a moratorium,
  - (b) a statement from a qualified person (“the proposed monitor”) that the person—
    - (i) is a qualified person, and
    - (ii) consents to act as the monitor in relation to the proposed moratorium,
  - (c) a statement from the proposed monitor that the company is an eligible company,
  - (d) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its debts, and
  - (e) a statement from the proposed monitor that, in the proposed monitor's view, it is likely that a moratorium for the company would result in the rescue of the company as a going concern.
- (2) Where it is proposed that more than one person should act as the monitor in relation to the proposed moratorium—
- (a) each of them must make a statement under subsection (1)(b), (c) and (e), and
  - (b) the statement under subsection (1)(b) must specify—
    - (i) which functions (if any) are to be exercised by the persons acting jointly, and
    - (ii) which functions (if any) are to be exercised by any or all of the persons.
- (3) The rules may make provision about the date on which a statement comprised in the relevant documents must be made.

- (4) The Secretary of State may by regulations amend this section for the purposes of adding to the list of documents in subsection (1).
- (5) Regulations under subsection (4) are subject to the affirmative resolution procedure.

#### **A7 Beginning of moratorium and appointment of monitor**

- (1) A moratorium for a company comes into force at the time at which—
  - (a) in the case of a company to which section A3 applies, the relevant documents are filed with the court under subsection (2) of that section;
  - (b) in the case of a company to which section A4 applies, an order is made under section A4(4)(a);
  - (c) in the case of a company to which section A5 applies, an order is made under section A5(4)(a).
- (2) On the coming into force of a moratorium, the person or persons who made the statement mentioned in section A6(1)(b) become the monitor in relation to the moratorium.

#### **A8 Obligations to notify where moratorium comes into force**

- (1) As soon as reasonably practicable after a moratorium for a company comes into force, the directors must notify the monitor of that fact.
- (2) As soon as reasonably practicable after receiving a notice under subsection (1), the monitor must notify the following that a moratorium for the company has come into force—
  - (a) the registrar of companies,
  - (b) every creditor of the company of whose claim the monitor is aware,
  - (c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
  - (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by section 126 of the Pensions Act 2004, the Board of the Pension Protection Fund.
- (3) A notice under subsection (2) must specify—
  - (a) when the moratorium came into force, and
  - (b) when, subject to any alteration under or by virtue of any of the provisions mentioned in section A9(3) or (4), the moratorium will come to an end.
- (4) If the directors fail to comply with subsection (1), any director who did not have a reasonable excuse for the failure commits an offence.
- (5) If the monitor without reasonable excuse fails to comply with subsection (2), the monitor commits an offence.

**CHAPTER 3**

## LENGTH OF MORATORIUM

*Initial period***A9 End of the moratorium**

- (1) A moratorium ends at the end of the initial period unless it is extended, or comes to an end sooner, under or by virtue of a provision mentioned in subsection (3) or (4).
- (2) In this Chapter “the initial period”, in relation to a moratorium, means the period of 20 business days beginning with the business day after the day on which the moratorium comes into force.
- (3) For provision under or by virtue of which a moratorium is or may be extended, see –
  - section A10 (extension by directors without creditor consent);
  - section A11 (extension by directors with creditor consent);
  - section A13 (extension by court on application of directors);
  - section A14 (extension while proposal for CVA pending);
  - section A15 (extension by court in course of other proceedings).
- (4) For provision under or by virtue of which the moratorium is or may be terminated, see –
  - section A16 (termination on entry into insolvency procedure etc);
  - section A38 (termination by monitor);
  - section A42 or A44 (termination by court).
- (5) A moratorium may not be extended under a provision mentioned in subsection (3) once it has come to an end.
- (6) Where the application of two or more of the provisions mentioned in subsections (3) and (4) would produce a different length of moratorium, the provision that applies last is to prevail (irrespective of whether that results in a shorter or longer moratorium).

*Extension of moratorium***A10 Extension by directors without creditor consent**

- (1) During the initial period, but after the first 15 business days of that period, the directors may extend the moratorium by filing with the court –
  - (a) a notice that the directors wish to extend the moratorium,
  - (b) a statement from the directors that all of the following that have fallen due have been paid or otherwise discharged –
    - (i) moratorium debts, and
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see section A18),
  - (c) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its pre-moratorium debts, and

- (d) a statement from the monitor that, in the monitor's view, it is likely that the moratorium will result in the rescue of the company as a going concern.
- (2) The rules may make provision about the date on which a statement mentioned in subsection (1) must be made.
- (3) On the filing with the court of the documents mentioned in subsection (1), the moratorium is extended so that it ends at the end of the period –
  - (a) beginning immediately after the initial period ends, and
  - (b) ending with the 20th business day after the initial period ends.

#### **A11 Extension by directors with creditor consent**

- (1) At any time after the first 15 business days of the initial period the directors may, if they have obtained creditor consent, extend the moratorium by filing with the court –
  - (a) a notice that the directors wish to extend the moratorium,
  - (b) a statement from the directors that all of the following that have fallen due have been paid or otherwise discharged –
    - (i) moratorium debts, and
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see section A18),
  - (c) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its pre-moratorium debts,
  - (d) a statement from the monitor that, in the monitor's view, it is likely that the moratorium will result in the rescue of the company as a going concern, and
  - (e) a statement from the directors that creditor consent has been obtained, and of the revised end date for which that consent was obtained.
- (2) The rules may make provision about the date on which a statement mentioned in subsection (1) must be made.
- (3) On the filing with the court of the documents mentioned in subsection (1), the moratorium is extended so that it ends with the revised end date mentioned in the statement under subsection (1)(e).
- (4) A moratorium may be extended under this section more than once.

#### **A12 Creditor consent for the purposes of section A11**

- (1) References in section A11 to creditor consent are to the consent of pre-moratorium creditors to a revised end date for the moratorium.
- (2) The decision as to consent is to be made using a qualifying decision procedure.
- (3) The revised end date must be a date before the end of the period of one year beginning with the first day of the initial period.
- (4) In this section “pre-moratorium creditor” means a creditor in respect of a pre-moratorium debt –

- (a) for which the company has a payment holiday during the moratorium (see section A18), and
  - (b) which has not been paid or otherwise discharged.
- (5) In determining for the purposes of subsection (4) what counts as a pre-moratorium debt for which the company has a payment holiday during the moratorium, sections A18(3) and A53(1)(b) apply as if the references to the moratorium were to the moratorium as proposed to be extended.
- (6) The Secretary of State may by regulations amend this section for the purposes of changing the definition of “pre-moratorium creditor”.
- (7) Regulations under subsection (6) are subject to the affirmative resolution procedure.

### **A13 Extension by court on application of directors**

- (1) At any time after the first 15 business days of the initial period, the directors may apply to the court for an order that the moratorium be extended.
- (2) The application must be accompanied by –
  - (a) a statement from the directors that all of the following that have fallen due have been paid or otherwise discharged –
    - (i) moratorium debts, and
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see section A18),
  - (b) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its pre-moratorium debts,
  - (c) a statement from the directors as to whether pre-moratorium creditors (as defined by section A12(4) and (5)) have been consulted about the application and if not why not, and
  - (d) a statement from the monitor that, in the monitor’s view, it is likely that the moratorium will result in the rescue of the company as a going concern.
- (3) The rules may make provision about the date on which a statement mentioned in subsection (2) must be made.
- (4) On hearing the application the court may –
  - (a) make an order that the moratorium be extended to such date as is specified in the order, or
  - (b) make any other order which the court thinks appropriate.
- (5) In deciding whether to make an order under subsection (4)(a) the court must, in particular, consider the following –
  - (a) the interests of pre-moratorium creditors, as defined by section A12(4) and (5), and
  - (b) the likelihood that the extension of the moratorium will result in the rescue of the company as a going concern.
- (6) Subsection (7) applies where –
  - (a) an application under this section is made, and

- (b) apart from that subsection, the moratorium would end at a time before the application has been disposed of.
- (7) The moratorium –
- (a) does not end at the time mentioned in subsection (6)(b), and
  - (b) instead, ends –
    - (i) in a case in which the court makes an order under subsection (4)(a), in accordance with the order;
    - (ii) otherwise, when the application is withdrawn or disposed of.
- (8) A moratorium may be extended under this section more than once.

#### **A14 Extension while proposal for CVA pending**

- (1) Subsection (2) applies where –
- (a) at any time, the directors make a proposal under Part 1 (company voluntary arrangements), and
  - (b) apart from that subsection, the moratorium would end at a time before the proposal is disposed of.
- (2) The moratorium –
- (a) does not end at the time mentioned in subsection (1)(b), and
  - (b) instead, ends when the proposal is disposed of.
- (3) For the purposes of this section a proposal under Part 1 is “disposed of” when any of the following takes place –
- (a) the company and its creditors both decide under section 4 not to approve the voluntary arrangement contained in the proposal;
  - (b) the decisions taken by the company and its creditors under section 4 differ, and –
    - (i) the period for making an application under section 4A(3) expires and either no application has been made within that period or any application made within that period has been withdrawn, or
    - (ii) an application is made under section 4A(3) and that application is disposed of, or it is withdrawn after the expiry of the period for making an application under section 4A(3);
  - (c) the voluntary arrangement contained in the proposal takes effect under section 5;
  - (d) the proposal is withdrawn.

#### **A15 Extension by court in the course of other proceedings**

- (1) Subsection (2) applies where –
- (a) an application is made under section 896 or 901C(1) of the Companies Act 2006 (arrangements and reconstructions: court order for holding of meeting) in respect of a company, and
  - (b) during proceedings before a court in connection with the application, a moratorium for the company is in force.
- (2) The court may make an order that the moratorium be extended to such date as is specified in the order.

*Early termination on certain grounds***A16 Company enters into insolvency procedure etc**

- (1) A moratorium comes to an end at any time at which the company –
  - (a) enters into a compromise or arrangement (see subsection (2)), or
  - (b) enters into a relevant insolvency procedure (see subsection (3)).
- (2) For the purposes of this section a company enters into a compromise or arrangement if an order under section 899 or 901F of the Companies Act 2006 (court sanction for compromise or arrangement) comes into effect in relation to the company.
- (3) For the purposes of this section a company enters into a relevant insolvency procedure if –
  - (a) a voluntary arrangement takes effect under section 5 in relation to the company,
  - (b) the company enters administration (within the meaning of Schedule B1 (see paragraph 1(2)(b) of that Schedule)),
  - (c) paragraph 44 of Schedule B1 (administration: interim moratorium) begins to apply in relation to the company, or
  - (d) the company goes into liquidation (see section 247).

*Obligations to notify change in end of moratorium***A17 Obligations to notify change in end of moratorium**

- (1) The table imposes obligations on the directors of a company to notify the monitor where a moratorium for the company is extended or comes to an end.

	<i>Where a moratorium is extended or comes to an end under or by virtue of the following provision</i>	<i>the directors must</i>
1	Section A10	Notify the monitor of the extension.
2	Section A11	Notify the monitor of the extension and of the revised end date.
3	Section A13(4)	Notify the monitor of the extension and provide the monitor with the court order under section A13(4).
4	Section A13(7)(a)	Notify the monitor of the extension.
5	Section A13(7)(b)(ii)	Notify the monitor that the moratorium has come to an end and of the date that it ended.
6	Section A14(2)(a)	Notify the monitor of the extension.

	<i>Where a moratorium is extended or comes to an end under or by virtue of the following provision</i>	<i>the directors must</i>
7	Section A14(2)(b)	Notify the monitor that the moratorium has come to an end and of the date that it ended.
8	Section A15	Notify the monitor of the extension and provide the monitor with any court order under section A15.
9	Section A16	Notify the monitor that the moratorium has come to an end.
10	Section A42	Notify the monitor that the moratorium has come to an end and provide the monitor with the court order under section A42.
11	Section A44	Notify the monitor that the moratorium has come to an end and provide the monitor with the court order under section A44.

- (2) After receiving a notice under subsection (1), other than a notice under entry 4 or 6 of the table, the monitor must notify the relevant persons of when the moratorium ended or, subject to any alteration under or by virtue of any of the provisions mentioned in section A9(3) or (4), the moratorium will come to an end.
- (3) After receiving a notice under entry 4 or 6 of the table, the monitor must notify the relevant persons.
- (4) If a moratorium comes to an end under section A38 (termination by monitor), the monitor must notify the company and the relevant persons of when the moratorium ended.
- (5) The rules may –
  - (a) make further provision about the timing of a notice required to be given under this section;
  - (b) require a notice to be accompanied by other documents.
- (6) If the directors fail to comply with subsection (1), any director who did not have a reasonable excuse for the failure commits an offence.
- (7) If the monitor without reasonable excuse fails to comply with any of subsections (2) to (4), the monitor commits an offence.
- (8) In this section “the relevant persons” means –
  - (a) the registrar of companies,
  - (b) every creditor of the company of whose claim the monitor is aware,



- (c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
- (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by section 126 of the Pensions Act 2004, the Board of the Pension Protection Fund.

## CHAPTER 4

### EFFECTS OF MORATORIUM

#### *Introductory*

#### **A18 Overview and construction of references to payment holidays**

- (1) This Chapter makes provision about the main effects of a moratorium for a company.
- (2) The provision made by this Chapter includes restrictions on the enforcement or payment of the debts that are defined by subsection (3) as pre-moratorium debts for which a company has a payment holiday during a moratorium.
- (3) In this Part a reference to pre-moratorium debts for which a company has a payment holiday during a moratorium is to its pre-moratorium debts that have fallen due before the moratorium, or that fall due during the moratorium, except in so far as they consist of amounts payable in respect of –
  - (a) the monitor’s remuneration or expenses,
  - (b) goods or services supplied during the moratorium,
  - (c) rent in respect of a period during the moratorium,
  - (d) wages or salary arising under a contract of employment,
  - (e) redundancy payments, or
  - (f) debts or other liabilities arising under a contract or other instrument involving financial services.
- (4) The rules may make provision as to what is, or is not, to count as the supply of goods or services for the purposes of subsection (3)(b).
- (5) The Secretary of State may by regulations amend this section for the purposes of changing the list in subsection (3).
- (6) Regulations under subsection (5) are subject to the affirmative resolution procedure.
- (7) In this section –
  - “contract or other instrument involving financial services” has the meaning given by Schedule ZA2;
  - “monitor’s remuneration or expenses” does not include remuneration in respect of anything done by a proposed monitor before the moratorium begins;
  - “redundancy payment” means –

- (a) a redundancy payment under Part 11 of the Employment Rights Act 1996 or Part 12 of the Employment Rights (Northern Ireland) Order 1996, or
  - (b) a payment made to a person who agrees to the termination of their employment in circumstances where they would have been entitled to a redundancy payment under that Part if dismissed;
- “wages or salary” includes –
- (a) a sum payable in respect of a period of holiday (for which purpose the sum is to be treated as relating to the period by reference to which the entitlement to holiday accrued),
  - (b) a sum payable in respect of a period of absence through illness or other good cause,
  - (c) a sum payable in lieu of holiday, and
  - (d) a contribution to an occupational pension scheme.

*Publicity about moratorium*

**A19 Publicity about moratorium**

- (1) During a moratorium, the company must, in any premises –
  - (a) where business of the company is carried on, and
  - (b) to which customers of the company or suppliers of goods or services to the company have access,
 display, in a prominent position so that it may easily be read by such customers or suppliers, a notice containing the required information.
- (2) During a moratorium, any websites of the company must state the required information.
- (3) During a moratorium, every business document issued by or on behalf of the company must state the required information.
- (4) For the purposes of subsections (1), (2) and (3), “the required information” is –
  - (a) that a moratorium is in force in relation to the company, and
  - (b) the name of the monitor.
- (5) If subsection (1), (2) or (3) is contravened –
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the contravention commits an offence.
- (6) In this section “business document” means –
  - (a) an invoice,
  - (b) an order for goods or services,
  - (c) a business letter, and
  - (d) an order form,
 whether in hard copy, electronic or any other form.

*Effect on creditors etc***A20 Restrictions on insolvency proceedings etc**

- (1) During a moratorium –
  - (a) no petition may be presented for the winding up of the company, except by the directors,
  - (b) no resolution may be passed for the voluntary winding up of the company under section 84(1)(a),
  - (c) a resolution for the voluntary winding up of the company under section 84(1)(b) may be passed only if the resolution is recommended by the directors,
  - (d) no order may be made for the winding up of the company, except on a petition by the directors,
  - (e) no administration application may be made in respect of the company, except by the directors,
  - (f) no notice of intention to appoint an administrator of the company under paragraph 14 or 22(1) of Schedule B1 may be filed with the court,
  - (g) no administrator of the company may be appointed under paragraph 14 or 22(1) of Schedule B1, and
  - (h) no administrative receiver of the company may be appointed.
- (2) Subsection (1)(a) does not apply to an excepted petition; and subsection (1)(d) does not apply to an order on an excepted petition.
- (3) For these purposes, “excepted petition” means a petition under –
  - (a) section 124A, 124B or 124C, or
  - (b) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.

**A21 Restrictions on enforcement and legal proceedings**

- (1) During a moratorium –
  - (a) a landlord or other person to whom rent is payable may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company, except with the permission of the court,
  - (b) in Scotland, a landlord or other person to whom rent is payable may not exercise a right of irritancy in relation to premises let to the company, except with the permission of the court,
  - (c) no steps may be taken to enforce any security over the company’s property except –
    - (i) steps to enforce a collateral security charge (within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979)),
    - (ii) steps to enforce security created or otherwise arising under a financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226)), or
    - (iii) steps taken with the permission of the court,

- (d) no steps may be taken to repossess goods in the company's possession under any hire-purchase agreement, except with the permission of the court, and
  - (e) no legal process (including legal proceedings, execution, distress or diligence) may be instituted, carried out or continued against the company or its property except—
    - (i) employment tribunal proceedings or any legal process arising out of such proceedings,
    - (ii) proceedings, not within sub-paragraph (i), involving a claim between an employer and a worker, or
    - (iii) a legal process instituted, carried out or continued with the permission of the court.
- (2) An application may not be made for permission under subsection (1) for the purposes of enforcing a pre-moratorium debt for which the company has a payment holiday during the moratorium.
  - (3) An application may not be made for permission under subsection (1)(c), (d) or (e) with a view to obtaining—
    - (a) the crystallisation of a floating charge, or
    - (b) the imposition, by virtue of provision in an instrument creating a floating charge, of any restriction on the disposal of any property of the company.
  - (4) Permission of the court under subsection (1) may be given subject to conditions.
  - (5) Subsection (1)(c)(iii) is subject to section A23(1).
  - (6) In this section—
    - “agency worker” has the meaning given by section 13(2) of the Employment Relations Act 1999;
    - “employer”—
      - (a) in relation to an agency worker, has the meaning given by section 13(2) of the Employment Relations Act 1999;
      - (b) otherwise, has the meaning given by section 230(4) of the Employment Rights Act 1996;
    - “worker” means an individual who is—
      - (a) a worker within the meaning of section 230(3) of the Employment Rights Act 1996, or
      - (b) an agency worker.

## **A22 Floating charges**

- (1) This section applies where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force.
- (2) During the moratorium, the holder of the floating charge may not give any notice which would have the effect of—
  - (a) causing the floating charge to crystallise, or
  - (b) causing the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of property of the company.
- (3) No other event occurring during the moratorium is to have the effect mentioned in subsection (2)(a) or (b).

- (4) Subsection (5) applies where –
- (a) the holder of a floating charge (“the chargee”) is prevented by subsection (2) from giving a notice mentioned there during the moratorium, and
  - (b) under the terms of the floating charge, the time for giving such a notice ends during the moratorium or before the chargee is given notice of the end of the moratorium under section A17.
- (5) The chargee may give notice later than is required under the terms of the floating charge, but only if the chargee does so as soon as is practicable after –
- (a) the end of the moratorium, or
  - (b) if later, the day on which the chargee is notified of the end of the moratorium.
- (6) Where –
- (a) subsection (3) prevents an event which occurs during the moratorium from having the effect mentioned there, and
  - (b) the holder of the floating charge gives notice of the event to the company as soon as is practicable after –
    - (i) the end of the moratorium, or
    - (ii) if later, the day on which the chargee is notified of the end of the moratorium,
- the event is to be treated as if it had occurred when the notice was given.
- (7) This section does not apply in relation to a floating charge that is –
- (a) a collateral security (as defined by section A27);
  - (b) a market charge (as defined by section A27);
  - (c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));
  - (d) a system-charge (as defined by section A27).

### **A23 Enforcement of security granted during moratorium**

- (1) Security granted by a company during a moratorium in relation to the company may be enforced only if the monitor consented to the grant of security under section A26.
- (2) See also section A21(1)(c), which restricts enforcement during a moratorium.

#### *Notification of insolvency proceedings*

### **A24 Duty of directors to notify monitor of insolvency proceedings etc**

- (1) The directors of a company must notify the monitor before taking any of the following steps during a moratorium –
  - (a) presenting a petition for the winding up of the company;
  - (b) making an administration application in respect of the company;
  - (c) appointing an administrator under paragraph 22(2) of Schedule B1.

- (2) The directors of a company must notify the monitor if, during a moratorium for the company, they recommend that the company passes a resolution for voluntary winding up under section 84(1)(b).
- (3) The rules may make provision about the timing of a notice required to be given under subsection (1) or (2).
- (4) If the directors fail to comply with subsection (1) or (2), any director who did not have a reasonable excuse for the failure commits an offence.

#### *Restrictions on transactions*

#### **A25 Restrictions on obtaining credit**

- (1) During a moratorium, the company may not obtain credit to the extent of £500 or more from a person unless the person has been informed that a moratorium is in force in relation to the company.
- (2) The reference to the company obtaining credit includes—
  - (a) the company entering into a conditional sale agreement in accordance with which goods are to be sold to the company,
  - (b) the company entering into any other form of hire-purchase agreement under which goods are to be bailed (in Scotland, hired) to the company, and
  - (c) the company being paid in advance (whether in money or otherwise) for the supply of goods or services.
- (3) If a company contravenes subsection (1)—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the obtaining of the credit commits an offence.

#### **A26 Restrictions on grant of security etc**

- (1) During a moratorium, the company may grant security over its property only if the monitor consents.
- (2) The monitor may give consent under subsection (1) only if the monitor thinks that the grant of security will support the rescue of the company as a going concern.
- (3) In deciding whether to give consent under subsection (1), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.
- (4) If the company grants security over its property during the moratorium otherwise than as authorised by subsection (1)—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the grant of the security commits an offence.
- (5) For the consequences of a company granting security over its property in contravention of subsection (1), see also section A23.

- (6) The monitor may not give consent under this section if the granting of security is an offence under section A27.

### **A27 Prohibition on entering into market contracts etc**

- (1) If a company enters into a transaction to which this section applies during a moratorium for the company –
- (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the company to enter into the transaction commits an offence.
- (2) A company enters into a transaction to which this section applies if it –
- (a) enters into a market contract,
  - (b) enters into a financial collateral arrangement,
  - (c) gives a transfer order,
  - (d) grants a market charge or a system-charge, or
  - (e) provides any collateral security.
- (3) Where during the moratorium a company enters into a transaction to which this section applies, nothing done by or in pursuance of the transaction is to be treated as done in contravention of any of sections A19, A21, A25, A26 and A28 to A32.
- (4) In this section –
- “collateral security” has the same meaning as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979);
  - “financial collateral arrangement” has the same meaning as in the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226);
  - “market charge” has the same meaning as in Part 7 of the Companies Act 1989;
  - “market contract” has the same meaning as in Part 7 of the Companies Act 1989;
  - “system-charge” has the meaning given by the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469);
  - “transfer order” has the same meaning as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.

### *Restrictions on payments and disposal of property*

### **A28 Restrictions on payment of certain pre-moratorium debts**

- (1) During a moratorium, the company may make one or more relevant payments to a person that (in total) exceed the specified maximum amount only if –
- (a) the monitor consents,
  - (b) the payment is in pursuance of a court order, or
  - (c) the payment is required by section A31(3) or A32(3).
- (2) In subsection (1) –
- “relevant payments” means payments in respect of pre-moratorium debts for which the company has a payment

holiday during the moratorium (see section A18);

“specified maximum amount” means an amount equal to the greater of –

- (a) £5000, and
  - (b) 1% of the value of the debts and other liabilities owed by the company to its unsecured creditors when the moratorium began, to the extent that the amount of such debts and liabilities can be ascertained at that time.
- (3) The monitor may give consent under subsection (1)(a) only if the monitor thinks that it will support the rescue of the company as a going concern.
  - (4) In deciding whether to give consent under subsection (1)(a), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.
  - (5) If the company makes a payment to which subsection (1) applies otherwise than as authorised by that subsection –
    - (a) the company commits an offence, and
    - (b) any officer of the company who without reasonable excuse authorised or permitted the payment commits an offence.

#### **A29 Restrictions on disposal of property**

- (1) During a moratorium, the company may dispose of its property only if authorised by subsection (2) or (5).
- (2) In the case of property that is not subject to a security interest, the company may dispose of the property if –
  - (a) the disposal is made in the ordinary way of the company’s business,
  - (b) the monitor consents, or
  - (c) the disposal is in pursuance of a court order.
- (3) The monitor may give consent under subsection (2)(b) only if the monitor thinks that it will support the rescue of the company as a going concern.
- (4) In deciding whether to give consent under subsection (2)(b), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.
- (5) In the case of property that is subject to a security interest, the company may dispose of the property if the disposal is in accordance with –
  - (a) section A31(1), or
  - (b) the terms of the security.
- (6) If the company disposes of its property during the moratorium otherwise than as authorised by this section –
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the disposal commits an offence.



**A30 Restrictions on disposal of hire-purchase property**

- (1) During a moratorium, the company may dispose of any goods in the possession of the company under a hire-purchase agreement only if the disposal is in accordance with –
  - (a) section A32(1), or
  - (b) the terms of the agreement.
- (2) If the company disposes of goods in the possession of the company under a hire-purchase agreement otherwise than as authorised by subsection (1) –
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the disposal commits an offence.

*Disposals of property free from charges etc***A31 Disposal of charged property free from charge**

- (1) During a moratorium, the company may, with the permission of the court, dispose of property which is subject to a security interest as if it were not subject to the security interest.
- (2) The court may give permission under subsection (1) only if the court thinks that it will support the rescue of the company as a going concern.
- (3) Where the court gives permission under subsection (1) other than in relation to a floating charge, the company must apply the following towards discharging the sums secured –
  - (a) the net proceeds of disposal of the property, and
  - (b) any money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the property in the open market by a willing vendor.
- (4) Where the permission relates to two or more security interests, the condition in subsection (3) requires the application of money in the order of the priorities of the security interests.
- (5) Where property subject to a floating charge is disposed of under subsection (1), the holder of the floating charge has the same priority in respect of acquired property as they had in respect of the property disposed of.
- (6) In subsection (5) “acquired property” means property of the company which directly or indirectly represents the property disposed of.
- (7) Where the court makes an order giving permission under subsection (1), the directors must, within the period of 14 days beginning with the date of the order, send a copy of it to the registrar of companies.
- (8) If the directors fail to comply with subsection (7), any director who did not have a reasonable excuse for the failure commits an offence.
- (9) Where property in Scotland is disposed of under subsection (1), the company must grant to the donee an appropriate document of transfer or conveyance of the property, and –

- (a) that document, or
  - (b) recording, intimation or registration of that document (where recording, intimation or registration of the document is a legal requirement for completion of title to the property),
- has the effect of disencumbering the property of or, as the case may be, freeing the property from, the security interest.
- (10) If a company fails to comply with subsection (3) or (9) –
    - (a) the company commits an offence, and
    - (b) any officer of the company who without reasonable excuse authorised or permitted the failure commits an offence.
  - (11) Subsection (1) does not apply in relation to any property which is subject to a financial collateral arrangement, a market charge, a system-charge or a collateral security (as defined by section A27).

### **A32 Disposal of hire-purchase property**

- (1) During a moratorium, the company may, with the permission of the court, dispose of goods which are in the possession of the company under a hire-purchase agreement as if all of the rights of the owner under the agreement were vested in the company.
- (2) The court may give permission under subsection (1) only if the court thinks that it will support the rescue of the company as a going concern.
- (3) Where the court gives permission under subsection (1), the company must apply the following towards discharging the sums payable under the hire-purchase agreement –
  - (a) the net proceeds of disposal of the goods, and
  - (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the goods in the open market by a willing vendor.
- (4) If a company fails to comply with subsection (3) –
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the failure commits an offence.
- (5) Where the court makes an order giving permission under subsection (1), the directors must, within the period of 14 days beginning with the date of the order, send a copy of it to the registrar of companies.
- (6) If the directors fail to comply with subsection (5), any director who did not have a reasonable excuse for the failure commits an offence.
- (7) In Scotland, where goods in the possession of the company under a hire-purchase agreement are disposed of under subsection (1), the disposal has the effect of extinguishing, as against the disponent, all rights of the owner of the goods under the agreement.

*Effect of contravention of certain provisions of Chapter***A33 Contravention of certain requirements imposed under this Chapter**

The fact that a company contravenes section A19 or any of sections A25 to A32 does not –

- (a) make any transaction void or unenforceable, or
- (b) affect the validity of any other thing.

**CHAPTER 5**

## THE MONITOR

**A34 Status of monitor**

The monitor in relation to a moratorium is an officer of the court.

**A35 Monitoring**

- (1) During a moratorium, the monitor must monitor the company's affairs for the purpose of forming a view as to whether it remains likely that the moratorium will result in the rescue of the company as a going concern.
- (2) In forming the view mentioned in subsection (1), the monitor is entitled to rely on information provided by the company, unless the monitor has reason to doubt its accuracy.

**A36 Provision of information to monitor**

- (1) The monitor may require the directors of the company to provide any information required by the monitor for the purpose of carrying out the monitor's functions.
- (2) The directors must comply with a requirement to provide information as soon as practicable.
- (3) For the potential consequences of failing to comply with a requirement to provide information, see section A38.

**A37 Application by monitor for directions**

The monitor in relation to a moratorium may apply to the court for directions about the carrying out of the monitor's functions.

**A38 Termination of moratorium by monitor**

- (1) The monitor must bring a moratorium to an end by filing a notice with the court if –
  - (a) the monitor thinks that the moratorium is no longer likely to result in the rescue of the company as a going concern,
  - (b) the monitor thinks that the objective of rescuing the company as a going concern has been achieved,
  - (c) the monitor thinks that, by reason of a failure by the directors to comply with a requirement under section A36, the monitor is unable properly to carry out the monitor's functions, or
  - (d) the monitor thinks that the company is unable to pay any of the following that have fallen due –

- (i) moratorium debts;
  - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see section A18).
- (2) The rules may provide for debts that are to be disregarded for the purposes of subsection (1)(d).
- (3) On the filing with the court of a notice under subsection (1), the moratorium comes to an end.
- (4) The rules may make provision about the timing of a notice required to be given under subsection (1).
- (5) The Secretary of State may by regulations amend this section for the purposes of changing the circumstances in which the monitor must bring a moratorium to an end under subsection (1).
- (6) Regulations under subsection (5) are subject to the affirmative resolution procedure.
- (7) See also section A17 (obligations to notify change in end of moratorium).

### **A39 Replacement of monitor or appointment of additional monitor**

- (1) The court may make an order authorising the appointment of a qualified person to act as the monitor in relation to a moratorium instead of, or in addition to, a person who already acts as the monitor.
- (2) The court may make an order providing that a person ceases to act as the monitor in relation to a moratorium.
- (3) An order under subsection (1) or (2) may be made only on an application by the directors or the monitor.
- (4) The court may make an order authorising the appointment of a monitor under subsection (1) only if the person has provided the court with a statement that the person –
  - (a) is a qualified person, and
  - (b) consents to act as the monitor in relation to the moratorium.
- (5) Where it is proposed that more than one person should act as the monitor in relation to the moratorium, the statement under subsection (4) must specify –
  - (a) which functions (if any) are to be exercised by the persons acting jointly, and
  - (b) which functions (if any) are to be exercised by any or all of the persons.
- (6) The rules may make provision about the date on which the statement under subsection (4) must be made.
- (7) Where the court makes an order under subsection (1) or (2) the person begins to act as the monitor, or ceases to act as the monitor, in relation to the moratorium at the time specified in, or determined in accordance with, the order (“the relevant time”).

- (8) As soon as reasonably practicable after the relevant time, the monitor must notify the following of the effect of the order –
- (a) the registrar of companies,
  - (b) every creditor of the company of whose claim the monitor is aware,
  - (c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
  - (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by section 126 of the Pensions Act 2004, the Board of the Pension Protection Fund.
- (9) If the monitor without reasonable excuse fails to comply with subsection (8), the monitor commits an offence.

#### **A40 Application of Part where two or more persons act as monitor**

- (1) Where two or more persons act jointly as the monitor –
- (a) a reference in this Act to the monitor is a reference to those persons acting jointly;
  - (b) where an offence of omission is committed by the monitor, each of the persons appointed to act jointly –
    - (i) commits the offence, and
    - (ii) may be proceeded against and punished individually.
- (2) Where persons act jointly in respect of only some of the functions of the monitor, subsection (1) applies only in relation to those functions.
- (3) Where two or more persons act concurrently as the monitor a reference in this Act to the monitor is a reference to any of the persons appointed (or any combination of them).

#### **A41 Presumption of validity**

An act of the monitor is valid in spite of a defect in the monitor's appointment or qualification.

## **CHAPTER 6**

### **CHALLENGES**

#### **A42 Challenge to monitor's actions**

- (1) Any of the persons specified below may apply to the court on the ground that an act, omission or decision of the monitor during a moratorium has unfairly harmed the interests of the applicant.
- (2) The persons who may apply are –
- (a) a creditor, director or member of the company, or
  - (b) any other person affected by the moratorium.
- (3) An application under subsection (1) may be made during the moratorium or after it has ended.
- (4) On an application under subsection (1) the court may –

- (a) confirm, reverse or modify any act or decision of the monitor,
  - (b) give the monitor directions, or
  - (c) make such other order as it thinks fit (but may not, under this paragraph, order the monitor to pay any compensation).
- (5) Where an application under subsection (1) relates to a failure by the monitor to bring the moratorium to an end under section A38(1), an order under subsection (4) may, in particular, bring the moratorium to an end and make such consequential provision as the court thinks fit.
- (6) Where an application under subsection (1) relates to the monitor bringing a moratorium to an end under section A38(1), an order under subsection (4) may, in particular, provide that the moratorium is not to be taken into account for the purposes of paragraph 2(1)(b) of Schedule ZA1 (company not eligible for moratorium if moratorium in force within previous 12 months).
- (7) In making an order under subsection (4) the court must have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.
- (8) See also section A17 (obligations to notify change in end of moratorium).

#### **A43 Challenges to monitor remuneration in insolvency proceedings**

- (1) The rules may confer on an administrator or liquidator of a company the right to apply to the court on the ground that remuneration charged by the monitor in relation to a prior moratorium for the company was excessive.
- (2) Rules under subsection (1) may (among other things) make provision as to—
- (a) time limits;
  - (b) disposals available to the court;
  - (c) the treatment of costs (or, in Scotland, the expenses) of the application in the administration or winding up.

#### **A44 Challenge to directors' actions**

- (1) A creditor or member of a company may apply to the court for an order under this section on the ground that—
- (a) during a moratorium, the company's affairs, business and property are being or have been managed by the directors in a manner which has unfairly harmed the interests of its creditors or members generally or of some part of its creditors or members (including at least the applicant), or
  - (b) any actual or proposed act or omission of the directors during a moratorium causes or would cause such harm.
- (2) An application under subsection (1) may be made during the moratorium or after it has ended.
- (3) On an application under subsection (1) the court may make such order as it thinks fit.
- (4) An order under subsection (3) may in particular—

- (a) regulate the management by the directors of the company's affairs, business and property during the remainder of the moratorium,
  - (b) require the directors to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant has complained they have omitted to do,
  - (c) require a decision of the company's creditors to be sought (using a qualifying decision procedure) on such matters as the court may direct, or
  - (d) bring the moratorium to an end and make such consequential provision as the court thinks fit.
- (5) In making an order under subsection (3) the court must have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.
- (6) See also section A17 (obligations to notify change in end of moratorium).

#### **A45 Challenge brought by Board of the Pension Protection Fund**

- (1) This section applies where –
- (a) a moratorium –
    - (i) is in force in relation to a company that is an employer in respect of an eligible scheme, or
    - (ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and
  - (b) the trustees or managers of the scheme are a creditor of the company.
- (2) The Board of the Pension Protection Fund may make any application under section A42(1) or A44(1) that could be made by the trustees or managers as a creditor.
- (3) For the purposes of such an application, any reference in section A42(1) or A44(1) to the interests of the applicant is to be read as a reference to the interests of the trustees or managers as a creditor.
- (4) In this section “eligible scheme” has the meaning given by section 126 of the Pensions Act 2004.

## **CHAPTER 7**

### OFFENCES: GENERAL

#### **A46 Offence of fraud etc during or in anticipation of moratorium**

- (1) An officer of a company commits an offence if, during a moratorium for the company or at any time within the period of 12 months ending with the day on which a moratorium for the company comes into force, the officer –
- (a) does any of the things mentioned in subsection (2), or
  - (b) was privy to the doing by others of any of the things mentioned in subsection (2)(c), (d) and (e).

- (2) Those things are –
- (a) concealing any part of the company’s property to the value of £500 or more, or concealing any debt due to or from the company,
  - (b) fraudulently removing any part of the company’s property to the value of £500 or more,
  - (c) concealing, destroying, mutilating or falsifying any document affecting or relating to the company’s property or affairs,
  - (d) making any false entry in any document affecting or relating to the company’s property or affairs,
  - (e) fraudulently parting with, altering or making any omission in any document affecting or relating to the company’s property or affairs, or
  - (f) pawning, pledging or disposing of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company’s business).
- (3) It is a defence –
- (a) for a person charged with an offence under subsection (1) in respect of any of the things mentioned in subsection (2)(a) or (f) to prove that the person had no intent to defraud, and
  - (b) for a person charged with an offence under subsection (1) in respect of any of the things mentioned in subsection (2)(c) or (d) to prove that the person had no intent to conceal the state of affairs of the company or to defeat the law.
- (4) Where a person pawns, pledges or disposes of any property of a company in circumstances which amount to an offence under subsection (1), every person who takes in pawn or pledge, or otherwise receives, the property commits an offence if the person knows it to be pawned, pledged or disposed of in circumstances which –
- (a) amount to an offence under subsection (1), or
  - (b) would, if a moratorium were obtained for the company within the period of 12 months beginning with the day on which the pawning, pledging or disposal took place, amount to an offence under subsection (1).
- (5) In this section, “officer” includes a shadow director.

#### **A47 Offence of false representation etc to obtain a moratorium**

- (1) An officer of a company commits an offence if, for the purpose of obtaining a moratorium for the company or an extension of a moratorium for the company, the officer –
- (a) makes any false representation, or
  - (b) fraudulently does, or omits to do, anything.
- (2) Subsection (1) applies even if no moratorium or extension is obtained.
- (3) In this section, “officer” includes a shadow director.

#### **A48 Prosecution of delinquent officers of company**

- (1) This section applies where a moratorium has been obtained for a company.



- (2) If it appears to the monitor that any past or present officer of the company has committed an offence in connection with the moratorium, the monitor must forthwith—
  - (a) report the matter to the appropriate authority, and
  - (b) provide the appropriate authority with such information and give the authority such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the monitor and relating to the matter in question) as the authority requires.
- (3) In subsection (2), “the appropriate authority”—
  - (a) in the case of a company registered in England and Wales, means the Secretary of State,
  - (b) in the case of a company registered in Scotland, means the Lord Advocate, and
  - (c) in the case of an unregistered company means—
    - (i) if it has a principal place of business in England and Wales but not Scotland, the Secretary of State,
    - (ii) if it has a principal place of business in Scotland but not England and Wales, the Lord Advocate,
    - (iii) if it has a principal place of business in both England and Wales and Scotland, the Secretary of State and the Lord Advocate, and
    - (iv) if it does not have a principal place of business in England and Wales or Scotland, the Secretary of State.
- (4) Where a matter is reported to the Secretary of State under subsection (2), the Secretary of State may, for the purpose of investigating the matter and such other matters relating to the affairs of the company as appear to the Secretary of State to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of the Companies Act 1985.
- (5) For the purpose of such an investigation any obligation imposed on a person by any provision of the Companies Acts to produce documents or give information to, or otherwise to assist, inspectors so appointed is to be regarded as an obligation similarly to assist the Secretary of State in the Secretary of State’s investigation.
- (6) Where a question is put to a person in exercise of the powers conferred by subsection (4), the person’s answer may be used in evidence against them.
- (7) However, in criminal proceedings in which the person is charged with an offence other than a false statement offence—
  - (a) no evidence relating to the answer may be adduced, and
  - (b) no question relating to it may be asked,by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of the person.
- (8) In subsection (7) “false statement offence” means—
  - (a) an offence under section 2 or 5 of the Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or

- (b) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).
- (9) Where a prosecuting authority institutes criminal proceedings following any report under subsection (2), the monitor, and every officer and agent of the company past and present (other than the defendant or defender), must give the authority all assistance in connection with the prosecution which they are reasonably able to give.
- (10) For this purpose –  
     “agent” includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company;  
     “prosecuting authority” means the Director of Public Prosecutions, the Lord Advocate or the Secretary of State.
- (11) The court may, on the application of the prosecuting authority, direct a person who has failed to comply with subsection (9) to comply with it.

## CHAPTER 8

### MISCELLANEOUS AND GENERAL

#### *Special rules for certain kinds of company etc*

#### **A49 Regulated companies: modifications to this Part**

- (1) For the purposes of sections A3 and A4 as they apply in relation to a regulated company, section A6(1) has effect as if the documents listed there included a reference to the written consent of the appropriate regulator to the appointment of the proposed monitor.
- (2) The remaining provisions of this section apply in relation to a moratorium for a regulated company.
- (3) Any notice under section A8(2), A17(2) to (4) or A39(8) must also be sent by the monitor to the appropriate regulator.
- (4) The directors must give the appropriate regulator notice of any qualifying decision procedure by which a decision of the company’s creditors is sought for the purposes of section A12(2) or A44(4)(c).
- (5) If the directors fail to comply with subsection (4), any director who did not have a reasonable excuse for the failure commits an offence.
- (6) The appropriate regulator, or a person appointed by the appropriate regulator, may in the way provided for by the rules, participate (but not vote) in any qualifying decision procedure by which a decision of the company’s creditors is sought for the purposes of this Part.
- (7) The appropriate regulator is entitled to be heard on any application to the court for permission under section A31(1) or A32(1) (disposal of charged property, etc).
- (8) The court may make an order under section A39(1) only if the appropriate regulator has given its written consent to the appointment of the proposed monitor.

- (9) The persons who may apply to the court under section A39(3), A42(1) or A44(1) include the appropriate regulator.
- (10) If a person other than a regulator applies to the court under section A39(3), A42(1) or A44(1) the appropriate regulator is entitled to be heard on the application.
- (11) If either regulator makes an application to the court under section A39(3), A42(1) or A44(1) in relation to a PRA-regulated company, the other regulator is entitled to be heard on the application.
- (12) This section does not affect any right that the appropriate regulator has (apart from this section) as a creditor of a regulated company.
- (13) In this section –
- “the appropriate regulator” means –
    - (a) where the regulated company is a PRA-regulated company, each of the Financial Conduct Authority and the Prudential Regulation Authority, and
    - (b) where the regulated company is not a PRA-regulated company, the Financial Conduct Authority;
  - “PRA-authorized person” has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000;
  - “PRA-regulated company” means a regulated company which –
    - (a) is, or has been, a PRA-authorized person,
    - (b) is, or has been, an appointed representative within the meaning given by section 39 of the Financial Services and Markets Act 2000, whose principal (or one of whose principals) is, or was, a PRA-authorized person, or
    - (c) is carrying on, or has carried on, a PRA-regulated activity (within the meaning of section 22A of that Act) in contravention of the general prohibition;
  - “regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section;
  - “regulated company” means a company which –
    - (a) is, or has been, an authorised person within the meaning given by section 31 of the Financial Services and Markets Act 2000,
    - (b) is, or has been, an appointed representative within the meaning given by section 39 of that Act, or
    - (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition within the meaning given by section 19 of that Act;
  - “regulator” means the Financial Conduct Authority or the Prudential Regulation Authority.
- (14) The Secretary of State may by regulations amend this section for the purposes of changing the definition of “regulated company” in subsection (13).
- (15) Regulations under subsection (14) are subject to the affirmative resolution procedure.

**A50 Power to modify this Part etc in relation to certain companies**

- (1) The Secretary of State may by regulations make provision under the law of England and Wales or Scotland –
  - (a) to modify this Part as it applies in relation to a company for which there is a special administration regime, or
  - (b) in connection with the interaction between this Part and any other insolvency procedure in relation to such a company.
- (2) The Welsh Ministers may by regulations make provision under the law of England and Wales –
  - (a) to modify this Part as it applies in relation to a company that is a social landlord registered under Part 1 of the Housing Act 1996, or
  - (b) make provision in connection with the interaction between this Part and any other insolvency procedure in relation to such a company.
- (3) The Scottish Ministers may by regulations make provision under the law of Scotland –
  - (a) to modify this Part as it applies in relation to a company that is a social landlord registered under Part 2 of the Housing (Scotland) Act 2010 (asp 17), or
  - (b) make provision in connection with the interaction between this Part and any other insolvency procedure in relation to such a company.
- (4) The Secretary of State may, by regulations, make any provision under the law of England and Wales, Scotland or Northern Ireland that appears to the Secretary of State to be appropriate in view of provision made under subsection (1), (2) or (3).
- (5) The power in subsection (1), (2), (3) or (4) may, in particular, be used to amend, repeal, revoke or otherwise modify any provision made by an enactment.
- (6) Regulations under subsection (1) or (4) are subject to the affirmative resolution procedure.
- (7) A statutory instrument containing regulations under subsection (2) may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of Senedd Cymru.
- (8) Regulations made by the Scottish Ministers under subsection (3) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
- (9) In this section –
  - “insolvency procedure” includes –
    - (a) in relation to subsection (1)(b), the provision made by sections 143A to 159 of the Housing and Regeneration Act 2008;
    - (b) in relation to subsection (2)(b), the provision made by sections 39 to 50 of the Housing Act 1996;

- (c) in relation to subsection (3)(b), the provision made by Part 7 of the Housing (Scotland) Act 2010;
- “ordinary administration” means the insolvency procedure provided for by Schedule B1;
- “special administration regime” means provision made by an enactment for an insolvency procedure that –
- (a) is similar or corresponds to ordinary administration, and
  - (b) provides for the administrator to have one or more special objectives instead of or in addition to the objectives of ordinary administration.

#### **A51 Power to make provision in connection with pension schemes**

- (1) The Secretary of State may by regulations provide that, in a case where –
  - (a) a moratorium –
    - (i) is in force in relation to a company that is an employer in respect of an eligible scheme, or
    - (ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and
  - (b) the trustees or managers of the scheme are a creditor of the company,the Board of the Pension Protection Fund may exercise any of the following rights.
- (2) The rights are those which are exercisable by the trustees or managers as a creditor of the company under or by virtue of –
  - (a) section A12, or
  - (b) a court order under section A44(4)(c).
- (3) Regulations under subsection (1) may provide that the Board may exercise any such rights –
  - (a) to the exclusion of the trustees or managers of the scheme, or
  - (b) in addition to the exercise of those rights by the trustees or managers of the scheme.
- (4) Regulations under subsection (1) –
  - (a) may specify conditions that must be met before the Board may exercise any such rights;
  - (b) may provide for any such rights to be exercisable by the Board for a specified period;
  - (c) may make provision in connection with any such rights ceasing to be so exercisable at the end of such a period.
- (5) Regulations under subsection (1) are subject to the affirmative resolution procedure.
- (6) In this section “eligible scheme” has the meaning given by section 126 of the Pensions Act 2004.

*Floating charges***A52 Void provisions in floating charge documents**

- (1) A provision in an instrument creating a floating charge is void if it provides for the obtaining of a moratorium, or anything done with a view to obtaining a moratorium, to be –
  - (a) an event causing the floating charge to crystallise,
  - (b) an event causing restrictions which would not otherwise apply to be imposed on the disposal of property by the company, or
  - (c) a ground for the appointment of a receiver.
- (2) The reference in subsection (1) to anything done with a view to obtaining a moratorium includes any preliminary decision or investigation.
- (3) In subsection (1) “receiver” includes a manager and a person who is appointed both receiver and manager.
- (4) Subsection (1) does not apply to a provision in an instrument creating a floating charge that is –
  - (a) a collateral security (as defined by section A27);
  - (b) a market charge (as defined by section A27);
  - (c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));
  - (d) a system-charge (as defined by section A27).

*Interpretation of this Part***A53 Meaning of “pre-moratorium debt” and “moratorium debt”**

- (1) In this Part “pre-moratorium debt”, in relation to a company for which a moratorium is or has been in force, means –
  - (a) any debt or other liability to which the company becomes subject before the moratorium comes into force, or
  - (b) any debt or other liability to which the company has become or may become subject during the moratorium by reason of any obligation incurred before the moratorium comes into force,but this is subject to subsection (3).
- (2) In this Part “moratorium debt”, in relation to a company for which a moratorium is or has been in force, means –
  - (a) any debt or other liability to which the company becomes subject during the moratorium, other than by reason of an obligation incurred before the moratorium came into force, or
  - (b) any debt or other liability to which the company has become or may become subject after the end of the moratorium by reason of an obligation incurred during the moratorium,but this is subject to subsection (3).
- (3) For the purposes of this Part –
  - (a) a liability in tort or delict is a “pre-moratorium debt” if either –
    - (i) the cause of action has accrued before the moratorium comes into force, or

- (ii) all the elements necessary to establish the cause of action exist before the moratorium comes into force except for actionable damage;
- (b) a liability in tort or delict is a “moratorium debt” if it does not fall within paragraph (a) and either –
  - (i) the cause of action has accrued during the moratorium, or
  - (ii) all the elements necessary to establish the cause of action exist before the moratorium comes to an end except for actionable damage.
- (4) The Secretary of State may by regulations amend this section for the purposes of changing the definition of “pre-moratorium debt” or “moratorium debt” in this Part.
- (5) Regulations under subsection (4) are subject to the affirmative resolution procedure.

#### **A54 Interpretation of this Part: general**

- (1) In this Part –
  - “company” means –
    - (a) a company registered under the Companies Act 2006 in England and Wales or Scotland, or
    - (b) an unregistered company that may be wound up under Part 5 of this Act;
  - “the court” means such court as is prescribed;
  - “eligible”, in relation to a company, has the meaning given by Schedule ZA1;
  - “employer”, in relation to a pension scheme –
    - (a) in sections A8(2)(c), A17(8)(c) and A39(8)(c), means an employer within the meaning of section 318(1) of the Pensions Act 2004;
    - (b) elsewhere in this Part, has the same meaning that it has for the purposes of Part 2 of the Pensions Act 2004 (see section 318(1) and (4) of that Act);
  - “enactment” includes an Act of the Scottish Parliament and an instrument made under such an Act;
  - “hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement;
  - “liability” means (subject to subsection (2)) a liability to pay money or money’s worth, including any liability under an enactment, a liability for breach of trust, any liability in contract, tort, delict or bailment, and any liability arising out of an obligation to make restitution;
  - “money purchase scheme” has the meaning given by section 181(1) of the Pension Schemes Act 1993;
  - “the monitor”, in relation to a moratorium, means the person who has the functions of the monitor in relation to the moratorium (see also section A40 for cases where two or more persons act as the monitor);
  - “moratorium” means a moratorium under this Part;
  - “moratorium debt” has the meaning given by section A53;

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;

“pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;

“pre-moratorium debt” has the meaning given by section A53;

“qualified person” means a person qualified to act as an insolvency practitioner;

“unable to pay its debts” –

(a) in relation to a registered company, has the same meaning as in Part 4 (see section 123);

(b) in relation to an unregistered company, has the same meaning as in Part 5 (see sections 222 to 224).

- (2) For the purposes of references in any provision of this Part to a debt or liability it is immaterial whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.
- (3) In this Part references to filing a document with the court are, in relation to a court in Scotland, references to lodging it in court.
- (4) The Secretary of State may by regulations amend this section for the purposes of changing the definition of “qualified person” in subsection (1).
- (5) Regulations under subsection (4) are subject to the affirmative resolution procedure.

### *Regulations*

#### **A55 Regulations**

- (1) Regulations under this Part may make –
  - (a) different provision for different purposes;
  - (b) consequential, supplementary, incidental or transitional provision or savings.
- (2) Regulations under this Part are to be made by statutory instrument, unless they are made by the Scottish Ministers.
- (3) Where regulations of the Secretary of State under this Part are subject to “the affirmative resolution procedure”, they may not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.”
- (2) Schedule 1 inserts into the Insolvency Act 1986 a new Schedule ZA1 (eligible companies).
- (3) Schedule 2 inserts into the Insolvency Act 1986 a new Schedule ZA2 (contracts involving financial services).

## **2 Moratoriums in Great Britain: further amendments and transition**

- (1) Schedule 3 contains consequential and other amendments to do with moratoriums under new Part A1 of the Insolvency Act 1986.



- (2) Nothing in this Act affects the operation of the Insolvency Act 1986, or any other enactment, in relation to a moratorium under Schedule A1 to that Act which comes into force before the repeal of that Schedule by Schedule 3 to this Act.
- (3) Subsection (2) is without prejudice to the operation of section 16 of the Interpretation Act 1978 (general savings).

### **3 Moratoriums in Great Britain: temporary modifications**

Schedule 4 makes temporary modifications to Part A1 of the Insolvency Act 1986 (moratorium) and other temporary provision in connection with that Part.

### **4 Moratoriums in Northern Ireland**

- (1) In the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), immediately before Part 2 (and after the heading before Parts 2 to 7) insert –

**“PART 1A**

MORATORIUM

**CHAPTER 1**

INTRODUCTORY

#### **13A Overview**

- (1) This Part contains provision that enables an eligible company, in certain circumstances, to obtain a moratorium, giving it various protections from creditors set out in this Part.
- (2) In this Chapter Article 13AA introduces Schedule ZA1 (which defines what is meant by an “eligible” company).
- (3) Chapter 2 sets out how an eligible company may obtain a moratorium.
- (4) Chapter 3 sets out for how long a moratorium has effect.
- (5) Chapter 4 sets out the effects of a moratorium on the company and its creditors.
- (6) Chapter 5 contains provision about the monitor.
- (7) Chapter 6 contains provision about challenges.
- (8) Chapter 7 contains provision about certain offences.
- (9) Chapter 8 contains miscellaneous and general provision, including –
  - (a) special provision for certain kinds of company;
  - (b) definitions for the purposes of this Part;
  - (c) provision about regulations under this Part.

#### **13AA Eligible companies**

Schedule ZA1 contains provision for determining whether a company is an eligible company for the purposes of this Part.

**CHAPTER 2****OBTAINING A MORATORIUM****13B Obtaining a moratorium by filing documents at High Court**

- (1) This Article applies to an eligible company that –
  - (a) is not subject to an outstanding winding-up petition, and
  - (b) is not an overseas company.
- (2) The directors of the company may obtain a moratorium for the company by filing the relevant documents with the High Court (for the relevant documents, see Article 13BC).
- (3) For the purposes of this Chapter a company is “subject to an outstanding winding-up petition” if –
  - (a) a petition for the winding up of the company has been presented, and
  - (b) the petition has not been withdrawn or determined.

**13BA Obtaining a moratorium for company subject to winding-up petition**

- (1) This Article applies to an eligible company that is subject to an outstanding winding-up petition.
- (2) The directors of the company may apply to the High Court for a moratorium for the company.
- (3) The application must be accompanied by the relevant documents (for the relevant documents, see Article 13BC).
- (4) On hearing the application the Court may –
  - (a) make an order that the company should be subject to a moratorium, or
  - (b) make any other order which the Court thinks appropriate.
- (5) The Court may make an order under paragraph (4)(a) only if it is satisfied that a moratorium for the company would achieve a better result for the company’s creditors as a whole than would be likely if the company were wound up (without first being subject to a moratorium).

**13BB Obtaining a moratorium for other overseas companies**

- (1) This Article applies to an eligible company that –
  - (a) is not subject to an outstanding winding-up petition, and
  - (b) is an overseas company.
- (2) The directors of the company may apply to the High Court for a moratorium for the company.
- (3) The application must be accompanied by the relevant documents (for the relevant documents, see Article 13BC).
- (4) On hearing the application the Court may –
  - (a) make an order that the company should be subject to a moratorium, or
  - (b) make any other order which the Court thinks appropriate.

**13BC The relevant documents**

- (1) For the purposes of this Chapter, “the relevant documents” are—
  - (a) a notice that the directors wish to obtain a moratorium,
  - (b) a statement from a qualified person (“the proposed monitor”) that the person—
    - (i) is a qualified person, and
    - (ii) consents to act as the monitor in relation to the proposed moratorium,
  - (c) a statement from the proposed monitor that the company is an eligible company,
  - (d) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its debts, and
  - (e) a statement from the proposed monitor that, in the proposed monitor’s view, it is likely that a moratorium for the company would result in the rescue of the company as a going concern.
- (2) Where it is proposed that more than one person should act as the monitor in relation to the proposed moratorium—
  - (a) each of them must make a statement under paragraph (1)(b), (c) and (e), and
  - (b) the statement under paragraph (1)(b) must specify—
    - (i) which functions (if any) are to be exercised by the persons acting jointly, and
    - (ii) which functions (if any) are to be exercised by any or all of the persons.
- (3) The rules may make provision about the date on which a statement comprised in the relevant documents must be made.
- (4) Regulations may amend this Article for the purposes of adding to the list of documents in paragraph (1).
- (5) Regulations may not be made under paragraph (4) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

**13BD Beginning of moratorium and appointment of monitor**

- (1) A moratorium for a company comes into force at the time at which—
  - (a) in the case of a company to which Article 13B applies, the relevant documents are filed with the High Court under paragraph (2) of that Article;
  - (b) in the case of a company to which Article 13BA applies, an order is made under Article 13BA(4)(a);
  - (c) in the case of a company to which Article 13BB applies, an order is made under Article 13BB(4)(a).
- (2) On the coming into force of a moratorium, the person or persons who made the statement mentioned in Article 13BC(1)(b) become the monitor in relation to the moratorium.

**13BE Obligations to notify where moratorium comes into force**

- (1) As soon as reasonably practicable after a moratorium for a company comes into force, the directors must notify the monitor of that fact.

- (2) As soon as reasonably practicable after receiving a notice under paragraph (1), the monitor must notify the following that a moratorium for the company has come into force –
  - (a) the registrar,
  - (b) every creditor of the company of whose claim the monitor is aware,
  - (c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
  - (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005, the Board of the Pension Protection Fund.
- (3) A notice under paragraph (2) must specify –
  - (a) when the moratorium came into force, and
  - (b) when, subject to any alteration under or by virtue of any of the provisions mentioned in Article 13C(3) or (4), the moratorium will come to an end.
- (4) If the directors fail to comply with paragraph (1), any director who did not have a reasonable excuse for the failure commits an offence.
- (5) If the monitor without reasonable excuse fails to comply with paragraph (2), the monitor commits an offence.

### CHAPTER 3

#### LENGTH OF MORATORIUM

##### *Initial period*

#### **13C End of the moratorium**

- (1) A moratorium ends at the end of the initial period unless it is extended, or comes to an end sooner, under or by virtue of a provision mentioned in paragraph (3) or (4).
- (2) In this Chapter “the initial period”, in relation to a moratorium, means the period of 20 business days beginning with the business day after the day on which the moratorium comes into force.
- (3) For provision under or by virtue of which a moratorium is or may be extended, see –
  - Article 13CA (extension by directors without creditor consent);
  - Article 13CB (extension by directors with creditor consent);
  - Article 13CD (extension by High Court on application of directors);
  - Article 13CE (extension while proposal for CVA pending);
  - Article 13CF (extension by High Court in course of other proceedings).
- (4) For provision under or by virtue of which the moratorium is or may be terminated, see –
  - Article 13CG (termination on entry into insolvency procedure etc);

Article 13ED (termination by monitor);

Article 13F or 13FB (termination by High Court).

- (5) A moratorium may not be extended under a provision mentioned in paragraph (3) once it has come to an end.
- (6) Where the application of two or more of the provisions mentioned in paragraphs (3) and (4) would produce a different length of moratorium, the provision that applies last is to prevail (irrespective of whether that results in a shorter or longer moratorium).

#### *Extension of moratorium*

#### **13CA Extension by directors without creditor consent**

- (1) During the initial period, but after the first 15 business days of that period, the directors may extend the moratorium by filing with the High Court –
  - (a) a notice that the directors wish to extend the moratorium,
  - (b) a statement from the directors that all of the following that have fallen due have been paid or otherwise discharged –
    - (i) moratorium debts, and
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see Article 13D),
  - (c) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its pre-moratorium debts, and
  - (d) a statement from the monitor that, in the monitor's view, it is likely that the moratorium will result in the rescue of the company as a going concern.
- (2) The rules may make provision about the date on which a statement mentioned in paragraph (1) must be made.
- (3) On the filing with the Court of the documents mentioned in paragraph (1), the moratorium is extended so that it ends at the end of the period –
  - (a) beginning immediately after the initial period ends, and
  - (b) ending with the 20th business day after the initial period ends.

#### **13CB Extension by directors with creditor consent**

- (1) At any time after the first 15 business days of the initial period the directors may, if they have obtained creditor consent, extend the moratorium by filing with the High Court –
  - (a) a notice that the directors wish to extend the moratorium,
  - (b) a statement from the directors that all of the following that have fallen due have been paid or otherwise discharged –
    - (i) moratorium debts, and
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see Article 13D),
  - (c) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its pre-moratorium debts,

- (d) a statement from the monitor that, in the monitor's view, it is likely that the moratorium will result in the rescue of the company as a going concern, and
  - (e) a statement from the directors that creditor consent has been obtained, and of the revised end date for which that consent was obtained.
- (2) The rules may make provision about the date on which a statement mentioned in paragraph (1) must be made.
  - (3) On the filing with the Court of the documents mentioned in paragraph (1), the moratorium is extended so that it ends with the revised end date mentioned in the statement under paragraph (1)(e).
  - (4) A moratorium may be extended under this Article more than once.

### **13CC Creditor consent for the purposes of Article 13CB**

- (1) References in Article 13CB to creditor consent are to the consent of pre-moratorium creditors to a revised end date for the moratorium.
- (2) The decision as to consent is to be made at a meeting of pre-moratorium creditors.
- (3) A meeting under paragraph (2)—
  - (a) is to be held at such time, date and place as the directors think fit, and
  - (b) is to be conducted in accordance with the rules.
- (4) The revised end date must be a date before the end of the period of one year beginning with the first day of the initial period.
- (5) In this Article “pre-moratorium creditor” means a creditor in respect of a pre-moratorium debt—
  - (a) for which the company has a payment holiday during the moratorium (see Article 13D), and
  - (b) which has not been paid or otherwise discharged.
- (6) In determining for the purposes of paragraph (5) what counts as a pre-moratorium debt for which the company has a payment holiday during the moratorium, Articles 13D(3) and 13HD(1)(b) apply as if the references to the moratorium were to the moratorium as proposed to be extended.
- (7) Regulations may amend this Article for the purposes of changing the definition of “pre-moratorium creditor”.
- (8) Regulations may not be made under paragraph (7) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

### **13CD Extension by High Court on application of directors**

- (1) At any time after the first 15 business days of the initial period, the directors may apply to the High Court for an order that the moratorium be extended.
- (2) The application must be accompanied by —

- (a) a statement from the directors that all of the following that have fallen due have been paid or otherwise discharged –
    - (i) moratorium debts, and
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see Article 13D),
  - (b) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its pre-moratorium debts,
  - (c) a statement from the directors as to whether pre-moratorium creditors (as defined by Article 13CC(5) and (6)) have been consulted about the application and if not why not, and
  - (d) a statement from the monitor that, in the monitor’s view, it is likely that the moratorium will result in the rescue of the company as a going concern.
- (3) The rules may make provision about the date on which a statement mentioned in paragraph (2) must be made.
- (4) On hearing the application the Court may –
  - (a) make an order that the moratorium be extended to such date as is specified in the order, or
  - (b) make any other order which the Court thinks appropriate.
- (5) In deciding whether to make an order under paragraph (4)(a) the Court must, in particular, consider the following –
  - (a) the interests of pre-moratorium creditors, as defined by Article 13CC(5) and (6), and
  - (b) the likelihood that the extension of the moratorium will result in the rescue of the company as a going concern.
- (6) Paragraph (7) applies where –
  - (a) an application under this Article is made, and
  - (b) apart from that paragraph, the moratorium would end at a time before the application has been disposed of.
- (7) The moratorium –
  - (a) does not end at the time mentioned in paragraph (6)(b), and
  - (b) instead, ends –
    - (i) in a case in which the Court makes an order under paragraph (4)(a), in accordance with the order;
    - (ii) otherwise, when the application is withdrawn or disposed of.
- (8) A moratorium may be extended under this Article more than once.

### **13CE Extension while proposal for CVA pending**

- (1) Paragraph (2) applies where –
  - (a) at any time, the directors make a proposal under Part 2 (company voluntary arrangements), and
  - (b) apart from that paragraph, the moratorium would end at a time before the proposal is disposed of.
- (2) The moratorium –

- (a) does not end at the time mentioned in paragraph (1)(b), and
  - (b) instead, ends when the proposal is disposed of.
- (3) For the purposes of this Article a proposal under Part 2 is “disposed of” when any of the following takes place –
- (a) the company and its creditors both decide under Article 17 not to approve the voluntary arrangement contained in the proposal;
  - (b) the decisions taken by the company and its creditors under Article 17 differ, and –
    - (i) the period for making an application under Article 17A(3) expires and either no application has been made within that period or any application made within that period has been withdrawn, or
    - (ii) an application is made under Article 17A(3) and that application is disposed of, or it is withdrawn after the expiry of the period for making an application under Article 17A(3);
  - (c) the voluntary arrangement contained in the proposal takes effect under Article 18;
  - (d) the proposal is withdrawn.

### **13CF Extension by High Court in the course of other proceedings**

- (1) Paragraph (2) applies where –
- (a) an application is made under section 896 or 901C(1) of the Companies Act 2006 (arrangements and reconstructions: court order for holding of meeting) in respect of a company, and
  - (b) during proceedings before the High Court in connection with the application, a moratorium for the company is in force.
- (2) The High Court may make an order that the moratorium be extended to such date as is specified in the order.

#### *Early termination on certain grounds*

### **13CG Company enters into insolvency procedure etc**

- (1) A moratorium comes to an end at any time at which the company –
- (a) enters into a compromise or arrangement (see paragraph (2)), or
  - (b) enters into a relevant insolvency procedure (see paragraph (3)).
- (2) For the purposes of this Article a company enters into a compromise or arrangement if an order under section 899 or 901F of the Companies Act 2006 (court sanction for compromise or arrangement) comes into effect in relation to the company.
- (3) For the purposes of this Article a company enters into a relevant insolvency procedure if –
- (a) a voluntary arrangement takes effect under Article 18 in relation to the company,
  - (b) the company enters administration (within the meaning of Schedule B1 (see paragraph 2(2)(b) of that Schedule)),
  - (c) paragraph 45 of Schedule B1 (administration: interim moratorium) begins to apply in relation to the company, or



- (d) the company goes into liquidation (see Article 6).

*Obligations to notify change in end of moratorium*

**13CH Obligations to notify change in end of moratorium**

- (1) The table imposes obligations on the directors of a company to notify the monitor where a moratorium for the company is extended or comes to an end.

	<i>Where a moratorium is extended or comes to an end under or by virtue of the following provision</i>	<i>the directors must</i>
1	Article 13CA	Notify the monitor of the extension.
2	Article 13CB	Notify the monitor of the extension and of the revised end date.
3	Article 13CD(4)	Notify the monitor of the extension and provide the monitor with the court order under Article 13CD(4).
4	Article 13CD(7)(a)	Notify the monitor of the extension.
5	Article 13CD(7)(b)(ii)	Notify the monitor that the moratorium has come to an end and of the date that it ended.
6	Article 13CE(2)(a)	Notify the monitor of the extension.
7	Article 13CE(2)(b)	Notify the monitor that the moratorium has come to an end and of the date that it ended.
8	Article 13CF	Notify the monitor of the extension and provide the monitor with any court order under Article 13CF.
9	Article 13CG	Notify the monitor that the moratorium has come to an end.
10	Article 13F	Notify the monitor that the moratorium has come to an end and provide the monitor with the court order under Article 13F.
11	Article 13FB	Notify the monitor that the moratorium has come to an end and provide the monitor with the court order under Article 13FB.

- (2) After receiving a notice under paragraph (1), other than a notice under entry 4 or 6 of the table, the monitor must notify the relevant persons of when the moratorium ended or, subject to any alteration under or by virtue of any of the provisions mentioned in Article 13C(3) or (4), the moratorium will come to an end.
- (3) After receiving a notice under entry 4 or 6 of the table, the monitor must notify the relevant persons.
- (4) If a moratorium comes to an end under Article 13ED (termination by monitor), the monitor must notify the company and the relevant persons of when the moratorium ended.
- (5) The rules may –
  - (a) make further provision about the timing of a notice required to be given under this Article;
  - (b) require a notice to be accompanied by other documents.
- (6) If the directors fail to comply with paragraph (1), any director who did not have a reasonable excuse for the failure commits an offence.
- (7) If the monitor without reasonable excuse fails to comply with any of paragraphs (2) to (4), the monitor commits an offence.
- (8) In this Article “the relevant persons” means –
  - (a) the registrar,
  - (b) every creditor of the company of whose claim the monitor is aware,
  - (c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
  - (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005, the Board of the Pension Protection Fund.

## CHAPTER 4

### EFFECTS OF MORATORIUM

#### *Introductory*

#### **13D Overview and construction of references to payment holidays**

- (1) This Chapter makes provision about the main effects of a moratorium for a company.
- (2) The provision made by this Chapter includes restrictions on the enforcement or payment of the debts that are defined by paragraph (3) as pre-moratorium debts for which a company has a payment holiday during a moratorium.
- (3) In this Part a reference to pre-moratorium debts for which a company has a payment holiday during a moratorium is to its pre-moratorium debts that have fallen due before the moratorium, or that fall due

during the moratorium, except in so far as they consist of amounts payable in respect of—

- (a) the monitor's remuneration or expenses,
  - (b) goods or services supplied during the moratorium,
  - (c) rent in respect of a period during the moratorium,
  - (d) wages or salary arising under a contract of employment,
  - (e) redundancy payments, or
  - (f) debts or other liabilities arising under a contract or other instrument involving financial services.
- (4) The rules may make provision as to what is, or is not, to count as the supply of goods or services for the purposes of paragraph (3)(b).
- (5) Regulations may amend this Article for the purposes of changing the list in paragraph (3).
- (6) Regulations may not be made under paragraph (5) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (7) In this Article—
- “contract or other instrument involving financial services” has the meaning given by Schedule ZA2;
  - “monitor's remuneration or expenses” does not include remuneration in respect of anything done by a proposed monitor before the moratorium begins;
  - “redundancy payment” means—
    - (a) a redundancy payment under Part 11 of the Employment Rights Act 1996 or Part 12 of the Employment Rights (Northern Ireland) Order 1996, or
    - (b) a payment made to a person who agrees to the termination of their employment in circumstances where they would have been entitled to a redundancy payment under that Part if dismissed;
  - “wages or salary” includes—
    - (a) a sum payable in respect of a period of holiday (for which purpose the sum is to be treated as relating to the period by reference to which the entitlement to holiday accrued),
    - (b) a sum payable in respect of a period of absence through illness or other good cause,
    - (c) a sum payable in lieu of holiday, and
    - (d) a contribution to an occupational pension scheme.

#### *Publicity about moratorium*

#### **13DA Publicity about moratorium**

- (1) During a moratorium, the company must, in any premises—
- (a) where business of the company is carried on, and
  - (b) to which customers of the company or suppliers of goods or services to the company have access,

display, in a prominent position so that it may easily be read by such customers or suppliers, a notice containing the required information.

- (2) During a moratorium, any websites of the company must state the required information.
- (3) During a moratorium, every business document issued by or on behalf of the company must state the required information.
- (4) For the purposes of paragraphs (1), (2) and (3), “the required information” is –
  - (a) that a moratorium is in force in relation to the company, and
  - (b) the name of the monitor.
- (5) If paragraph (1), (2) or (3) is contravened –
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the contravention commits an offence.
- (6) In this Article “business document” means –
  - (a) an invoice,
  - (b) an order for goods or services,
  - (c) a business letter, and
  - (d) an order form,
 whether in hard copy, electronic or any other form.

#### *Effect on creditors etc*

### **13DB Restrictions on insolvency proceedings etc**

- (1) During a moratorium –
  - (a) no petition may be presented for the winding up of the company, except by the directors,
  - (b) no resolution may be passed for the voluntary winding up of the company under Article 70(1)(a),
  - (c) a resolution for the voluntary winding up of the company under Article 70(1)(b) may be passed only if the resolution is recommended by the directors,
  - (d) no order may be made for the winding up of the company, except on a petition by the directors,
  - (e) no administration application may be made in respect of the company, except by the directors,
  - (f) no notice of intention to appoint an administrator of the company under paragraph 15 or 23(1) of Schedule B1 may be filed with the High Court,
  - (g) no administrator of the company may be appointed under paragraph 15 or 23(1) of Schedule B1, and
  - (h) no administrative receiver of the company may be appointed.
- (2) Paragraph (1)(a) does not apply to an excepted petition; and paragraph (1)(d) does not apply to an order on an excepted petition.
- (3) For these purposes, “excepted petition” means a petition under –
  - (a) Article 104A, 104B or 104C, or

- (b) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.

### **13DC Restrictions on enforcement and legal proceedings**

- (1) During a moratorium –
  - (a) a landlord or other person to whom rent is payable may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company, except with the permission of the High Court,
  - (b) no steps may be taken to enforce any security over the company’s property except –
    - (i) steps to enforce a collateral security charge (within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979)),
    - (ii) steps to enforce security created or otherwise arising under a financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226)), or
    - (iii) steps taken with the permission of the High Court,
  - (c) no steps may be taken to repossess goods in the company’s possession under any hire-purchase agreement, except with the permission of the High Court, and
  - (d) no legal process (including legal proceedings, enforcement and distress) may be instituted, carried out or continued against the company or its property except –
    - (i) employment tribunal proceedings or any legal process arising out of such proceedings,
    - (ii) proceedings, not within paragraph (i), involving a claim between an employer and a worker, or
    - (iii) a legal process instituted, carried out or continued with the permission of the High Court.
- (2) An application may not be made for permission under paragraph (1) for the purposes of enforcing a pre-moratorium debt for which the company has a payment holiday during the moratorium.
- (3) An application may not be made for permission under paragraph (1)(b), (c) or (d) with a view to obtaining –
  - (a) the crystallisation of a floating charge, or
  - (b) the imposition, by virtue of provision in an instrument creating a floating charge, of any restriction on the disposal of any property of the company.
- (4) Permission of the High Court under paragraph (1) may be given subject to conditions.
- (5) Paragraph (1)(b)(iii) is subject to Article 13DE(1).
- (6) In this Article –
  - “agency worker” has the meaning given by Article 15(2) of the Employment Relations (Northern Ireland) Order 1999;
  - “employer” –

- (a) in relation to an agency worker, has the meaning given by Article 15(2) of the Employment Relations (Northern Ireland) Order 1999;
  - (b) otherwise, has the meaning given by Article 3(4) of the Employment Rights (Northern Ireland) Order 1996;
- “worker” means an individual who is –
- (a) a worker within the meaning of Article 3(3) of the Employment Rights (Northern Ireland) Order 1996, or
  - (b) an agency worker.

### 13DD Floating charges

- (1) This Article applies where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force.
- (2) During the moratorium, the holder of the floating charge may not give any notice which would have the effect of –
  - (a) causing the floating charge to crystallise, or
  - (b) causing the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of property of the company.
- (3) No other event occurring during the moratorium is to have the effect mentioned in paragraph (2)(a) or (b).
- (4) Paragraph (5) applies where –
  - (a) the holder of a floating charge (“the chargee”) is prevented by paragraph (2) from giving a notice mentioned there during the moratorium, and
  - (b) under the terms of the floating charge, the time for giving such a notice ends during the moratorium or before the chargee is given notice of the end of the moratorium under Article 13CH.
- (5) The chargee may give notice later than is required under the terms of the floating charge, but only if the chargee does so as soon as is practicable after –
  - (a) the end of the moratorium, or
  - (b) if later, the day on which the chargee is notified of the end of the moratorium.
- (6) Where –
  - (a) paragraph (3) prevents an event which occurs during the moratorium from having the effect mentioned there, and
  - (b) the holder of the floating charge gives notice of the event to the company as soon as is practicable after –
    - (i) the end of the moratorium, or
    - (ii) if later, the day on which the chargee is notified of the end of the moratorium,

the event is to be treated as if it had occurred when the notice was given.
- (7) This Article does not apply in relation to a floating charge that is –
  - (a) a collateral security (as defined by Article 13DI);
  - (b) a market charge (as defined by Article 13DI);

- (c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));
- (d) a system-charge (as defined by Article 13DI).

### **13DE Enforcement of security granted during moratorium**

- (1) Security granted by a company during a moratorium in relation to the company may be enforced only if the monitor consented to the grant of security under Article 13DH.
- (2) See also Article 13DC(1)(b), which restricts enforcement during a moratorium.

#### *Notification of insolvency proceedings*

### **13DF Duty of directors to notify monitor of insolvency proceedings etc**

- (1) The directors of a company must notify the monitor before taking any of the following steps during a moratorium –
  - (a) presenting a petition for the winding up of the company;
  - (b) making an administration application in respect of the company;
  - (c) appointing an administrator under paragraph 23(2) of Schedule B1.
- (2) The directors of a company must notify the monitor if, during a moratorium for the company, they recommend that the company passes a resolution for voluntary winding up under Article 70(1)(b).
- (3) The rules may make provision about the timing of a notice required to be given under paragraph (1) or (2).
- (4) If the directors fail to comply with paragraph (1) or (2), any director who did not have a reasonable excuse for the failure commits an offence.

#### *Restrictions on transactions*

### **13DG Restrictions on obtaining credit**

- (1) During a moratorium, the company may not obtain credit to the extent of £500 or more from a person unless the person has been informed that a moratorium is in force in relation to the company.
- (2) The reference to the company obtaining credit includes –
  - (a) the company entering into a conditional sale agreement in accordance with which goods are to be sold to the company,
  - (b) the company entering into any other form of hire-purchase agreement under which goods are to be bailed to the company, and
  - (c) the company being paid in advance (whether in money or otherwise) for the supply of goods or services.
- (3) If a company contravenes paragraph (1) –
  - (a) the company commits an offence, and

- (b) any officer of the company who without reasonable excuse authorised or permitted the obtaining of the credit commits an offence.

### **13DH Restrictions on grant of security etc**

- (1) During a moratorium, the company may grant security over its property only if the monitor consents.
- (2) The monitor may give consent under paragraph (1) only if the monitor thinks that the grant of security will support the rescue of the company as a going concern.
- (3) In deciding whether to give consent under paragraph (1), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.
- (4) If the company grants security over its property during the moratorium otherwise than as authorised by paragraph (1) –
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the grant of the security commits an offence.
- (5) For the consequences of a company granting security over its property in contravention of paragraph (1), see also Article 13DE.
- (6) The monitor may not give consent under this Article if the granting of security is an offence under Article 13DI.

### **13DI Prohibition on entering into market contracts etc**

- (1) If a company enters into a transaction to which this Article applies during a moratorium for the company –
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the company to enter into the transaction commits an offence.
- (2) A company enters into a transaction to which this Article applies if it –
  - (a) enters into a market contract,
  - (b) enters into a financial collateral arrangement,
  - (c) gives a transfer order,
  - (d) grants a market charge or a system-charge, or
  - (e) provides any collateral security.
- (3) Where during the moratorium a company enters into a transaction to which this Article applies, nothing done by or in pursuance of the transaction is to be treated as done in contravention of any of Articles 13DA, 13DC, 13DG, 13DH and 13DJ to 13DN.
- (4) In this Article –
  - “collateral security” has the same meaning as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979);



“financial collateral arrangement” has the same meaning as in the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226);

“market charge” has the same meaning as in Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990;

“market contract” has the same meaning as in Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990;

“system-charge” has the meaning given by the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (S.R. 1996/252);

“transfer order” has the same meaning as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979).

*Restrictions on payments and disposal of property*

**13DJ Restrictions on payment of certain pre-moratorium debts**

- (1) During a moratorium, the company may make one or more relevant payments to a person that (in total) exceed the specified maximum amount only if—
  - (a) the monitor consents,
  - (b) the payment is in pursuance of a court order, or
  - (c) the payment is required by Article 13DM(3) or 13DN(3).
- (2) In paragraph (1)—
 

“relevant payments” means payments in respect of pre-moratorium debts for which the company has a payment holiday during the moratorium (see Article 13D);

“specified maximum amount” means an amount equal to the greater of—

  - (a) £5000, and
  - (b) 1% of the value of the debts and other liabilities owed by the company to its unsecured creditors when the moratorium began, to the extent that the amount of such debts and liabilities can be ascertained at that time.
- (3) The monitor may give consent under paragraph (1)(a) only if the monitor thinks that it will support the rescue of the company as a going concern.
- (4) In deciding whether to give consent under paragraph (1)(a), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.
- (5) If the company makes a payment to which paragraph (1) applies otherwise than as authorised by that paragraph—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the payment commits an offence.

**13DK Restrictions on disposal of property**

- (1) During a moratorium, the company may dispose of its property only if authorised by paragraph (2) or (5).

- (2) In the case of property that is not subject to a security interest, the company may dispose of the property if—
  - (a) the disposal is made in the ordinary way of the company's business,
  - (b) the monitor consents, or
  - (c) the disposal is in pursuance of a court order.
- (3) The monitor may give consent under paragraph (2)(b) only if the monitor thinks that it will support the rescue of the company as a going concern.
- (4) In deciding whether to give consent under paragraph (2)(b), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.
- (5) In the case of property that is subject to a security interest, the company may dispose of the property if the disposal is in accordance with—
  - (a) Article 13DM(1), or
  - (b) the terms of the security.
- (6) If the company disposes of its property during the moratorium otherwise than as authorised by this Article—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the disposal commits an offence.

#### **13DL Restrictions on disposal of hire-purchase property**

- (1) During a moratorium, the company may dispose of any goods in the possession of the company under a hire-purchase agreement only if the disposal is in accordance with—
  - (a) Article 13DN(1), or
  - (b) the terms of the agreement.
- (2) If the company disposes of goods in the possession of the company under a hire-purchase agreement otherwise than as authorised by paragraph (1)—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the disposal commits an offence.

#### *Disposals of property free from charges etc*

#### **13DM Disposal of charged property free from charge**

- (1) During a moratorium, the company may, with the permission of the High Court, dispose of property which is subject to a security interest as if it were not subject to the security interest.
- (2) The Court may give permission under paragraph (1) only if the Court thinks that it will support the rescue of the company as a going concern.
- (3) Where the Court gives permission under paragraph (1) other than in relation to a floating charge, the company must apply the following towards discharging the sums secured—
  - (a) the net proceeds of disposal of the property, and

- (b) any money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the property in the open market by a willing vendor.
- (4) Where the permission relates to two or more security interests, the condition in paragraph (3) requires the application of money in the order of the priorities of the security interests.
- (5) Where property subject to a floating charge is disposed of under paragraph (1), the holder of the floating charge has the same priority in respect of acquired property as they had in respect of the property disposed of.
- (6) In paragraph (5) “acquired property” means property of the company which directly or indirectly represents the property disposed of.
- (7) Where the Court makes an order giving permission under paragraph (1), the directors must, within the period of 14 days beginning with the date of the order, send a copy of it to the registrar.
- (8) If the directors fail to comply with paragraph (7), any director who did not have a reasonable excuse for the failure commits an offence.
- (9) If a company fails to comply with paragraph (3) –
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the failure commits an offence.
- (10) Paragraph (1) does not apply in relation to any property which is subject to a financial collateral arrangement, a market charge, a system-charge or a collateral security (as defined by Article 13DI).

### **13DN Disposal of hire-purchase property**

- (1) During a moratorium, the company may, with the permission of the High Court, dispose of goods which are in the possession of the company under a hire-purchase agreement as if all of the rights of the owner under the agreement were vested in the company.
- (2) The Court may give permission under paragraph (1) only if the Court thinks that it will support the rescue of the company as a going concern.
- (3) Where the Court gives permission under paragraph (1), the company must apply the following towards discharging the sums payable under the hire-purchase agreement –
  - (a) the net proceeds of disposal of the goods, and
  - (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the goods in the open market by a willing vendor.
- (4) If a company fails to comply with paragraph (3) –
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the failure commits an offence.

- (5) Where the Court makes an order giving permission under paragraph (1), the directors must, within the period of 14 days beginning with the date of the order, send a copy of it to the registrar.
- (6) If the directors fail to comply with paragraph (5), any director who did not have a reasonable excuse for the failure commits an offence.

*Effect of contravention of certain provisions of Chapter*

**13DO Contravention of certain requirements imposed under this Chapter**

The fact that a company contravenes Article 13DA or any of Articles 13DG to 13DN does not –

- (a) make any transaction void or unenforceable, or
- (b) affect the validity of any other thing.

**CHAPTER 5**

THE MONITOR

**13E Status of monitor**

The monitor in relation to a moratorium is an officer of the High Court.

**13EA Monitoring**

- (1) During a moratorium, the monitor must monitor the company's affairs for the purpose of forming a view as to whether it remains likely that the moratorium will result in the rescue of the company as a going concern.
- (2) In forming the view mentioned in paragraph (1), the monitor is entitled to rely on information provided by the company, unless the monitor has reason to doubt its accuracy.

**13EB Provision of information to monitor**

- (1) The monitor may require the directors of the company to provide any information required by the monitor for the purpose of carrying out the monitor's functions.
- (2) The directors must comply with a requirement to provide information as soon as practicable.
- (3) For the potential consequences of failing to comply with a requirement to provide information, see Article 13ED.

**13EC Application by monitor for directions**

The monitor in relation to a moratorium may apply to the High Court for directions about the carrying out of the monitor's functions.

**13ED Termination of moratorium by monitor**

- (1) The monitor must bring a moratorium to an end by filing a notice with the High Court if –
  - (a) the monitor thinks that the moratorium is no longer likely to result in the rescue of the company as a going concern,

- (b) the monitor thinks that the objective of rescuing the company as a going concern has been achieved,
  - (c) the monitor thinks that, by reason of a failure by the directors to comply with a requirement under Article 13EB, the monitor is unable properly to carry out the monitor's functions, or
  - (d) the monitor thinks that the company is unable to pay any of the following that have fallen due –
    - (i) moratorium debts;
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see Article 13D).
- (2) The rules may provide for debts that are to be disregarded for the purposes of paragraph (1)(d).
  - (3) On the filing with the Court of a notice under paragraph (1), the moratorium comes to an end.
  - (4) The rules may make provision about the timing of a notice required to be given under paragraph (1).
  - (5) Regulations may amend this Article for the purposes of changing the circumstances in which the monitor must bring a moratorium to an end under paragraph (1).
  - (6) Regulations may not be made under paragraph (5) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
  - (7) See also Article 13CH (obligations to notify change in end of moratorium).

### **13EE Replacement of monitor or appointment of additional monitor**

- (1) The High Court may make an order authorising the appointment of a qualified person to act as the monitor in relation to a moratorium instead of, or in addition to, a person who already acts as the monitor.
- (2) The High Court may make an order providing that a person ceases to act as the monitor in relation to a moratorium.
- (3) An order under paragraph (1) or (2) may be made on only an application by the directors or the monitor.
- (4) The Court may make an order authorising the appointment of a monitor under paragraph (1) only if the person has provided the Court with a statement that the person –
  - (a) is a qualified person, and
  - (b) consents to act as the monitor in relation to the moratorium.
- (5) Where it is proposed that more than one person should act as the monitor in relation to the moratorium, the statement under paragraph (4) must specify –
  - (a) which functions (if any) are to be exercised by the persons acting jointly, and
  - (b) which functions (if any) are to be exercised by any or all of the persons.

- (6) The rules may make provision about the date on which the statement under paragraph (4) must be made.
- (7) Where the Court makes an order under paragraph (1) or (2) the person begins to act as the monitor, or ceases to act as the monitor, in relation to the moratorium at the time specified in, or determined in accordance with, the order (“the relevant time”).
- (8) As soon as reasonably practicable after the relevant time, the monitor must notify the following of the effect of the order –
  - (a) the registrar,
  - (b) every creditor of the company of whose claim the monitor is aware,
  - (c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
  - (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005, the Board of the Pension Protection Fund.
- (9) If the monitor without reasonable excuse fails to comply with paragraph (8), the monitor commits an offence.

#### **13EF Application of Part where two or more persons act as monitor**

- (1) Where two or more persons act jointly as the monitor –
  - (a) a reference in this Order to the monitor is a reference to those persons acting jointly;
  - (b) where an offence of omission is committed by the monitor, each of the persons appointed to act jointly –
    - (i) commits the offence, and
    - (ii) may be proceeded against and punished individually.
- (2) Where persons act jointly in respect of only some of the functions of the monitor, paragraph (1) applies only in relation to those functions.
- (3) Where two or more persons act concurrently as the monitor a reference in this Order to the monitor is a reference to any of the persons appointed (or any combination of them).

#### **13EG Presumption of validity**

An act of the monitor is valid in spite of a defect in the monitor’s appointment or qualification.

## **CHAPTER 6**

### **CHALLENGES**

#### **13F Challenge to monitor’s actions**

- (1) Any of the persons specified below may apply to the High Court on the ground that an act, omission or decision of the monitor during a moratorium has unfairly harmed the interests of the applicant.
- (2) The persons who may apply are –

- (a) a creditor, director or member of the company, or
  - (b) any other person affected by the moratorium.
- (3) An application under paragraph (1) may be made during the moratorium or after it has ended.
- (4) On an application under paragraph (1) the Court may –
  - (a) confirm, reverse or modify any act or decision of the monitor,
  - (b) give the monitor directions, or
  - (c) make such other order as it thinks fit (but may not, under this sub-paragraph, order the monitor to pay any compensation).
- (5) Where an application under paragraph (1) relates to a failure by the monitor to bring the moratorium to an end under Article 13ED(1), an order under paragraph (4) may, in particular, bring the moratorium to an end and make such consequential provision as the Court thinks fit.
- (6) Where an application under paragraph (1) relates to the monitor bringing a moratorium to an end under Article 13ED(1), an order under paragraph (4) may, in particular, provide that the moratorium is not to be taken into account for the purposes of paragraph 2(1)(b) of Schedule ZA1 (company not eligible for moratorium if moratorium in force within previous 12 months).
- (7) In making an order under paragraph (4) the Court must have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.
- (8) See also Article 13CH (obligations to notify change in end of moratorium).

### **13FA Challenges to monitor remuneration in insolvency proceedings**

- (1) The rules may confer on an administrator or liquidator of a company the right to apply to the High Court on the ground that remuneration charged by the monitor in relation to a prior moratorium for the company was excessive.
- (2) Rules under paragraph (1) may (among other things) make provision as to –
  - (a) time limits;
  - (b) disposals available to the Court;
  - (c) the treatment of costs of the application in the administration or winding up.

### **13FB Challenge to directors' actions**

- (1) A creditor or member of a company may apply to the High Court for an order under this Article on the ground that –
  - (a) during a moratorium, the company's affairs, business and property are being or have been managed by the directors in a manner which has unfairly harmed the interests of its creditors or members generally or of some part of its creditors or members (including at least the applicant), or
  - (b) any actual or proposed act or omission of the directors during a moratorium causes or would cause such harm.

- (2) An application under paragraph (1) may be made during the moratorium or after it has ended.
- (3) On an application under paragraph (1) the Court may make such order as it thinks fit.
- (4) An order under paragraph (3) may in particular –
  - (a) regulate the management by the directors of the company’s affairs, business and property during the remainder of the moratorium,
  - (b) require the directors to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant has complained they have omitted to do,
  - (c) require the summoning of a meeting of the company’s creditors for the purpose of considering such matters as the Court may direct, or
  - (d) bring the moratorium to an end and make such consequential provision as the Court thinks fit.
- (5) In making an order under paragraph (3) the Court must have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.
- (6) See also Article 13CH (obligations to notify change in end of moratorium).

### **13FC Challenge brought by Board of the Pension Protection Fund**

- (1) This Article applies where –
  - (a) a moratorium –
    - (i) is in force in relation to a company that is an employer in respect of an eligible scheme, or
    - (ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and
  - (b) the trustees or managers of the scheme are a creditor of the company.
- (2) The Board of the Pension Protection Fund may make any application under Article 13F(1) or 13FB(1) that could be made by the trustees or managers as a creditor.
- (3) For the purposes of such an application, any reference in Article 13F(1) or 13FB(1) to the interests of the applicant is to be read as a reference to the interests of the trustees or managers as a creditor.
- (4) In this Article “eligible scheme” has the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005.

## **CHAPTER 7**

### **OFFENCES: GENERAL**

### **13G Offence of fraud etc during or in anticipation of moratorium**

- (1) An officer of a company commits an offence if, during a moratorium for the company or at any time within the period of 12 months ending with



- the day on which a moratorium for the company comes into force, the officer –
- (a) does any of the things mentioned in paragraph (2), or
  - (b) was privy to the doing by others of any of the things mentioned in paragraph (2)(c), (d) and (e).
- (2) Those things are –
- (a) concealing any part of the company’s property to the value of £500 or more, or concealing any debt due to or from the company,
  - (b) fraudulently removing any part of the company’s property to the value of £500 or more,
  - (c) concealing, destroying, mutilating or falsifying any document affecting or relating to the company’s property or affairs,
  - (d) making any false entry in any document affecting or relating to the company’s property or affairs,
  - (e) fraudulently parting with, altering or making any omission in any document affecting or relating to the company’s property or affairs, or
  - (f) pawning, pledging or disposing of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company’s business).
- (3) It is a defence –
- (a) for a person charged with an offence under paragraph (1) in respect of any of the things mentioned in paragraph (2)(a) or (f) to prove that the person had no intent to defraud, and
  - (b) for a person charged with an offence under paragraph (1) in respect of any of the things mentioned in paragraph (2)(c) or (d) to prove that the person had no intent to conceal the state of affairs of the company or to defeat the law.
- (4) Where a person pawns, pledges or disposes of any property of a company in circumstances which amount to an offence under paragraph (1), every person who takes in pawn or pledge, or otherwise receives, the property commits an offence if the person knows it to be pawned, pledged or disposed of in circumstances which –
- (a) amount to an offence under paragraph (1), or
  - (b) would, if a moratorium were obtained for the company within the period of 12 months beginning with the day on which the pawning, pledging or disposal took place, amount to an offence under paragraph (1).
- (5) In this Article, “officer” includes a shadow director.

### **13GA Offence of false representation etc to obtain a moratorium**

- (1) An officer of a company commits an offence if, for the purpose of obtaining a moratorium for the company or an extension of a moratorium for the company, the officer –
  - (a) makes any false representation, or
  - (b) fraudulently does, or omits to do, anything.
- (2) Paragraph (1) applies even if no moratorium or extension is obtained.

- (3) In this Article, “officer” includes a shadow director.

### **13GB Prosecution of delinquent officers of company**

- (1) This Article applies where a moratorium has been obtained for a company.
- (2) If it appears to the monitor that any past or present officer of the company has committed an offence in connection with the moratorium, the monitor must forthwith—
- (a) report the matter to the Department, and
  - (b) provide the Department with such information and give it such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the monitor and relating to the matter in question) as it requires.
- (3) Where a matter is reported to the Department under paragraph (2), the Department may, for the purpose of investigating the matter and such other matters relating to the affairs of the company as appear to the Department to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of the Companies Act 1985.
- (4) For the purpose of such an investigation any obligation imposed on a person by any provision of the Companies Acts to produce documents or give information to, or otherwise to assist, inspectors so appointed is to be regarded as an obligation similarly to assist the Department in its investigation.
- (5) Where a question is put to a person in exercise of the powers conferred by paragraph (3), the person’s answer may be used in evidence against them.
- (6) However, in criminal proceedings in which the person is charged with an offence other than a false statement offence—
- (a) no evidence relating to the answer may be adduced, and
  - (b) no question relating to it may be asked,
- by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of the person.
- (7) In paragraph (6) “false statement offence” means an offence under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).
- (8) Where the Director of Public Prosecutions for Northern Ireland institutes criminal proceedings following any report under paragraph (2), the monitor, and every officer and agent of the company past and present (other than the defendant), must give the Director all assistance in connection with the prosecution which they are reasonably able to give.
- (9) For this purpose “agent” includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

- (10) The High Court may, on the application of the Director of Public Prosecutions for Northern Ireland, direct a person who has failed to comply with paragraph (8) to comply with it.

## CHAPTER 8

### MISCELLANEOUS AND GENERAL

#### *Special rules for certain kinds of company etc*

#### **13H Regulated companies: modifications to this Part**

- (1) For the purposes of Articles 13B and 13BA as they apply in relation to a regulated company, Article 13BC(1) has effect as if the documents listed there included a reference to the written consent of the appropriate regulator to the appointment of the proposed monitor.
- (2) The remaining provisions of this Article apply in relation to a moratorium for a regulated company.
- (3) Any notice under Article 13BE(2), 13CH(2) to (4) or 13EE(8) must also be sent by the monitor to the appropriate regulator.
- (4) The directors must give the appropriate regulator notice of any meeting of the company's creditors that is to be held for the purposes of Article 13CC(2) or 13FB(4)(c).
- (5) If the directors fail to comply with paragraph (4), any director who did not have a reasonable excuse for the failure commits an offence.
- (6) The appropriate regulator, or a person appointed by the appropriate regulator, may in the way provided for by the rules, participate (but not vote) in any meeting of the company's creditors that is held for the purposes of this Part.
- (7) The appropriate regulator is entitled to be heard on any application to the High Court for permission under Article 13DM(1) or 13DN(1) (disposal of charged property, etc.).
- (8) The High Court may make an order under Article 13EE(1) only if the appropriate regulator has given its written consent to the appointment of the proposed monitor.
- (9) The persons who may apply to the High Court under Article 13EE(3), 13F(1) or 13FB(1) include the appropriate regulator.
- (10) If a person other than a regulator applies to the High Court under Article 13EE(3), 13F(1) or 13FB(1) the appropriate regulator is entitled to be heard on the application.
- (11) If either regulator makes an application to the High Court under Article 13EE(3), 13F(1) or 13FB(1) in relation to a PRA-regulated company, the other regulator is entitled to be heard on the application.
- (12) This Article does not affect any right that the appropriate regulator has (apart from this Article) as a creditor of a regulated company.
- (13) In this Article –  
    “the appropriate regulator” means –

- (a) where the regulated company is a PRA-regulated company, each of the Financial Conduct Authority and the Prudential Regulation Authority, and
  - (b) where the regulated company is not a PRA-regulated company, the Financial Conduct Authority;
- “PRA-*authorised person*” has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000;
- “PRA-*regulated company*” means a regulated company which –
- (a) is, or has been, a PRA-*authorised person*,
  - (b) is, or has been, an appointed representative within the meaning given by section 39 of the Financial Services and Markets Act 2000, whose principal (or one of whose principals) is, or was, a PRA-*authorised person*, or
  - (c) is carrying on, or has carried on, a PRA-*regulated activity* (within the meaning of section 22A of that Act) in contravention of the general prohibition;
- “*regulated activity*” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section;
- “*regulated company*” means a company which –
- (a) is, or has been, an *authorised person* within the meaning given by section 31 of the Financial Services and Markets Act 2000,
  - (b) is, or has been, an appointed representative within the meaning given by section 39 of that Act, or
  - (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition within the meaning given by section 19 of that Act;
- “*regulator*” means the Financial Conduct Authority or the Prudential Regulation Authority.
- (14) Regulations may amend this Article for the purposes of changing the definition of “*regulated company*” in paragraph (13).
- (15) Regulations may not be made under paragraph (14) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

### **13HA Power to modify this Part etc in relation to certain companies**

- (1) Regulations may –
- (a) modify this Part as it applies in relation to a company for which there is a special administration regime, or
  - (b) make provision in connection with the interaction between this Part and any other insolvency procedure in relation to such a company.
- (2) The power in paragraph (1) may, in particular, be used to amend, repeal, revoke or otherwise modify any statutory provision.
- (3) In this Article –
- “*ordinary administration*” means the insolvency procedure provided for by Schedule B1;

“special administration regime” means provision made by any statutory provision for an insolvency procedure that –

- (a) is similar or corresponds to ordinary administration, and
  - (b) provides for the administrator to have one or more special objectives instead of or in addition to the objectives of ordinary administration.
- (4) Regulations may not be made under paragraph (1) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

### **13HB Power to make provision in connection with pension schemes**

- (1) A Northern Ireland department may by regulations provide that, in a case where –
- (a) a moratorium –
    - (i) is in force in relation to a company that is an employer in respect of an eligible scheme, or
    - (ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and
  - (b) the trustees or managers of the scheme are a creditor of the company,
- the Board of the Pension Protection Fund may exercise any of the following rights.
- (2) The rights are those which are exercisable by the trustees or managers as a creditor of the company under or by virtue of –
- (a) Article 13CC, or
  - (b) a court order under Article 13FB(4)(c).
- (3) Regulations under paragraph (1) may provide that the Board may exercise any such rights –
- (a) to the exclusion of the trustees or managers of the scheme, or
  - (b) in addition to the exercise of those rights by the trustees or managers of the scheme.
- (4) Regulations under paragraph (1) –
- (a) may specify conditions that must be met before the Board may exercise any such rights;
  - (b) may provide for any such rights to be exercisable by the Board for a specified period;
  - (c) may make provision in connection with any such rights ceasing to be so exercisable at the end of such a period.
- (5) Regulations may not be made under paragraph (1) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (6) In this Article “eligible scheme” has the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005.

*Floating charges***13HC Void provisions in floating charge documents**

- (1) A provision in an instrument creating a floating charge is void if it provides for the obtaining of a moratorium, or anything done with a view to obtaining a moratorium, to be –
  - (a) an event causing the floating charge to crystallise,
  - (b) an event causing restrictions which would not otherwise apply to be imposed on the disposal of property by the company, or
  - (c) a ground for the appointment of a receiver.
- (2) The reference in paragraph (1) to anything done with a view to obtaining a moratorium includes any preliminary decision or investigation.
- (3) In paragraph (1) “receiver” includes a manager and a person who is appointed both receiver and manager.
- (4) Paragraph (1) does not apply to a provision in an instrument creating a floating charge that is –
  - (a) a collateral security (as defined by Article 13DI);
  - (b) a market charge (as defined by Article 13DI);
  - (c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));
  - (d) a system-charge (as defined by Article 13DI).

*Interpretation of this Part***13HD Meaning of “pre-moratorium debt” and “moratorium debt”**

- (1) In this Part “pre-moratorium debt”, in relation to a company for which a moratorium is or has been in force, means –
  - (a) any debt or other liability to which the company becomes subject before the moratorium comes into force, or
  - (b) any debt or other liability to which the company has become or may become subject during the moratorium by reason of any obligation incurred before the moratorium comes into force,but this is subject to paragraph (3).
- (2) In this Part “moratorium debt”, in relation to a company for which a moratorium is or has been in force, means –
  - (a) any debt or other liability to which the company becomes subject during the moratorium, other than by reason of an obligation incurred before the moratorium came into force, or
  - (b) any debt or other liability to which the company has become or may become subject after the end of the moratorium by reason of an obligation incurred during the moratorium,but this is subject to paragraph (3).
- (3) For the purposes of this Part –
  - (a) a liability in tort is a “pre-moratorium debt” if either –
    - (i) the cause of action has accrued before the moratorium comes into force, or

- (ii) all the elements necessary to establish the cause of action exist before the moratorium comes into force except for actionable damage;
- (b) a liability in tort is a “moratorium debt” if it does not fall within sub-paragraph (a) and either –
  - (i) the cause of action has accrued during the moratorium, or
  - (ii) all the elements necessary to establish the cause of action exist before the moratorium comes to an end except for actionable damage.
- (4) Regulations may amend this Article for the purposes of changing the definition of “pre-moratorium debt” and “moratorium debt” in this Part.
- (5) Regulations may not be made under paragraph (4) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

### **13HE Interpretation of this Part: general**

- (1) In this Part –
  - “company” means –
    - (a) a company registered under the Companies Act 2006 in Northern Ireland, or
    - (b) an unregistered company that may be wound up under Part 6 of this Order;
  - “eligible”, in relation to a company, has the meaning given by Schedule ZA1;
  - “employer”, in relation to a pension scheme –
    - (a) in Articles 13BE(2)(c), 13CH(8)(c) and 13EE(8)(c), means an employer within the meaning of Article 2(2) of the Pensions (Northern Ireland) Order 2005;
    - (b) elsewhere in this Part, has the same meaning that it has for the purposes of Part 3 of the Pensions (Northern Ireland) Order 2005 (see Article 2(2) and (5) of that Order);
  - “hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement;
  - “money purchase scheme” has the meaning given by section 176(1) of the Pension Schemes (Northern Ireland) Act 1993;
  - “the monitor”, in relation to a moratorium, means the person who has the functions of the monitor in relation to the moratorium (see also Article 13EF for cases where two or more persons act as the monitor);
  - “moratorium” means a moratorium under this Part;
  - “moratorium debt” has the meaning given by Article 13HD;
  - “occupational pension scheme” has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993;
  - “pension scheme” has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993;
  - “pre-moratorium debt” has the meaning given by Article 13HD;

“qualified person” means a person qualified to act as an insolvency practitioner;

“unable to pay its debts” –

- (a) in relation to a registered company, has the same meaning as in Part 5 (see Article 103);
  - (b) in relation to an unregistered company, has the same meaning as in Part 6 (see Articles 186 to 188).
- (2) Regulations may amend this Article for the purposes of changing the definition of “qualified person” in paragraph (1).
- (3) Regulations may not be made under paragraph (2) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

### *Regulations*

#### **13HF Regulations**

Regulations made in the exercise of any power conferred by this Part may make consequential, supplementary, incidental or transitional provision or savings.”

- (2) Schedule 5 inserts into the Insolvency (Northern Ireland) Order 1989 a new Schedule ZA1 (eligible companies).
- (3) Schedule 6 inserts into the Insolvency (Northern Ireland) Order 1989 a new Schedule ZA2 (contracts involving financial services).

#### **5 Moratoriums in Northern Ireland: further amendments and transition**

- (1) Schedule 7 contains consequential and other amendments to do with moratoriums under new Part 1A of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (2) Nothing in this Act affects the operation of the Insolvency (Northern Ireland) Order 1989, or any other statutory provision, in relation to a moratorium under Schedule A1 to that Order which comes into force before the repeal of that Schedule by Schedule 7 to this Act.
- (3) Subsection (2) is without prejudice to the operation of section 16 of the Interpretation Act 1978 (general savings).
- (4) In this section “statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

#### **6 Moratoriums in Northern Ireland: temporary modifications**

Schedule 8 makes temporary modifications to Part 1A of the Insolvency (Northern Ireland) Order 1989 (moratorium) and other temporary provision in connection with that Part.



*Arrangements and reconstructions for companies in financial difficulty***7 Arrangements and reconstructions for companies in financial difficulty**

Schedule 9 contains provision about arrangements and reconstructions for companies in financial difficulty.

*Administration: sales to connected persons***8 Administration in Great Britain: sales to connected persons**

- (1) Paragraph 60A of Schedule B1 to the Insolvency Act 1986 (which expired in May 2020) is revived.
- (2) For sub-paragraph (10) of that paragraph substitute –  
“(10) This paragraph expires at the end of June 2021 unless the power conferred by it is exercised before then.”

**9 Administration in Northern Ireland: sales to connected persons**

- (1) The Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) is amended as follows.
- (2) Schedule B1 (administration) is amended in accordance with subsections (3) to (5).
- (3) Paragraph 61 (powers of administrator) becomes sub-paragraph (1) of that paragraph.
- (4) After that sub-paragraph insert –  
“(2) But the power to sell, hire out or otherwise dispose of property is subject to any regulations that may be made under paragraph 61A.”
- (5) After paragraph 61 insert –  
“61A(1) Regulations may make provision for –
  - (a) prohibiting, or
  - (b) imposing requirements or conditions in relation to, the disposal, hiring out or sale of property of a company by the administrator to a connected person in circumstances specified in the regulations.
  - (2) Regulations under this paragraph may in particular require the approval of, or provide for the imposition of requirements or conditions by –
    - (a) creditors of the company,
    - (b) the High Court, or
    - (c) a person of a description specified in the regulations.
  - (3) In sub-paragraph (1), “connected person”, in relation to a company, means –
    - (a) a relevant person in relation to the company, or
    - (b) a company connected with the company.

- (4) For the purposes of sub-paragraph (3) –
- (a) “relevant person”, in relation to a company, means –
    - (i) a director or other officer, or shadow director, of the company;
    - (ii) a non-employee associate of such a person;
    - (iii) a non-employee associate of the company;
  - (b) a company is connected with another if any relevant person of one is or has been a relevant person of the other.
- (5) In sub-paragraph (4), “non-employee associate” of a person means a person who is an associate of that person otherwise than by virtue of employing or being employed by that person.
- (6) Paragraph (11) of Article 4 (extended definition of company) applies for the purposes of sub-paragraphs (3) to (5) as it applies for the purposes of that Article.
- (7) Regulations under this paragraph may make incidental, consequential, supplemental and transitional provision.
- (8) Regulations may not be made under this paragraph unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (9) This paragraph expires at the end of June 2021 unless the power conferred by it is exercised before then.”
- (6) In Article 2(2), in the definition of “regulations”, after the words “and paragraph 16 of Schedule A1” (which are repealed by paragraph 3(b) of Schedule 7 to this Act) insert “and paragraph 61A of Schedule B1”.

### *Winding-up petitions*

#### **10 Winding-up petitions: Great Britain**

Schedule 10 contains temporary provision in relation to winding-up petitions in Great Britain.

#### **11 Winding-up petitions: Northern Ireland**

Schedule 11 contains temporary provision in relation to winding-up petitions in Northern Ireland.

### *Wrongful trading*

#### **12 Suspension of liability for wrongful trading: Great Britain**

- (1) In determining for the purposes of section 214 or 246ZB of the Insolvency Act 1986 (liability of director for wrongful trading) the contribution (if any) to a company’s assets that it is proper for a person to make, the court is to assume that the person is not responsible for any worsening of the financial position of the company or its creditors that occurs during the relevant period.
- (2) In this section the “relevant period” is the period which –
  - (a) begins with 1 March 2020, and

- (b) ends with 30 September 2020.
- (3) Subsection (1) does not apply if at any time during the relevant period the company concerned is excluded from being eligible by any of the paragraphs of Schedule ZA1 to the Insolvency Act 1986 listed in subsection (4), as they apply for the purposes of this subsection (see subsection (5)).
- (4) The paragraphs of Schedule ZA1 to the Insolvency Act 1986 are –
  - (a) paragraph 3 (insurance companies),
  - (b) paragraph 4 (banks),
  - (c) paragraph 5 (electronic money institutions),
  - (d) paragraph 6 (investment banks and investment firms),
  - (e) paragraph 9 (payment institutions),
  - (f) paragraph 10 (operators of payment systems etc),
  - (g) paragraph 11 (recognised investment exchanges, clearing houses etc),
  - (h) paragraph 12 (securitisation companies),
  - (i) paragraph 13 (parties to capital market arrangements),
  - (j) paragraph 15 (public-private partnership project companies), and
  - (k) paragraph 18 (certain overseas companies).
- (5) In their application for the purposes of subsection (3) –
  - (a) each of paragraphs 13 and 15 of Schedule ZA1 to the Insolvency Act 1986 has effect as if in sub-paragraph (1) –
    - (i) the words “, on the filing date” were omitted, and
    - (ii) paragraph (b) were omitted, and
  - (b) paragraph 18 of that Schedule has effect as if for “paragraph 2”, in both places, there were substituted “paragraphs 2, 7 and 8”.
- (6) Subsection (1) also does not apply if at any time during the relevant period the company concerned –
  - (a) has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on a regulated activity, and
  - (b) is not subject to a requirement imposed under that Act to refrain from holding money for clients.
- (7) This section has effect –
  - (a) in so far as it relates to section 214 of the Insolvency Act 1986, as if it were contained in Part 4 of that Act, and
  - (b) in so far as it relates to section 246ZB of the Insolvency Act 1986, as if it were contained in Part 6 of that Act.
- (8) But this section does not have effect in relation to the following bodies (which are bodies to which provisions contained in Parts 4 and 6 of the Insolvency Act 1986 apply) –
  - (a) a society that is registered within the meaning of the Friendly Societies Act 1974 and that at any time during the relevant period carries on the regulated activity of effecting or carrying out contracts of insurance;
  - (b) a building society within the meaning of the Building Societies Act 1986;
  - (c) a society that is incorporated under the Friendly Societies Act 1992;
  - (d) a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 that is registered under that Act as a credit union;

- (e) a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 that at any time during the relevant period carries on the regulated activity of effecting or carrying out contracts of insurance.
- (9) In this section “regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section.

### **13 Suspension of liability for wrongful trading: Northern Ireland**

- (1) In determining for the purposes of Article 178 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (liability of director for wrongful trading) the contribution (if any) to a company’s assets that it is proper for a person to make, the High Court is to assume that the person is not responsible for any worsening of the financial position of the company or its creditors that occurs during the relevant period.
- (2) In this section the “relevant period” is the period which –
  - (a) begins with 1 March 2020, and
  - (b) ends with 30 September 2020.
- (3) Subsection (1) does not apply if at any time during the relevant period the company concerned is excluded from being eligible by any of the paragraphs of Schedule ZA1 to the Insolvency (Northern Ireland) Order 1989 listed in subsection (4), as they apply for the purposes of this subsection (see subsection (5)).
- (4) The paragraphs of Schedule ZA1 to the Insolvency (Northern Ireland) Order 1989 are –
  - (a) paragraph 3 (insurance companies),
  - (b) paragraph 4 (banks),
  - (c) paragraph 5 (electronic money institutions),
  - (d) paragraph 6 (investment banks and investment firms),
  - (e) paragraph 9 (payment institutions),
  - (f) paragraph 10 (operators of payment systems etc),
  - (g) paragraph 11 (recognised investment exchanges, clearing houses etc),
  - (h) paragraph 12 (securitisation companies),
  - (i) paragraph 13 (parties to capital market arrangements),
  - (j) paragraph 15 (public-private partnership project companies), and
  - (k) paragraph 18 (certain overseas companies).
- (5) In their application for the purposes of subsection (3) –
  - (a) each of paragraphs 13 and 15 of Schedule ZA1 to the Insolvency (Northern Ireland) Order 1989 has effect as if in sub-paragraph (1) –
    - (i) the words “, on the filing date” were omitted, and
    - (ii) paragraph (b) were omitted, and
  - (b) paragraph 18 of that Schedule has effect as if for “paragraph 2”, in both places, there were substituted “paragraphs 2, 7 and 8”.
- (6) Subsection (1) also does not apply if at any time during the relevant period the company concerned –
  - (a) has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on a regulated activity, and

- (b) is not subject to a requirement imposed under that Act to refrain from holding money for clients.
- (7) This section has effect as if it were contained in Part 5 of the Insolvency (Northern Ireland) Order 1989.
- (8) But this section does not have effect in relation to the following bodies (which are bodies to which provisions contained in Part 5 of the Insolvency (Northern Ireland) Order 1989 apply) –
- (a) a registered society within the meaning of the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)) that at any time during the relevant period carries on the regulated activity of effecting or carrying out contracts of insurance;
  - (b) a society that is registered within the meaning of the Friendly Societies Act 1974 and that at any time during the relevant period carries on the regulated activity of effecting or carrying out contracts of insurance;
  - (c) a building society within the meaning of the Building Societies Act 1986;
  - (d) a credit union within the meaning of the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12));
  - (e) a society that is incorporated under the Friendly Societies Act 1992.
- (9) In this section “regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section.

*Termination clauses in supply contracts*

#### **14 Protection of supplies of goods and services: Great Britain**

- (1) In the Insolvency Act 1986, after section 233A insert –
- “233B Protection of supplies of goods and services**
- (1) This section applies where a company becomes subject to a relevant insolvency procedure.
  - (2) A company becomes subject to a relevant insolvency procedure for the purposes of this section where –
    - (a) a moratorium under Part A1 comes into force for the company,
    - (b) the company enters administration,
    - (c) an administrative receiver of the company is appointed (otherwise than in succession to another administrative receiver),
    - (d) a voluntary arrangement approved under Part 1 takes effect in relation to the company,
    - (e) the company goes into liquidation,
    - (f) a provisional liquidator of the company is appointed (otherwise than in succession to another provisional liquidator), or
    - (g) a court order is made under section 901C(1) of the Companies Act 2006 in relation to the company (order summoning meeting relating to compromise or arrangement).
  - (3) A provision of a contract for the supply of goods or services to the company ceases to have effect when the company becomes subject to

- the relevant insolvency procedure if and to the extent that, under the provision –
- (a) the contract or the supply would terminate, or any other thing would take place, because the company becomes subject to the relevant insolvency procedure, or
  - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company becomes subject to the relevant insolvency procedure.
- (4) Where –
- (a) under a provision of a contract for the supply of goods or services to the company the supplier is entitled to terminate the contract or the supply because of an event occurring before the start of the insolvency period, and
  - (b) the entitlement arises before the start of that period,
- the entitlement may not be exercised during that period.
- (5) Where a provision of a contract ceases to have effect under subsection (3) or an entitlement under a provision of a contract is not exercisable under subsection (4), the supplier may terminate the contract if –
- (a) in a case where the company has become subject to a relevant insolvency procedure as specified in subsection (2)(b), (c), (e) or (f), the office-holder consents to the termination of the contract,
  - (b) in any other case, the company consents to the termination of the contract, or
  - (c) the court is satisfied that the continuation of the contract would cause the supplier hardship and grants permission for the termination of the contract.
- (6) Where a provision of a contract ceases to have effect under subsection (3) and the company becomes subject to a further relevant insolvency procedure, the supplier may terminate the contract in accordance with subsection (5)(a) to (c).
- (7) The supplier shall not make it a condition of any supply of goods and services after the time when the company becomes subject to the relevant insolvency procedure, or do anything which has the effect of making it a condition of such a supply, that any outstanding charges in respect of a supply made to the company before that time are paid.
- (8) In this section “the insolvency period”, in relation to a relevant insolvency procedure, means the period beginning when the company becomes subject to the relevant insolvency procedure and ending –
- (a) in the case of a moratorium under Part A1, when the moratorium comes to an end,
  - (b) in the case of the company entering administration, when the appointment of the administrator ceases to have effect under –
    - (i) paragraphs 76 to 84 of Schedule B1, or
    - (ii) an order under section 901F of the Companies Act 2006,
  - (c) in the case of the appointment of an administrative receiver of the company, when the receiver or any successor to the receiver ceases to hold office without a successor being appointed,

- (d) in the case of a voluntary arrangement approved under Part 1 taking effect in relation to the company, when the arrangement ceases to have effect,
  - (e) in the case of the company going into liquidation, when—
    - (i) the liquidator complies with section 94(2), 106(2) or 146(3) (duties relating to final account), or
    - (ii) the appointment of the liquidator ceases to have effect under an order under section 901F of the Companies Act 2006,
  - (f) in the case of the appointment of a provisional liquidator for the company, when the provisional liquidator or any successor to the provisional liquidator ceases to hold office without a successor being appointed, and
  - (g) in the case of the making of a court order under section 901C(1) of the Companies Act 2006 in relation to the company, when—
    - (i) an order made by the court under section 901F of that Act takes effect, or
    - (ii) the court decides not to make such an order.
- (9) In this section “office-holder”, in relation to a company which has entered into an insolvency procedure as specified in subsection (2)(b), (c), (e) or (f), means the administrator, administrative receiver, liquidator or provisional liquidator respectively.
- (10) Schedule 4ZZA provides for exclusions from the operation of this section.

### **233C Powers to amend section 233B and Schedule 4ZZA**

- (1) The Secretary of State may by regulations omit any of paragraphs (a) to (g) of section 233B(2) (relevant insolvency procedures).
- (2) The Secretary of State may by regulations amend Schedule 4ZZA so as to—
  - (a) remove or amend any exclusion from section 233B for the time being specified there, or
  - (b) add further exclusions from section 233B.
- (3) In subsection (2), references to exclusions from section 233B are to circumstances in which section 233B, or any provision of that section, does not apply.
- (4) The circumstances referred to in subsection (3) may be framed by reference to kinds of company, supplier, contract, goods or services or in any other way.
- (5) Regulations under this section may make—
  - (a) different provision for different purposes;
  - (b) consequential provision;
  - (c) transitional and supplementary provision.
- (6) Regulations under this section made by virtue of subsection (5) may in particular make provision amending this Act or any other enactment whenever passed or made (including, if paragraph 1(1) or (2) of Schedule 4ZZA is omitted, provision omitting section 233A or 233 respectively).

- (7) Regulations under subsection (1) may not omit section 233B(2)(c) unless the Secretary of State has first consulted the Scottish Ministers.
  - (8) In this section “enactment” includes an Act of the Scottish Parliament and an instrument made under such an Act.
  - (9) Regulations under this section are to be made by statutory instrument.
  - (10) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”
- (2) In the Insolvency Act 1986, in section 434 (Crown application), before “bind” insert “and sections 233A and 233B and Schedule 4ZZA”.
  - (3) Schedule 12—
    - (a) inserts a new Schedule into the Insolvency Act 1986 which provides for exclusions from the operation of section 233B of that Act, and
    - (b) contains consequential amendments.
  - (4) The amendments made by this section and Schedule 12 have effect in relation to a company which becomes subject to a relevant insolvency procedure on or after the day on which this section comes into force (but in respect of contracts entered into before, as well as those entered into on or after, that day).

## 15 Temporary exclusion for small suppliers: Great Britain

- (1) Section 233B of the Insolvency Act 1986 does not apply in relation to a contract for the supply of goods or services to a company where—
  - (a) the company becomes subject to a relevant insolvency procedure during the relevant period, and
  - (b) the supplier is a small entity at the time the company becomes subject to the procedure.
- (2) In subsection (1)(a) “relevant period” means the period which—
  - (a) begins with the day on which this section comes into force, and
  - (b) ends with 30 September 2020.
- (3) For the purposes of subsection (1)(b), whether the supplier is a “small entity” at the time the company becomes subject to a relevant insolvency procedure (the “relevant time”) is to be determined under subsections (4) to (10).
- (4) Where the supplier is not in its first financial year at the relevant time, the supplier is a small entity at the relevant time if at least two of the following conditions were met in relation to its most recent financial year—
  - Condition 1: the supplier’s turnover was not more than £10.2 million;
  - Condition 2: the supplier’s balance sheet total was not more than £5.1 million;
  - Condition 3: the number of the supplier’s employees was not more than 50.
- (5) For the purposes of Condition 1 in subsection (4), if the supplier’s most recent financial year was not 12 months, the maximum figure for turnover must be proportionately adjusted.
- (6) For the purposes of Condition 2 in subsection (4), the supplier’s balance sheet total means the aggregate of the amounts shown as assets in the supplier’s balance sheet.



- (7) For the purposes of Condition 3 in subsection (4), the number of the supplier's employees means the average number of persons employed by the supplier in its most recent financial year, determined as follows –
- (a) find for each month in that financial year the number of persons employed under contracts of service by the supplier in that month (whether throughout the month or not),
  - (b) add together the monthly totals, and
  - (c) divide by the number of months in the financial year.
- (8) In subsections (4) to (7) the supplier's "most recent financial year" is the financial year of the supplier which, at the relevant time, has ended most recently.
- (9) Where the supplier is in its first financial year at the relevant time, the supplier is a small entity at the relevant time if at least two of the following conditions are met –
- Condition 1: the supplier's average turnover for each complete month in the supplier's first financial year is not more than £850,000;
- Condition 2: the aggregate of amounts which would be shown in a balance sheet of the supplier drawn up at the relevant time is not more than £5.1 million;
- Condition 3: the average number of persons employed by the supplier in the supplier's first financial year (determined as specified in subsection (7)) is not more than 50.
- (10) In this section –
- "entity" means –
- (a) a company,
  - (b) a limited liability partnership,
  - (c) any other association or body of persons, whether or not incorporated, and
  - (d) an individual carrying on a trade or business;
- "relevant insolvency procedure" has the same meaning as in section 233B of the Insolvency Act 1986.
- (11) This section has effect as if it were included in Part 6 of the Insolvency Act 1986.

## 16 Protection of supplies of electricity, gas, water, etc: Northern Ireland

- (1) Article 197 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) is amended as follows.
- (2) Paragraph (3) is amended in accordance with subsections (3) to (5).
- (3) After sub-paragraph (a) insert –

"(aza) a supply of electricity by a class of person within Class A (small supply) or Class B (resale) of Schedule 3 to the Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 2013 (S.R. 2013/93);"
- (4) After sub-paragraph (b) insert –

"(ba) a supply of water by a person who has an interest in the premises to which the supply is given;"
- (5) After sub-paragraph (c) (and before the words "and in this paragraph")

insert –

- “(d) a supply of communications services by a person who carries on a business which includes giving such supplies;
- (e) a supply of goods or services mentioned in paragraph (3A) by a person who carries on a business which includes giving such supplies, where the supply is for the purpose of enabling or facilitating anything to be done by electronic means;”.

(6) After paragraph (3) insert –

- “(3A) The goods and services referred to in paragraph (3)(e) are –
- (a) point of sale terminals;
  - (b) computer hardware and software;
  - (c) information, advice and technical assistance in connection with the use of information technology;
  - (d) data storage and processing;
  - (e) website hosting.”

## 17 Further protection of essential supplies: Northern Ireland

(1) After Article 197 of the Insolvency (Northern Ireland) Order 1989 insert –

### “197A Further protection of essential supplies

- (1) An insolvency-related term of a contract for the supply of essential goods or services to a company ceases to have effect if –
  - (a) the company enters administration, or
  - (b) a voluntary arrangement approved under Part 2 takes effect in relation to the company.
- (2) An insolvency-related term of a contract does not cease to have effect by virtue of paragraph (1) to the extent that –
  - (a) it provides for the contract or the supply to terminate, or any other thing to take place, because the company becomes subject to an insolvency procedure other than administration or a voluntary arrangement;
  - (b) it entitles a supplier to terminate the contract or the supply, or do any other thing, because the company becomes subject to an insolvency procedure other than administration or a voluntary arrangement; or
  - (c) it entitles a supplier to terminate the contract or the supply because of an event that occurs, or may occur, after the company enters administration or the voluntary arrangement takes effect.
- (3) Where an insolvency-related term of a contract ceases to have effect under this Article the supplier may –
  - (a) terminate the contract, if the condition in paragraph (4) is met;
  - (b) terminate the supply, if the condition in paragraph (5) is met.
- (4) The condition in this paragraph is that –
  - (a) the insolvency office-holder consents to the termination of the contract,
  - (b) the High Court grants permission for the termination of the contract, or

- (c) any charges in respect of the supply that are incurred after the company entered administration or the voluntary arrangement took effect are not paid within the period of 28 days beginning with the day on which payment is due.

The High Court may grant permission under sub-paragraph (b) only if satisfied that the continuation of the contract would cause the supplier hardship.

- (5) The condition in this paragraph is that—
  - (a) the supplier gives written notice to the insolvency office-holder that the supply will be terminated unless the office-holder personally guarantees the payment of any charges in respect of the continuation of the supply after the company entered administration or the voluntary arrangement took effect, and
  - (b) the insolvency office-holder does not give that guarantee within the period of 14 days beginning with the day the notice is received.
- (6) For the purposes of securing that the interests of suppliers are protected, where—
  - (a) an insolvency-related term of a contract (the “original term”) ceases to have effect by virtue of paragraph (1), and
  - (b) the company subsequently enters administration, or a voluntary arrangement subsequently has effect in relation to it, the contract is treated for the purposes of paragraphs (1) to (5) as if, immediately before the subsequent administration is entered into or the subsequent voluntary arrangement takes effect, it included an insolvency-related term identical to the original term.
- (7) A contract for the supply of essential goods or services is a contract for a supply mentioned in Article 197(3).
- (8) An insolvency-related term of a contract for the supply of essential goods or services to a company is a provision of the contract under which—
  - (a) the contract or the supply would terminate, or any other thing would take place, because the company enters administration or the voluntary arrangement takes effect,
  - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company enters administration or the voluntary arrangement takes effect, or
  - (c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before the company enters administration or the voluntary arrangement takes effect.
- (9) In this Article “insolvency office-holder” means—
  - (a) in a case where a company enters administration, the administrator;
  - (b) in a case where a voluntary arrangement under Part 2 takes effect in relation to a company, the supervisor of the voluntary arrangement.”

- (2) In Schedule 5 to the Investment Bank Special Administration Regulations 2011

(S.I. 2011/245), in the Table, after the entry for section 233 insert –

“Section 233A                      | Article 197A                      | -”.

- (3) The amendments made by this section have effect in relation to a company which enters administration or has a voluntary arrangement take effect in relation to it on or after the day on which this section comes into force (but in respect of contracts entered into before, as well as those entered into on or after, that day).

## 18 Protection of supplies of goods and services: Northern Ireland

- (1) After Article 197A of the Insolvency (Northern Ireland) Order 1989 insert –

### “197B Protection of supplies of goods and services

- (1) This Article applies where a company becomes subject to a relevant insolvency procedure.
- (2) A company becomes subject to a relevant insolvency procedure for the purposes of this Article where –
- (a) a moratorium under Part 1A comes into force for the company,
  - (b) the company enters administration,
  - (c) an administrative receiver of the company is appointed (otherwise than in succession to another administrative receiver),
  - (d) a voluntary arrangement approved under Part 2 takes effect in relation to the company,
  - (e) the company goes into liquidation,
  - (f) a provisional liquidator of the company is appointed (otherwise than in succession to another provisional liquidator), or
  - (g) a court order is made under section 901C(1) of the Companies Act 2006 in relation to the company (order summoning meeting relating to compromise or arrangement).
- (3) A provision of a contract for the supply of goods or services to the company ceases to have effect when the company becomes subject to the relevant insolvency procedure if and to the extent that, under the provision –
- (a) the contract or the supply would terminate, or any other thing would take place, because the company becomes subject to the relevant insolvency procedure, or
  - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company becomes subject to the relevant insolvency procedure.
- (4) Where –
- (a) under a provision of a contract for the supply of goods or services to the company the supplier is entitled to terminate the contract or the supply because of an event occurring before the start of the insolvency period, and
  - (b) the entitlement arises before the start of that period,
- the entitlement may not be exercised during that period.

- (5) Where a provision of a contract ceases to have effect under paragraph (3) or an entitlement under a provision of a contract is not exercisable under paragraph (4), the supplier may terminate the contract if—
- (a) in a case where the company has become subject to a relevant insolvency procedure as specified in paragraph (2)(b), (c), (e) or (f), the office-holder consents to the termination of the contract,
  - (b) in any other case, the company consents to the termination of the contract, or
  - (c) the High Court is satisfied that the continuation of the contract would cause the supplier hardship and grants permission for the termination of the contract.
- (6) Where a provision of a contract ceases to have effect under paragraph (3) and the company becomes subject to a further relevant insolvency procedure, the supplier may terminate the contract in accordance with paragraph (5)(a) to (c).
- (7) The supplier shall not make it a condition of any supply of goods and services after the time when the company becomes subject to the relevant insolvency procedure, or do anything which has the effect of making it a condition of such a supply, that any outstanding charges in respect of a supply made to the company before that time are paid.
- (8) In this Article “the insolvency period”, in relation to a relevant insolvency procedure, means the period beginning when the company becomes subject to the relevant insolvency procedure and ending—
- (a) in the case of a moratorium under Part 1A, when the moratorium comes to an end,
  - (b) in the case of the company entering administration, when the appointment of the administrator ceases to have effect under—
    - (i) paragraphs 77 to 85 of Schedule B1, or
    - (ii) an order under section 901F of the Companies Act 2006,
  - (c) in the case of the appointment of an administrative receiver of the company, when the receiver or any successor to the receiver ceases to hold office without a successor being appointed,
  - (d) in the case of a voluntary arrangement approved under Part 2 taking effect in relation to the company, when the arrangement ceases to have effect,
  - (e) in the case of the company going into liquidation, when the liquidator has—
    - (i) pursuant to Article 80(1), laid the account of the winding up before a general meeting of the company and given an explanation of it,
    - (ii) pursuant to Article 92(1), laid the account of the winding up before a general meeting of the company and a meeting of the creditors and given an explanation of it to each meeting, or
    - (iii) pursuant to Article 124(1), given the liquidator’s report of the winding up to a general meeting of the company’s creditors,or when the appointment of the liquidator ceases to have effect under an order under section 901F of the Companies Act 2006,
  - (f) in the case of the appointment of a provisional liquidator for the company, when the provisional liquidator or any successor to

- the provisional liquidator ceases to hold office without a successor being appointed, and
- (g) in the case of the making of a court order under section 901C(1) of the Companies Act 2006 in relation to the company, when—
- (i) an order made by the High Court under section 901F of that Act takes effect, or
  - (ii) the High Court decides not to make such an order.
- (9) In this Article “office-holder”, in relation to a company which has entered into an insolvency procedure as specified in paragraph (2)(b), (c), (e) or (f), means the administrator, administrative receiver, liquidator or provisional liquidator respectively.
- (10) Schedule 2ZZA provides for exclusions from the operation of this Article.

### **197C Powers to amend Article 197B and Schedule 2ZZA**

- (1) Regulations may omit any of sub-paragraphs (a) to (g) of Article 197B(2) (relevant insolvency procedures).
  - (2) Regulations may amend Schedule 2ZZA so as to—
    - (a) remove or amend any exclusion from Article 197B for the time being specified there, or
    - (b) add further exclusions from Article 197B.
  - (3) In paragraph (2), references to exclusions from Article 197B are to circumstances in which Article 197B, or any provision of that Article, does not apply.
  - (4) The circumstances referred to in paragraph (3) may be framed by reference to kinds of company, supplier, contract, goods or services or in any other way.
  - (5) Regulations under this Article may make—
    - (a) consequential provision;
    - (b) transitional and supplementary provision.
  - (6) Regulations under this Article made by virtue of paragraph (5) may in particular make provision amending this Order or any other statutory provision whenever passed or made (including, if paragraph 1(1) or (2) of Schedule 2ZZA is omitted, provision omitting Article 197A or 197 respectively).
  - (7) Regulations may not be made under this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”
- (2) In the Insolvency (Northern Ireland) Order 1989, in Article 2(2), in the definition of “regulations”, before “Article 359(2)” insert “Article 197C and”.
- (3) Schedule 13—
- (a) inserts a new Schedule into the Insolvency (Northern Ireland) Order 1989 which provides for exclusions from the operation of Article 197B of that Order, and
  - (b) contains consequential amendments.

- (4) The amendments made by this section and Schedule 13 have effect in relation to a company which becomes subject to a relevant insolvency procedure on or after the day on which this section comes into force (but in respect of contracts entered into before, as well as those entered into on or after, that day).

## 19 Temporary exclusion for small suppliers: Northern Ireland

- (1) Article 197B of the Insolvency (Northern Ireland) Order 1989 does not apply in relation to a contract for the supply of goods or services to a company where –
  - (a) the company becomes subject to a relevant insolvency procedure during the relevant period, and
  - (b) the supplier is a small entity at the time the company becomes subject to the procedure.
- (2) In subsection (1)(a) “relevant period” means the period which –
  - (a) begins with the day on which this section comes into force, and
  - (b) ends with 30 September 2020.
- (3) For the purposes of subsection (1)(b), whether the supplier is a “small entity” at the time the company becomes subject to a relevant insolvency procedure (the “relevant time”) is to be determined under subsections (4) to (10).
- (4) Where the supplier is not in its first financial year at the relevant time, the supplier is a small entity at the relevant time if at least two of the following conditions were met in relation to its most recent financial year –  
Condition 1: the supplier’s turnover was not more than £10.2 million;  
Condition 2: the supplier’s balance sheet total was not more than £5.1 million;  
Condition 3: the number of the supplier’s employees was not more than 50.
- (5) For the purposes of Condition 1 in subsection (4), if the supplier’s most recent financial year was not 12 months, the maximum figure for turnover must be proportionately adjusted.
- (6) For the purposes of Condition 2 in subsection (4), the supplier’s balance sheet total means the aggregate of the amounts shown as assets in the supplier’s balance sheet.
- (7) For the purposes of Condition 3 in subsection (4), the number of the supplier’s employees means the average number of persons employed by the supplier in its most recent financial year, determined as follows –
  - (a) find for each month in that financial year the number of persons employed under contracts of service by the supplier in that month (whether throughout the month or not),
  - (b) add together the monthly totals, and
  - (c) divide by the number of months in the financial year.
- (8) In subsections (4) to (7) the supplier’s “most recent financial year” is the financial year of the supplier which, at the relevant time, has ended most recently.
- (9) Where the supplier is in its first financial year at the relevant time, the supplier is a small entity at the relevant time if at least two of the following conditions are met –  
Condition 1: the supplier’s average turnover for each complete month in the supplier’s first financial year is not more than £850,000;

Condition 2: the aggregate of amounts which would be shown in a balance sheet of the supplier drawn up at the relevant time is not more than £5.1 million;

Condition 3: the average number of persons employed by the supplier in the supplier's first financial year (determined as specified in subsection (7)) is not more than 50.

- (10) In this section –
- “entity” means –
    - (a) a company,
    - (b) a limited liability partnership,
    - (c) any other association or body of persons, whether or not incorporated, and
    - (d) an individual carrying on a trade or business;
  - “relevant insolvency procedure” has the same meaning as in Article 197B of the Insolvency (Northern Ireland) Order 1989.
- (11) This section has effect as if it were included in Part 7 of the Insolvency (Northern Ireland) Order 1989.

*Power to amend corporate insolvency or governance legislation: Great Britain*

## 20 Regulations to amend legislation: Great Britain

- (1) The Secretary of State may by regulations amend, or modify the effect of, corporate insolvency or governance legislation so as to –
- (a) change the conditions that must be met before a corporate insolvency or restructuring procedure applies to entities of any description (whether by adding, varying or removing any condition),
  - (b) change the way in which a corporate insolvency or restructuring procedure applies in relation to entities of any description, or
  - (c) change or disapply any duty of a person with corporate responsibility or the liability of such a person to any sanction.
- (2) Regulations under this section may –
- (a) make different provision for different purposes;
  - (b) make provision binding the Crown.
- (3) Regulations under this section must be made in accordance with sections 21 to 26.

## 21 Purposes

- (1) The Secretary of State may only make regulations under section 20(1)(a) or (b) if satisfied that the regulations are expedient for any of the following purposes –
- (a) reducing, or assisting in the reduction of, the number of entities entering into corporate insolvency or restructuring procedures for reasons relating to the effects of coronavirus on businesses or on the economy of the United Kingdom;
  - (b) mitigating or otherwise dealing with the effect on corporate insolvency or restructuring procedures of any increase or potential increase in the



- number of entities entering into those procedures for the reasons referred to in paragraph (a);
- (c) mitigating difficulties that corporate insolvency or restructuring procedures might impose on a business in view of—
    - (i) any worsening of the financial position of the business in consequence of, or for reasons relating to, coronavirus,
    - (ii) constraints on people's ability to work, or to be in proximity to each other, as a result of coronavirus, or
    - (iii) measures for public health taken in response to coronavirus.
- (2) The Secretary of State may only make regulations under section 20(1)(c) if satisfied that the regulations are expedient for the purpose of securing that the duties of persons with corporate responsibility, or the liability of those persons to any sanction, take due account of the effects of coronavirus on businesses or on the economy of the United Kingdom.

## 22 Restrictions

- (1) Before making regulations under section 20 the Secretary of State must consider the effect of the regulations on persons likely to be affected by them (for example, debtors, creditors or employees).
- (2) The Secretary of State may only make regulations under section 20 if satisfied—
  - (a) that the need for the provision made by the regulations is urgent,
  - (b) that the provision made by the regulations is proportionate to the purpose for which it is made,
  - (c) that it is not practicable without legislation to bring about the result intended to be brought about by that provision, and
  - (d) if the Secretary of State could make the same provision in other subordinate legislation, that doing so would risk not achieving the purpose for which the regulations are made (because of possible delay or for any other reason).
- (3) Regulations under section 20—
  - (a) may not create a criminal offence or civil penalty (but may modify the circumstances in which a person is guilty of an existing offence or liable for an existing civil penalty);
  - (b) may not make provision so as to impose or increase a fee.
- (4) Regulations under section 20 may not make provision that could be made by an Act of the Scottish Parliament unless the Secretary of State has first consulted the Scottish Ministers.

## 23 Time-limited effect

- (1) Regulations under section 20 must be framed so that any provision made by them—
  - (a) has effect only for a period not exceeding six months, or
  - (b) applies only in relation to circumstances occurring in a period not exceeding six months.
- (2) This does not prevent further regulations under section 20 from—

- (a) making the same provision for, or applying in relation to, subsequent periods (not exceeding six months at a time);
  - (b) extending (by up to six months) the period for or in relation to which earlier regulations under that section apply.
- (3) The Secretary of State must keep regulations under section 20 under review during the period for which they have effect or in relation to which they apply.
- (4) If on such a review the Secretary of State is satisfied that that period –
  - (a) is longer than expedient for the purpose for which the regulations were made, or
  - (b) has ceased to be proportionate to that purpose,the Secretary of State must by regulations under this subsection revoke or amend the regulations as appropriate.
- (5) Regulations under subsection (4) may contain transitional provision or savings.

## **24 Expiry**

- (1) The Secretary of State may not make regulations under section 20 after 30 April 2021.
- (2) Where regulations under section 20 are in force on the date specified in subsection (1), that subsection does not –
  - (a) affect the continued operation of the regulations, or
  - (b) prevent the making of further regulations under section 20 on one or more occasions, where those further regulations make the same provision for, or applying in relation to, subsequent periods (not exceeding six months at a time).
- (3) The Secretary of State may by regulations substitute a later date for the date for the time being specified in subsection (1).
- (4) The power in subsection (3) –
  - (a) may not be exercised so as to substitute a date which is –
    - (i) after the period of one year beginning with the date for the time being specified in subsection (1), or
    - (ii) after the period of two years beginning with the date on which this Act is passed, but
  - (b) may be exercised more than once.

## **25 Consequential provision etc**

- (1) The Secretary of State may by regulations make consequential, incidental or supplementary provision, or transitional provision or savings, in connection with provision made by regulations under section 20.
- (2) Regulations under this section may –
  - (a) make provision by amending or modifying the effect of any enactment (including this Act);
  - (b) make different provision for different purposes;
  - (c) make provision binding the Crown.

## 26 Procedure for regulations

- (1) Regulations under sections 20 to 25 are to be made by statutory instrument.
- (2) A statutory instrument containing—
  - (a) regulations made under section 20, other than one to which subsection (6)(a) applies, or
  - (b) regulations made under section 25 which make provision by amending an Act or an Act of the Scottish Parliament,must be laid before Parliament as soon as reasonably practicable after being made.
- (3) Regulations contained in a statutory instrument laid before Parliament by virtue of subsection (2) cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made, unless during that period the instrument is approved by a resolution of each House of Parliament.
- (4) In calculating the period of 40 days, no account is to be taken of any time during which—
  - (a) Parliament is dissolved or prorogued, or
  - (b) both Houses of Parliament are adjourned for more than 4 days.
- (5) Where regulations cease to have effect as a result of subsection (3) that does not—
  - (a) affect anything previously done under or by virtue of the regulations, or
  - (b) prevent the making of new regulations.
- (6) A statutory instrument containing—
  - (a) regulations under section 20 which merely revoke other regulations under that section (with or without transitional provision), or
  - (b) regulations under section 23(4),is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Regulations under section 24(3) may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.
- (8) A statutory instrument containing regulations under section 25 which do not make provision by amending an Act or an Act of the Scottish Parliament is subject to annulment in pursuance of a resolution of either House of Parliament (unless the regulations were contained in a statutory instrument laid before Parliament by virtue of subsection (2)).

## 27 Interpretation

- (1) In sections 20 to 26 and this section—

“coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

“corporate insolvency or governance legislation” means—

  - (a) the Insolvency Act 1986, except so far as relating to the insolvency or bankruptcy of individuals,
  - (b) Part 26A of the Companies Act 2006 (arrangements and reconstructions for companies in financial difficulty),

- (c) the Company Directors Disqualification Act 1986,
- (d) this Act,
- (e) any subordinate legislation made under the enactments specified in paragraphs (a) to (d),
- (f) the Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), and
- (g) after IP completion day, Regulation (EU) 2015/848 on insolvency proceedings;

“corporate insolvency or restructuring procedure” means –

- (a) a moratorium under Part A1 of the Insolvency Act 1986;
- (b) a company voluntary arrangement under Part 1 of that Act (including a moratorium under section 1A of that Act in a case where such a moratorium applies after the coming into force of paragraph 30 of Schedule 3);
- (c) administration under Part 2 of that Act;
- (d) receivership to which Part 3 of that Act applies;
- (e) winding up under Part 4 or 5 of that Act;
- (f) the procedure provided for by Part 26A of the Companies Act 2006;

“enactment” includes an Act of the Scottish Parliament and an instrument made under such an Act;

“person with corporate responsibility” means –

- (a) in relation to a company, a director, manager, secretary or other officer of the body,
- (b) in relation to a partnership or limited liability partnership, a partner or member, and
- (c) in relation to any other entity, a person with responsibility for managing the entity;

“subordinate legislation” has the meaning given by section 21(1) of the Interpretation Act 1978.

- (2) References to an enactment in subsection (1) include in particular that enactment as applied by any other enactment, with or without modifications, to partnerships, limited liability partnerships or other entities.

*Power to amend corporate insolvency or governance legislation: Northern Ireland*

## **28 Regulations to amend legislation: Northern Ireland**

- (1) The Department or the Secretary of State may by regulations amend, or modify the effect of, corporate insolvency or governance legislation so as to –
  - (a) change the conditions that must be met before a corporate insolvency or restructuring procedure applies to entities of any description (whether by adding, varying or removing any condition),
  - (b) change the way in which a corporate insolvency or restructuring procedure applies in relation to entities of any description, or
  - (c) change or disapply any duty of a person with corporate responsibility or the liability of such a person to any sanction.
- (2) Regulations under this section may –
  - (a) make different provision for different purposes;

- (b) make provision binding the Crown.
- (3) Regulations under this section must be made in accordance with sections 29 to 35.
- (4) In sections 29 to 35, “relevant authority” means the Department or the Secretary of State.

## 29 Purposes

- (1) A relevant authority may only make regulations under section 28(1)(a) or (b) if satisfied that the regulations are expedient for any of the following purposes –
  - (a) reducing, or assisting in the reduction of, the number of entities entering into corporate insolvency or restructuring procedures for reasons relating to the effects of coronavirus on businesses or on the economy of the United Kingdom;
  - (b) mitigating or otherwise dealing with the effect on corporate insolvency or restructuring procedures of any increase or potential increase in the number of entities entering into those procedures for the reasons referred to in paragraph (a);
  - (c) mitigating difficulties that corporate insolvency or restructuring procedures might impose on a business in view of –
    - (i) any worsening of the financial position of the business in consequence of, or for reasons relating to, coronavirus,
    - (ii) constraints on people’s ability to work, or to be in proximity to each other, as a result of coronavirus, or
    - (iii) measures for public health taken in response to coronavirus.
- (2) A relevant authority may only make regulations under section 28(1)(c) if satisfied that the regulations are expedient for the purpose of securing that the duties of persons with corporate responsibility, or the liability of those persons to any sanction, take due account of the effects of coronavirus on businesses or on the economy of the United Kingdom.

## 30 Restrictions

- (1) Before making regulations under section 28 the relevant authority concerned must consider the effect of the regulations on persons likely to be affected by them (for example, debtors, creditors or employees).
- (2) A relevant authority may only make regulations under section 28 if satisfied –
  - (a) that the need for the provision made by the regulations is urgent,
  - (b) that the provision made by the regulations is proportionate to the purpose for which it is made,
  - (c) that it is not practicable without legislation to bring about the result intended to be brought about by that provision, and
  - (d) if a Northern Ireland Department or the Secretary of State could make the same provision in exercise of power under a statutory provision other than section 28, that doing so would risk not achieving the purpose for which the regulations are made (because of possible delay or for any other reason).
- (3) Regulations under section 28 –

- (a) may not create a criminal offence or civil penalty (but may modify the circumstances in which a person is guilty of an existing offence or liable for an existing civil penalty);
- (b) may not make provision so as to impose or increase a fee.

### 31 Time-limited effect

- (1) Regulations under section 28 must be framed so that any provision made by them –
  - (a) has effect only for a period not exceeding six months, or
  - (b) applies only in relation to circumstances occurring in a period not exceeding six months.
- (2) This does not prevent further regulations under section 28 from –
  - (a) making the same provision for, or applying in relation to, subsequent periods (not exceeding six months at a time);
  - (b) extending (by up to six months) the period for or in relation to which earlier regulations under that section apply.
- (3) A relevant authority must keep regulations made by it under section 28 under review during the period for which they have effect or in relation to which they apply.
- (4) If on such a review the relevant authority is satisfied that that period –
  - (a) is longer than expedient for the purpose for which the regulations were made, or
  - (b) has ceased to be proportionate to that purpose,the relevant authority must by regulations under this subsection revoke or amend the regulations as appropriate.
- (5) Regulations under subsection (4) may contain transitional provision or savings.

### 32 Expiry

- (1) A relevant authority may not make regulations under section 28 after 30 April 2021.
- (2) Where regulations under section 28 are in force on the date specified in subsection (1), that subsection does not –
  - (a) affect the continued operation of the regulations, or
  - (b) prevent the making of further regulations under section 28 on one or more occasions, where those further regulations make the same provision for, or applying in relation to, subsequent periods (not exceeding six months at a time).
- (3) A relevant authority may by regulations substitute a later date for the date for the time being specified in subsection (1).
- (4) The power in subsection (3) –
  - (a) may not be exercised so as to substitute a date which is –
    - (i) after the period of one year beginning with the date for the time being specified in subsection (1), or
    - (ii) after the period of two years beginning with the date on which this Act is passed, but

- (b) may be exercised more than once.

### **33 Consequential provision etc**

- (1) A relevant authority may by regulations make consequential, incidental or supplementary provision, or transitional provision or savings, in connection with provision made by regulations under section 28.
- (2) Regulations under this section may –
  - (a) make provision by amending or modifying the effect of any statutory provision (including this Act);
  - (b) make different provision for different purposes;
  - (c) make provision binding the Crown.

### **34 Procedure for regulations made by the Department**

- (1) Any power of the Department to make regulations under sections 28 to 33 is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (2) Regulations made under section 28 by the Department, other than any to which subsection (5) applies, and regulations made under section 33 by the Department which make provision by amending an Act or Northern Ireland legislation, must be laid before the Assembly as soon as reasonably practicable after being made.
- (3) Regulations laid before the Assembly by virtue of subsection (2) cease to have effect at the end of the period of 40 days beginning with the day on which the regulations are made, unless during that period the regulations are approved by a resolution of the Assembly.
- (4) In calculating the period of 40 days, no account is to be taken of any time during which the Assembly is –
  - (a) dissolved, or
  - (b) in recess for more than 4 days, or
  - (c) adjourned for more than 6 days.
- (5) Where regulations cease to have effect as a result of subsection (3) that does not –
  - (a) affect anything previously done under or by virtue of the regulations, or
  - (b) prevent the making of new regulations.
- (6) Regulations made by the Department under section 28 which merely revoke other regulations under that section (with or without transitional provision), and regulations made by the Department under section 31(4), are subject to negative resolution within the meaning of section 41(6) the 1954 Act.
- (7) Regulations under section 32(3) may not be made by the Department unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (8) Regulations made by the Department under section 33 which do not make provision by amending an Act or Northern Ireland legislation are subject to negative resolution within the meaning of section 41(6) of the 1954 Act, but this does not apply to any contained in a statutory rule by virtue of subsection (9).

- (9) A statutory rule that (in accordance with subsection (2)) is laid before the Assembly may contain regulations under section 33 that would, but for subsection (8) and this subsection, be subject to negative resolution within the meaning of section 41(6) of the 1954 Act.
- (10) Section 41(3) of the 1954 Act applies for the purposes of subsection (7) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.
- (11) In this section –
  - “the 1954 Act” means the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.));
  - “the Assembly” means the Northern Ireland Assembly.

### **35 Procedure for regulations made by the Secretary of State**

- (1) Regulations made by the Secretary of State under sections 28 to 33 are to be made by statutory instrument.
- (2) A statutory instrument containing –
  - (a) regulations made under section 28 by the Secretary of State, other than one to which subsection (6)(a) applies, or
  - (b) regulations made under section 33 by the Secretary of State which make provision by amending an Act,must be laid before Parliament as soon as reasonably practicable after being made.
- (3) Regulations contained in a statutory instrument laid before Parliament by virtue of subsection (2) cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made, unless during that period the instrument is approved by a resolution of each House of Parliament.
- (4) In calculating the period of 40 days, no account is to be taken of any time during which –
  - (a) Parliament is dissolved or prorogued, or
  - (b) both Houses of Parliament are adjourned for more than 4 days.
- (5) Where regulations cease to have effect as a result of subsection (3) that does not –
  - (a) affect anything previously done under or by virtue of the regulations, or
  - (b) prevent the making of new regulations.
- (6) A statutory instrument containing –
  - (a) regulations made by the Secretary of State under section 28 which merely revoke other regulations under that section (with or without transitional provision), or
  - (b) regulations made by the Secretary of State under section 31(4),is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Regulations under section 32(3) may not be made by the Secretary of State unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.



- (8) A statutory instrument containing regulations made by the Secretary of State under section 33 which do not make provision by amending an Act is subject to annulment in pursuance of a resolution of either House of Parliament (unless the regulations were contained in a statutory instrument laid before Parliament by virtue of subsection (2)).

### 36 Interpretation

- (1) In sections 28 to 35 and this section –

“coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

“corporate insolvency or governance legislation” means –

- (a) the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), except so far as relating to the insolvency or bankruptcy of individuals,
- (b) Part 26A of the Companies Act 2006 (arrangements and reconstructions for companies in financial difficulty),
- (c) the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)),
- (d) this Act,
- (e) any statutory provision made under the enactments specified in paragraphs (a) to (d),
- (f) the Cross-Border Insolvency Regulations (Northern Ireland) 2007 (S.R. (N.I.) 2007/115), and
- (g) after IP completion day, Regulation (EU) 2015/848 on insolvency proceedings;

“corporate insolvency or restructuring procedure” means –

- (a) a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989;
- (b) a company voluntary arrangement under Part 2 of that Order (including a moratorium under Article 14A of that Order in a case where such a moratorium applies after the coming into force of paragraph 26 of Schedule 7);
- (c) administration under Part 3 of that Order;
- (d) receivership to which Part 4 of that Order applies;
- (e) winding up under Part 5 or 6 of that Order;
- (f) the procedure provided for by Part 26A of the Companies Act 2006;

“the Department” means the Department for the Economy in Northern Ireland;

“person with corporate responsibility” means –

- (a) in relation to a company, a director, manager, secretary or other officer of the body,
- (b) in relation to a partnership or limited liability partnership, a partner or member, and
- (c) in relation to any other entity, a person with responsibility for managing the entity;

“relevant authority” has the meaning given by section 28(4);

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

- (2) References to an enactment in subsection (1) include in particular that enactment as applied by any other enactment, with or without modifications, to partnerships, limited liability partnerships or other entities.
- (3) In this section “enactment” includes an enactment contained in Northern Ireland legislation or an instrument made under Northern Ireland legislation.

### *Meetings and filings*

#### **37 Meetings of companies and other bodies**

Schedule 14 makes provision about meetings of companies and other bodies.

#### **38 Temporary extension of period for public company to file accounts**

- (1) This section applies where (but for this section) the period allowed for the directors of a public company to comply with their obligation under section 441 of the Companies Act 2006 to deliver accounts and reports for a financial year to the registrar would end –
  - (a) after 25 March 2020, and
  - (b) before the relevant day.
- (2) The period allowed for the directors to comply with that obligation is to be taken to be (and always to have been) a period that ends with the relevant day.
- (3) The relevant day is whichever is the earlier of –
  - (a) 30 September 2020, and
  - (b) the last day of the period of 12 months immediately following the end of the relevant accounting reference period.
- (4) Expressions used in this section and section 442 of the Companies Act 2006 (period allowed for filing accounts) have the same meaning in this section as in that section.

#### **39 Temporary power to extend periods for providing information to registrar**

- (1) The Secretary of State may by regulations provide that any provision listed in section 40 is to have effect as if for a reference in the provision to a period of days or months (“the existing period”) there were substituted a reference to such longer period (“the substituted period”) as is specified in the regulations.
- (2) The substituted period must not exceed –
  - (a) 42 days, in a case where the existing period is 21 days or fewer, and
  - (b) 12 months, in a case where the existing period is 3, 6 or 9 months.
- (3) The power conferred by this section may not be exercised in relation to a reference to a period of 12 months.
- (4) Regulations under this section may make –
  - (a) different provision for different purposes;
  - (b) consequential, incidental or supplementary provision (including provision modifying an enactment);
  - (c) transitional provision or savings.

- (5) In subsection (4) “enactment” includes an Act of the Scottish Parliament and an instrument made under such an Act.
- (6) Regulations under this section are to be made by statutory instrument.
- (7) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) This section expires at the end of the day on 5 April 2021.
- (9) The expiry of this section does not affect the continued operation of any regulations made under this section for the purpose of determining the length of any period that begins before the expiry.

#### 40 Section 39: the listed provisions

The provisions referred to in section 39(1) are –

- (a) section 9 of the Limited Partnerships Act 1907 (registration of changes to a limited partnership);
- (b) section 466 of the Companies Act 1985 (registration of alteration to a floating charge);
- (c) section 9 of the Limited Liability Partnerships Act 2000 (notice of membership changes);
- (d) regulation 80C of the European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326) (notice of change in members of the supervisory organ);
- (e) the following sections of the Companies Act 2006 –
  - section 87 (notice of change of address of registered office);
  - section 114 (notice of place where register of members is kept);
  - section 162 (notice of place where register of directors is kept);
  - section 167 (notice of change in directors etc);
  - section 275 (notice of place where register of secretaries is kept);
  - section 276 (notice of change in secretaries etc);
  - section 442 (period allowed for filing accounts);
  - section 790M (register of people with significant control);
  - section 790N (notice of place where PSC register is kept);
  - section 790VA (notice of change to the PSC register);
  - section 853A(1) (confirmation statements);
  - section 859A (registration of charge);
  - section 859B (registration of charge contained in debentures);
  - section 859Q (notice of place where copies of instruments creating charges are kept);
- (f) the following provisions of the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (S.I. 2017/694) –
  - regulation 7 (notice of change to the registration information);
  - regulation 8 (notice of ceasing to be a Scottish qualifying partnership);
  - the provisions of Part 5 (duties to deliver information);
  - regulation 35 (confirmation statements).

*Powers to change periods***41 Power to change duration of temporary provisions: Great Britain**

- (1) The Secretary of State may by regulations made by statutory instrument amend a relevant provision so as to—
  - (a) curtail the period for the time being specified in that provision, or
  - (b) prolong that period by up to six months if the Secretary of State considers it reasonable to do so to mitigate an effect of coronavirus.
- (2) In this section—
  - “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
  - “relevant provision” means—
    - (a) section 12(2),
    - (b) section 15(2),
    - (c) paragraph 1 of Schedule 4, or
    - (d) paragraph 1(3) or 21(1) of Schedule 10.
- (3) A statutory instrument containing regulations made under subsection (1)(a) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A statutory instrument containing regulations made under subsection (1)(b) must be laid before Parliament as soon as reasonably practicable after being made.
- (5) Subsection (4) does not apply if a draft of the statutory instrument has been laid before and approved by a resolution of each House of Parliament.
- (6) Regulations contained in a statutory instrument laid before Parliament by virtue of subsection (4) cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made, unless during that period the instrument is approved by a resolution of each House of Parliament.
- (7) In calculating the period of 40 days, no account is to be taken of any time during which—
  - (a) Parliament is dissolved or prorogued, or
  - (b) both Houses of Parliament are adjourned for more than 4 days.
- (8) Where regulations relating to any relevant provision cease to have effect as a result of subsection (6), the period specified in the relevant provision ends—
  - (a) at the time it would have ended under the relevant provision if the regulations had not been made, or
  - (b) if later, at the end of the period of 40 days mentioned in subsection (6).
- (9) Where regulations cease to have effect as a result of subsection (6) that does not prevent the making of new regulations.
- (10) Regulations under this section may make—
  - (a) different provision for the purposes of different relevant provisions;
  - (b) consequential, transitional or transitory provision or savings.

**42 Power to change duration of temporary provisions: Northern Ireland**

- (1) The Department may by regulations amend a relevant provision so as to—
  - (a) curtail the period for the time being specified in that provision, or
  - (b) prolong that period by up to six months if the Department considers it reasonable to do so to mitigate an effect of coronavirus.
- (2) In this section—

“coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

“relevant provision” means—

  - (a) section 13(2),
  - (b) section 19(2),
  - (c) paragraph 1 of Schedule 8, or
  - (d) paragraph 1(3) or 18(1) of Schedule 11.
- (3) Regulations under subsection (1)(a) are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).
- (4) Regulations under subsection (1)(b) must be laid before the Assembly as soon as reasonably practicable after being made.
- (5) Subsection (4) does not apply if a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (6) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (5) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.
- (7) Regulations laid before the Assembly by virtue of subsection (4) cease to have effect at the end of the period of 40 days beginning with the day on which the regulations are made, unless during that period the regulations are approved by a resolution of the Assembly.
- (8) In calculating the period of 40 days, no account is to be taken of any time during which the Assembly is—
  - (a) dissolved,
  - (b) in recess for more than 4 days, or
  - (c) adjourned for more than 6 days.
- (9) Where regulations cease to have effect as a result of subsection (7), the period specified in the relevant provision ends—
  - (a) at the time it would have ended under the relevant provision if the regulations had not been made, or
  - (b) if later, at the end of the period of 40 days mentioned in subsection (7).
- (10) Where regulations cease to have effect as a result of subsection (7) that does not prevent the making of new regulations.
- (11) Regulations under this section may make—
  - (a) different provision for the purposes of different relevant provisions;
  - (b) consequential, transitional or transitory provision or savings.
- (12) The power of the Department to make regulations under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

- (13) In this section –  
     “the Assembly” means the Northern Ireland Assembly;  
     “the Department” means the Department for the Economy in Northern Ireland.

*Implementation of insolvency measures*

**43 Modified procedure for regulations of the Secretary of State**

- (1) During the period of six months beginning with the day on which this section comes into force, any relevant provision that may be made by the Secretary of State by regulations that are subject to the affirmative resolution procedure may be made by regulations that are subject to the made affirmative procedure.
- (2) In subsection (1) “relevant provision” means –
- (a) provision under section A50(1) or (4) of the Insolvency Act 1986 (power to modify moratorium provisions in relation to certain companies);
  - (b) provision under section A51(1) of the Insolvency Act 1986 (moratorium: power to make provision in connection with pension schemes);
  - (c) provision under paragraph 20 of Schedule ZA1 to the Insolvency Act 1986 to exclude private registered providers of social housing from being eligible companies for the purposes of Part A1 of that Act;
  - (d) provision under section 14 or 16 of the Limited Liability Partnerships Act 2000 (insolvency etc and power to make consequential amendments) to the extent that the provision is made in connection with the application of Part A1 of the Insolvency Act 1986 to limited liability partnerships that are registered providers of social housing;
  - (e) provision under section 245 of the Charities Act 2011 (insolvency etc of charitable incorporated organisations etc) to the extent that the provision applies, or is otherwise made in connection with, the new insolvency measures.
- (3) During the period of six months beginning with the day on which this section comes into force, the consultation duty in section 348(4) of the Charities Act 2011 does not apply in relation to regulations under section 245 of that Act to the extent that they contain provision which applies, or is otherwise made in connection with, the new insolvency measures.
- (4) In subsections (2) and (3) “the new insolvency measures” means the provision made by –
- (a) sections 1 to 3 and Schedules 1 to 4 (moratorium);
  - (b) sections 14 and 15 and Schedule 12 (termination clauses in supply contracts).
- (5) For the purposes of this section –
- (a) “regulations that are subject to the affirmative resolution procedure” means regulations that may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament;
  - (b) “regulations that are subject to the made affirmative procedure” means regulations that –

- (i) are contained in a statutory instrument that must be laid before Parliament as soon as reasonably practicable after being made, and
  - (ii) cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made, unless during that period the instrument is approved by a resolution of each House of Parliament.
- (6) In calculating the period of 40 days mentioned in subsection (5)(b)(ii), no account is to be taken of any time during which—
  - (a) Parliament is dissolved or prorogued, or
  - (b) both Houses of Parliament are adjourned for more than 4 days.
- (7) Where by virtue of this section the Secretary of State makes regulations that are subject to the made affirmative procedure and the regulations cease to have effect because they are not approved within the period mentioned in subsection (5)(b)(ii), the fact that the regulations cease to have effect does not—
  - (a) affect anything previously done under or by virtue of the regulations, or
  - (b) prevent the making of new regulations.

#### **44 Modified procedure for regulations of the Welsh Ministers**

- (1) During the period of six months beginning with the day on which this section comes into force, any relevant provision that may be made by the Welsh Ministers by regulations that are subject to the affirmative resolution procedure may be made by regulations that are subject to the made affirmative procedure.
- (2) In subsection (1) “relevant provision” means—
  - (a) provision under section A50(2) of the Insolvency Act 1986 (power to modify moratorium provisions in relation to certain companies);
  - (b) provision under paragraph 21 of Schedule ZA1 to the Insolvency Act 1986 (exclusion of registered social landlords from eligibility under Part A1 of that Act);
  - (c) provision under section 247A of the Charities Act 2011 (regulations about moratoriums for charitable incorporated organisations that are registered social landlords).
- (3) During the period of six months beginning with the day on which this section comes into force, the consultation duty in section 247A(6) of the Charities Act 2011 does not apply in relation to regulations under section 247A of that Act.
- (4) For the purposes of this section—
  - (a) “regulations that are subject to the affirmative resolution procedure” means regulations that may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of Senedd Cymru;
  - (b) “regulations that are subject to the made affirmative procedure” means regulations that—
    - (i) are contained in a statutory instrument that must be laid before Senedd Cymru as soon as reasonably practicable after being made, and
    - (ii) cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made, unless during

that period the instrument is approved by a resolution of Senedd Cymru.

- (5) In calculating the period of 40 days mentioned in subsection (4)(b)(ii), no account is to be taken of any time during which Senedd Cymru is –
  - (a) dissolved, or
  - (b) in recess for more than 4 days.
- (6) Where by virtue of this section the Welsh Ministers make regulations that are subject to the made affirmative procedure and the regulations cease to have effect because they are not approved within the period mentioned in subsection (4)(b)(ii), the fact that the regulations cease to have effect does not –
  - (a) affect anything previously done under or by virtue of the regulations, or
  - (b) prevent the making of new regulations.

#### **45 Modified procedure for regulations of the Scottish Ministers**

- (1) During the period of six months beginning with the day on which this section comes into force, any relevant provision that may be made by the Scottish Ministers by regulations that are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)) may be made by regulations that are subject to the made affirmative procedure.
- (2) In subsection (1) “relevant provision” means –
  - (a) provision under section A50(3) of the Insolvency Act 1986 (power to modify moratorium provisions in relation to certain companies);
  - (b) provision under paragraph 22 of Schedule ZA1 to the Insolvency Act 1986 (exclusion of registered social landlords from eligibility under Part A1 of that Act).
- (3) For the purposes of this section “regulations that are subject to the made affirmative procedure” means regulations that –
  - (a) must be laid before the Scottish Parliament as soon as reasonably practicable after being made, and
  - (b) cease to have effect at the end of the period of 40 days beginning with the day on which the regulations are made, unless during that period the regulations are approved by a resolution of the Scottish Parliament.
- (4) In calculating the period of 40 days mentioned in subsection (3)(b), no account is to be taken of any time during which the Scottish Parliament is –
  - (a) dissolved, or
  - (b) in recess for more than 4 days.
- (5) Where by virtue of this section the Scottish Ministers make regulations that are subject to the made affirmative procedure and the regulations cease to have effect because they are not approved within the period mentioned in subsection (3)(b), the fact that the regulations cease to have effect does not –
  - (a) affect anything previously done under or by virtue of the regulations, or
  - (b) prevent the making of new regulations.



- (6) Section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 does not apply in relation to regulations that are subject to the made affirmative procedure by virtue of this section.

#### **46 Modified procedure for regulations of Northern Ireland departments**

- (1) During the period of six months beginning with the day on which this section comes into force, any relevant provision that may be made by a Northern Ireland department by regulations that are subject to the affirmative resolution procedure may be made by regulations that are subject to the made affirmative procedure.
- (2) In subsection (1) “relevant provision” means –
- (a) provision under Article 13HA(1) of the Insolvency (Northern Ireland) Order 1989 (power to modify moratorium provisions in relation to certain companies);
  - (b) provision under Article 13HB(1) of that Order (moratorium: power to make provision in connection with pension schemes).
- (3) For the purposes of this section –
- (a) “regulations that are subject to the affirmative resolution procedure” means regulations that may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly;
  - (b) “regulations that are subject to the made affirmative procedure” means regulations that –
    - (i) must be laid before the Assembly as soon as reasonably practicable after being made, and
    - (ii) cease to have effect at the end of the period of 40 days beginning with the day on which the regulations are made, unless during that period the regulations are approved by a resolution of the Assembly.
- (4) In calculating the period of 40 days mentioned in subsection (3)(b)(ii), no account is to be taken of any time during which the Assembly is –
- (a) dissolved,
  - (b) in recess for more than 4 days, or
  - (c) adjourned for more than 6 days.
- (5) Where by virtue of this section a Northern Ireland department makes regulations that are subject to the made affirmative procedure and the regulations cease to have effect because they are not approved within the period mentioned in subsection (3)(b)(ii), the fact that the regulations cease to have effect does not –
- (a) affect anything previously done under or by virtue of the regulations, or
  - (b) prevent the making of new regulations.
- (6) In this section “the Assembly” means the Northern Ireland Assembly.

*General***47 Power to make consequential provision**

- (1) The Secretary of State or the Treasury may by regulations make provision that is consequential on this Act.
- (2) The power in subsection (1) may, in particular, be used to amend, repeal, revoke or otherwise modify any provision of this Act or any provision made by or under primary legislation passed or made –
  - (a) before this Act, or
  - (b) later in the same session of Parliament as this Act.
- (3) But the power to amend or repeal any provision made by this Act may not be used after the period of 3 years beginning with the day on which it is passed.
- (4) Regulations under this section –
  - (a) may make different provision for different purposes;
  - (b) may include transitional or transitory provision or savings.
- (5) Regulations under this section are to be made by statutory instrument.
- (6) A statutory instrument containing regulations under this section that amend or repeal provision made by primary legislation (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (7) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this section “primary legislation” means –
  - (a) an Act,
  - (b) an Act or Measure of Senedd Cymru,
  - (c) an Act of the Scottish Parliament, or
  - (d) Northern Ireland legislation.

**48 Extent**

- (1) An amendment, repeal or revocation made by this Act has the same extent within the United Kingdom as the provision amended, repealed or revoked.
- (2) The following provisions extend to England and Wales and Scotland only –
  - (a) section 3 and Parts 1 and 2 of Schedule 4;
  - (b) section 10 and Schedule 10;
  - (c) section 12;
  - (d) section 15;
  - (e) sections 20 to 24;
  - (f) section 41.
- (3) The following provisions extend to England and Wales only –
  - (a) section 44;
  - (b) Part 3 of Schedule 4.
- (4) The following provisions extend to Scotland only –

- (a) section 45;
  - (b) Part 4 of Schedule 4.
- (5) The following provisions extend to Northern Ireland only –
- (a) section 6 and Schedule 8;
  - (b) section 11 and Schedule 11;
  - (c) section 13;
  - (d) section 19;
  - (e) sections 28 to 36;
  - (f) section 42.
- (6) Subject to the above, this Act extends to England and Wales, Scotland and Northern Ireland.

#### **49 Commencement**

- (1) This Act comes into force on the day after that on which it is passed, subject to subsection (2).
- (2) Paragraph 51 of Schedule 3 comes into force on such day as the Secretary of State may by regulations appoint.
- (3) Different days may be appointed for different purposes.
- (4) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.
- (5) The power to make regulations under subsection (4) includes power to make different provision for different purposes.
- (6) Regulations under this section are to be made by statutory instrument.

#### **50 Short title**

This Act may be cited as the Corporate Insolvency and Governance Act 2020.

## SCHEDULES

## SCHEDULE 1

Section 1(2)

## MORATORIUMS IN GREAT BRITAIN: ELIGIBLE COMPANIES

In the Insolvency Act 1986, before Schedule A1 (which is repealed by Schedule 3 to this Act) insert –

## “SCHEDULE ZA1

Section A2

## MORATORIUM: ELIGIBLE COMPANIES

*Eligible companies*

- 1 A company is “eligible” for the purposes of this Part unless it is excluded from being eligible by any of the following –
- paragraph 2 (current or recent insolvency procedure);
  - paragraph 3 (insurance companies);
  - paragraph 4 (banks);
  - paragraph 5 (electronic money institutions);
  - paragraph 6 (investment banks and investment firms);
  - paragraph 7 (market contracts, market charges, etc);
  - paragraph 8 (participants in designated systems);
  - paragraph 9 (payment institutions);
  - paragraph 10 (operators of payment systems, infrastructure providers etc);
  - paragraph 11 (recognised investment exchanges, clearing houses and CSDs);
  - paragraph 12 (securitisation companies);
  - paragraph 13 (parties to capital market arrangements);
  - paragraph 15 (public-private partnership project companies);
  - paragraph 18 (certain overseas companies).

*Companies subject to, or recently subject to, moratorium or an insolvency procedure*

- 2 (1) A company is excluded from being eligible if –
- (a) on the filing date, a moratorium for the company is in force, or
  - (b) at any time during the period of 12 months ending with the filing date, a moratorium for the company was in force (but see section A42(6) for power of the court to modify the effect of this paragraph).
- (2) A company is excluded from being eligible if –

- (a) on the filing date, the company is subject to an insolvency procedure, or
  - (b) at any time during the period of 12 months ending with the filing date, the company was subject to an insolvency procedure within sub-paragraph (3)(a) or (b).
- (3) For the purposes of sub-paragraph (2), a company is subject to an insolvency procedure at any time if at that time –
- (a) a voluntary arrangement has effect in relation to the company,
  - (b) the company is in administration,
  - (c) paragraph 44 of Schedule B1 applies in relation to the company (administration: interim moratorium),
  - (d) there is an administrative receiver of the company,
  - (e) there is a provisional liquidator of the company,
  - (f) the company is being wound up, or
  - (g) a relevant petition for the winding up of the company has been presented and has not been withdrawn or determined.
- (4) In sub-paragraph (3)(g) “relevant petition” means a petition under –
- (a) section 124A (winding up on grounds of public interest),
  - (b) section 124B (winding up of SE), or
  - (c) section 124C (winding up of SCE).

#### *Insurance companies*

- 3 (1) A company is excluded from being eligible if –
- (a) it carries on the regulated activity of effecting or carrying out contracts of insurance, and
  - (b) it is not an exempt person in relation to that activity.
- (2) In this paragraph –
- “exempt person”, in relation to a regulated activity, has the meaning given by section 417 of the Financial Services and Markets Act 2000;
- “regulated activity” has the meaning given by section 22 of that Act, taken with Schedule 2 to that Act and any order under that section.

#### *Banks*

- 4 (1) A company is excluded from being eligible if –
- (a) it has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits,
  - (b) it is a banking group company within the meaning of Part 1 of the Banking Act 2009 (see section 81D of that Act), or
  - (c) it has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 or the Banking Act 1987.

- (2) In sub-paragraph (1)(a) “regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section.

*Electronic money institutions*

- 5 A company is excluded from being eligible if it is an electronic money institution within the meaning of the Electronic Money Regulations 2011 (S.I. 2011/99) (see regulation 2 of those Regulations).

*Investment banks and investment firms*

- 6 (1) A company is excluded from being eligible if it is an investment bank or an investment firm.
- (2) In this paragraph –
- “investment bank” means a company that has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of –
- (a) safeguarding and administering investments,
  - (b) managing an AIF or a UCITS,
  - (c) acting as trustee or depositary of an AIF or a UCITS,
  - (d) dealing in investments as principal, or
  - (e) dealing in investments as agent,
- but does not include a company that has permission to arrange for one or more others to carry on the activity mentioned in paragraph (a) if it does not otherwise have permission to carry on any of the activities mentioned in paragraphs (a) to (e);
- “investment firm” has the same meaning as in the Banking Act 2009 (see section 258A of that Act), disregarding any order made under section 258A(2)(b) of that Act;
- “regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section.

*Companies that are party to market contracts or subject to market charges, etc*

- 7 (1) A company is excluded from being eligible if it is a party to a market contract for the purposes of Part 7 of the Companies Act 1989 (see section 155 of that Act).
- (2) A company is excluded from being eligible if any of its property is subject to a market charge for the purposes of Part 7 of the Companies Act 1989 (see section 173 of that Act).
- (3) A company is excluded from being eligible if any of its property is subject to a charge that is a system-charge, within the meaning of the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469) (see regulation 2 of those Regulations).

*Participants in designated systems*

- 8 A company is excluded from being eligible if –

- (a) it is a participant in a designated system, within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979) (see regulation 2 of those Regulations), or
- (b) any of its property is subject to a collateral security charge within the meaning of those Regulations (see regulation 2 of those Regulations).

*Payment institutions*

- 9 A company is excluded from being eligible if it is an authorised payment institution, a small payment institution or a registered account information service provider within the meaning of the Payment Services Regulations 2017 (S.I. 2017/752) (see regulation 2 of those Regulations).

*Operators of payment systems, infrastructure providers etc*

- 10 A company is excluded from being eligible if –
- (a) it is the operator of a payment system or an infrastructure provider within the meaning of Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 42 of that Act), or
  - (b) it is an infrastructure company, within the meaning of Part 6 of that Act (see section 112 of that Act).

*Recognised investment exchanges, clearing houses and CSDs*

- 11 A company is excluded from being eligible if it is a recognised investment exchange, a recognised clearing house or a recognised CSD within the meaning of the Financial Services and Markets Act 2000 (see section 285 of that Act).

*Securitisation companies*

- 12 A company is excluded from being eligible if it is a securitisation company within the meaning of the Taxation of Securitisation Companies Regulations 2006 (S.I. 2006/3296) (see regulation 4 of those Regulations).

*Parties to capital market arrangements*

- 13 (1) A company is excluded from being eligible if, on the filing date –
- (a) it is a party to an agreement which is or forms part of a capital market arrangement (see sub-paragraph (2)),
  - (b) a party has incurred, or when the agreement was entered into was expected to incur, a debt of at least £10 million under the arrangement (at any time during the life of the capital market arrangement), and
  - (c) the arrangement involves the issue of a capital market investment (see paragraph 14).
- (2) For the purposes of this paragraph, an arrangement is a “capital market arrangement” if any of the following applies –

- 
- (a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement;
  - (b) at least one party guarantees the performance of obligations of another party;
  - (c) at least one party provides security in respect of the performance of obligations of another party;
  - (d) the arrangement involves an investment of a kind described in articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (options, futures and contracts for differences).
- (3) For the purposes of sub-paragraph (2) –
- (a) a reference to holding a security as trustee includes a reference to holding it as nominee or agent,
  - (b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and
  - (c) a reference to holding a capital market investment is to holding a legal or beneficial interest in it.
- (4) For the purposes of sub-paragraph (1)(b), where a debt is denominated wholly or partly in a foreign currency, the sterling equivalent is to be calculated as at the time when the arrangement is entered into.
- 14 (1) For the purposes of paragraph 13 an investment is a “capital market investment” if condition A or B is met.
- (2) Condition A is that the investment –
- (a) is within article 77 or 77A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (debt instruments), and
  - (b) is rated, listed or traded or designed to be rated, listed or traded.
- (3) In sub-paragraph (2) –
- “listed” means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (interpretation);
  - “rated” means rated for the purposes of investment by an internationally recognised rating agency;
  - “traded” means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.
- (4) In sub-paragraph (3) –
- “foreign market” has the same meaning as “relevant market” in article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529) (foreign markets);



“recognised investment exchange” has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange).

- (5) Condition B is that the investment consists of a bond or commercial paper issued to one or more of the following –
- (a) an investment professional within the meaning of article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529);
  - (b) a person who, when the agreement mentioned in paragraph 13(1) is entered into, is a certified high net worth individual in relation to a communication within the meaning of article 48(2) of that Order;
  - (c) a person to whom article 49(2) of that Order applies (high net worth company, etc);
  - (d) a person who, when the agreement mentioned in paragraph 13(1) is entered into, is a certified sophisticated investor in relation to a communication within the meaning of article 50(1) of that Order;
  - (e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.
- (6) For the purposes of sub-paragraph (5) –
- (a) in applying article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 –
    - (i) in article 19(5)(b), ignore the words after “exempt person”,
    - (ii) in article 19(5)(c)(i), for the words from “the controlled activity” to the end substitute “a controlled activity”, and
    - (iii) in article 19(5)(e), ignore the words from “where the communication” to the end;
  - (b) in applying article 49(2) of that Order, ignore article 49(2)(e);
  - (c) “bond” means –
    - (i) a bond that is within article 77(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, or
    - (ii) an alternative finance investment bond within the meaning of article 77A of that Order;
  - (d) “commercial paper” has the meaning given by article 9(3) of that Order.

*Public-private partnership project companies*

- 15 (1) A company is excluded from being eligible if, on the filing date, it is a project company of a project which –
- (a) is a public-private partnership project (see paragraph 16), and
  - (b) includes step-in rights (see paragraph 17).

- 
- (2) For the purposes of this paragraph a company is a “project company” of a project if any of the following applies –
- (a) it holds property for the purpose of the project;
  - (b) it has sole or principal responsibility under an agreement for carrying out all or part of the project;
  - (c) it is one of a number of companies which together carry out the project;
  - (d) it has the purpose of supplying finance to enable the project to be carried out;
  - (e) it is the holding company of a company within any of paragraphs (a) to (d).
- (3) But a company is not a “project company” of a project if –
- (a) it performs a function within sub-paragraph (2)(a) to (d) or is within sub-paragraph (2)(e), but
  - (b) it also performs a function which is not –
    - (i) within sub-paragraph (2)(a) to (d),
    - (ii) related to a function within sub-paragraph (2)(a) to (d), or
    - (iii) related to the project.
- (4) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.
- 16 (1) For the purposes of paragraph 15 “public-private partnership project” means a project –
- (a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or
  - (b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.
- (2) In sub-paragraph (1) “public body” means –
- (a) a body which exercises public functions,
  - (b) a body specified for the purposes of this paragraph by the Secretary of State, or
  - (c) a body within a class specified for the purposes of this paragraph by the Secretary of State.
- (3) In sub-paragraph (1)(a) “resources” includes –
- (a) funds (including payment for the provision of services or facilities);
  - (b) assets;
  - (c) professional skill;
  - (d) the grant of a concession or franchise;
  - (e) any other commercial resource.
- (4) A specification under sub-paragraph (2) may be –
- (a) general, or
  - (b) for the purpose of the application of paragraph 15 to a specified case.

- 17 (1) For the purposes of paragraph 15 a project has “step-in rights” if a person who provides finance in connection with the project has a conditional entitlement under an agreement to –
- (a) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or
  - (b) make arrangements for carrying out all or part of the project.
- (2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.

*Overseas companies with corresponding functions*

- 18 A company is excluded from being eligible if its registered office or head office is outside the United Kingdom and –
- (a) its functions correspond to those of a company mentioned in any of the previous paragraphs of this Schedule apart from paragraph 2 and, if it were a company registered under the Companies Act 2006 in England and Wales or Scotland, it would be excluded from being eligible by that paragraph, or
  - (b) it has entered into a transaction or done anything else that, if done in England and Wales or Scotland by a company registered under the Companies Act 2006 in England and Wales or Scotland, would result in the company being excluded by any of the previous paragraphs of this Schedule apart from paragraph 2.

*Interpretation of Schedule*

- 19 (1) This paragraph applies for the purposes of this Schedule.
- (2) “Agreement” includes any agreement or undertaking effected by –
- (a) contract,
  - (b) deed, or
  - (c) any other instrument intended to have effect in accordance with the law of England and Wales, Scotland or another jurisdiction.
- (3) “The filing date” means the date on which documents are filed with the court under section A3, A4 or A5.
- (4) “Party” to an arrangement includes a party to an agreement which –
- (a) forms part of the arrangement,
  - (b) provides for the raising of finance as part of the arrangement, or
  - (c) is necessary for the purposes of implementing the arrangement.

*Powers to amend Schedule*

- 20 (1) The Secretary of State may by regulations amend this Schedule, apart from paragraph 2, so as to alter the circumstances in which a company is “eligible” for the purposes of this Part.
- (2) Regulations under this paragraph are subject to the affirmative resolution procedure.
- 21 (1) The Welsh Ministers may by regulations amend this Schedule –
- (a) so as to provide that a social landlord registered under Part 1 of the Housing Act 1996 is excluded from being “eligible” for the purposes of this Part;
- (b) so as to reverse the effect of any provision made under paragraph (a).
- (2) Regulations under this paragraph extend to England and Wales only.
- (3) A statutory instrument containing regulations under this paragraph may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of Senedd Cymru.
- 22 (1) The Scottish Ministers may by regulations amend this Schedule –
- (a) so as to provide that a social landlord registered under Part 2 of the Housing (Scotland) Act 2010 (asp 17) is excluded from being “eligible” for the purposes of this Part;
- (b) so as to reverse the effect of any provision made under paragraph (a).
- (2) Regulations under this paragraph extend to Scotland only.
- (3) Regulations under this paragraph are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).”

## SCHEDULE 2

Section 1(3)

## MORATORIUMS IN GREAT BRITAIN: CONTRACTS INVOLVING FINANCIAL SERVICES

In the Insolvency Act 1986, after Schedule ZA1 (inserted by Schedule 1 to this Act) insert –

## “SCHEDULE ZA2

Section A18

## MORATORIUM: CONTRACT OR OTHER INSTRUMENT INVOLVING FINANCIAL SERVICES

*Introductory*

- 1 For the purposes of section A18 “contract or other instrument involving financial services” means a contract or other instrument to which any of the following paragraphs applies.

*Financial contracts*

- 2 (1) This paragraph applies to a financial contract.
- (2) “Financial contract” means –
  - (a) a contract for the provision of financial services consisting of –
    - (i) lending (including the factoring and financing of commercial transactions),
    - (ii) financial leasing, or
    - (iii) providing guarantees or commitments;
  - (b) a securities contract, including –
    - (i) a contract for the purchase, sale or loan of a security, group or index of securities;
    - (ii) an option on a security or group or index of securities;
    - (iii) a repurchase or reverse repurchase transaction on any such security, group or index;
  - (c) a commodities contract, including –
    - (i) a contract for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;
    - (ii) an option on a commodity or group or index of commodities;
    - (iii) a repurchase or reverse repurchase transaction on any such commodity, group or index;
  - (d) a futures or forwards contract, including a contract (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;
  - (e) a swap agreement, including –
    - (i) a swap or option relating to interest rates, spot or other foreign exchange agreements, currency, an equity index or equity, a debt index or debt, commodity indexes or commodities, weather, emissions or inflation;
    - (ii) a total return, credit spread or credit swap;
    - (iii) any agreement or transaction that is similar to an agreement that is referred to in sub-paragraph (i) or (ii) and is the subject of recurrent dealing in the swaps or derivatives markets;
  - (f) an inter-bank borrowing agreement where the term of the borrowing is three months or less;
  - (g) a master agreement for any of the contracts or agreements referred to in paragraphs (a) to (f).
- (3) For the purposes of this paragraph “commodities” includes –
  - (a) units recognised for compliance with the requirements of EU Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading,

- (b) allowances under paragraph 5 of Schedule 2 to the Climate Change Act 2008 relating to a trading scheme dealt with under Part 1 of that Schedule (schemes limiting activities relating to emissions of greenhouse gas), and
- (c) renewables obligation certificates issued –
  - (i) by the Gas and Electricity Markets Authority under an order made under section 32B of the Electricity Act 1989, or
  - (ii) by the Northern Ireland Authority for Utility Regulation under the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) and pursuant to an order made under Articles 52 to 55F of that Order.

#### *Securities financing transactions*

- 3 (1) This paragraph applies to –
  - (a) a securities financing transaction, and
  - (b) a master agreement for securities financing transactions.
- (2) “Securities financing transaction” has the meaning given by Article 3(11) of Regulation (EU) 2015/2365 on the transparency of securities financing transactions.
- (3) But for the purposes of that Article as it applies for the purposes of this paragraph, references to “commodities” in that Regulation are to be taken as including the units, allowances and certificates referred to in paragraph 2(3)(a), (b) and (c).

#### *Derivatives*

- 4 (1) This paragraph applies to –
  - (a) a derivative, and
  - (b) a master agreement for derivatives.
- (2) “Derivative” has the meaning given by Article 2(5) of Regulation (EU) No. 648/2012.

#### *Spot contracts*

- 5 (1) This paragraph applies to –
  - (a) a spot contract, and
  - (b) a master agreement for spot contracts.
- (2) “Spot contract” has the meaning given by Article 7(2) or 10(2) of Commission Delegated Regulation of 25.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

*Capital market investments*

- 6 (1) This paragraph applies to an agreement which is, or forms part of, an arrangement involving the issue of a capital market investment.
- (2) “Capital market investment” has the meaning given by paragraph 14 of Schedule ZA1.

*Contracts forming part of a public-private partnership*

- 7 This paragraph applies to a contract forming part of a public-private partnership project within the meaning given by paragraph 16 of Schedule ZA1.

*Market contracts*

- 8 This paragraph applies to a market contract within the meaning of Part 7 of the Companies Act 1989 (see section 155 of that Act).

*Qualifying collateral arrangements and qualifying property transfers*

- 9 This paragraph applies to qualifying collateral arrangements and qualifying property transfers within the meaning of Part 7 of the Companies Act 1989 (see section 155A of that Act).

*Contracts secured by certain charges or arrangements*

- 10 This paragraph applies to a contract where any obligation under the contract is –
  - (a) secured by a market charge within the meaning of Part 7 of the Companies Act 1989 (see section 173 of that Act),
  - (b) secured by a system-charge within the meaning of the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469) (see regulation 2 of those Regulations), or
  - (c) secured or otherwise covered by a financial collateral arrangement within the meaning of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226) (see regulation 3 of those Regulations).

*Default arrangements and transfer orders*

- 11 This paragraph applies to a contract which is included in default arrangements, or a transfer order, within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979) (see regulation 2 of those Regulations).

*Card-based payment transactions*

- 12 This paragraph applies to a contract to accept and process card-based payment transactions within the meaning given by Regulation (EU) 2015/751 of the European Parliament and of the Council of 29th April 2015 on interchange fees for card-based payment transactions.

*Power to amend Schedule*

- 13 (1) The Secretary of State may by regulations amend this Schedule so as to change the meaning of “contract or other instrument involving financial services” for the purposes of section A18.
- (2) Regulations under this paragraph are subject to the affirmative resolution procedure.”

SCHEDULE 3

Section 2

MORATORIUMS IN GREAT BRITAIN: FURTHER AMENDMENTS

*Insolvency Act 1986*

- 1 The Insolvency Act 1986 is amended as follows.
- 2 Omit section 1A (moratorium where directors propose voluntary arrangement).
- 3 In section 2 (procedure where nominee is not the liquidator or administrator), in subsection (1), omit from “and the directors” to the end.
- 4 (1) Section 4 (decision of the company and its creditors in relation to voluntary arrangement) is amended as follows.
- (2) After subsection (4) insert –
- “(4A) Subject to subsection (4B), where the nominee’s report under section 2(2) is submitted to the court before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the company under Part A1, neither the company nor its creditors may approve any proposal or modification under which the following are to be paid otherwise than in full –
- (a) moratorium debts (within the meaning given by section 174A);
- (b) priority pre-moratorium debts (within the meaning given by section 174A).
- (4B) Subsection (4A) does not prevent the approval of such a proposal or modification with the concurrence of the creditor concerned.”
- 5 (1) Section 4A (approval of voluntary arrangement) is amended as follows.
- (2) In subsection (2)(b), for “(4)” substitute “(6)”.
- (3) In subsection (5), for “within the meaning given by paragraph 44 of Schedule A1” substitute “as defined by section A49(13)”.
- (4) In subsection (5A), for “within the meaning of paragraph 44 of Schedule A1” substitute “as defined by section A49(13)”.
- 6 (1) Section 5 (effect of approval of voluntary arrangement) is amended as follows.



- 
- (2) After subsection (3) insert –
- “(3A) Where immediately before the voluntary arrangement took effect a moratorium for the company was in force under Part A1 and a petition for the winding up of the company, other than an excepted petition within the meaning of section A20, was presented before the beginning of the moratorium, the court must dismiss the petition.”
- (3) In subsection (4) after “subsection (3)(a)” insert “or dismiss a petition under subsection (3A)”.
- 7 (1) Section 7A (prosecution of delinquent officers of company) is amended as follows.
- (2) For subsection (1) substitute –
- “(1) This section applies where the approval of a voluntary arrangement in relation to a company has taken effect under section 4A.”
- (3) In subsection (2) –
- (a) for the words before paragraph (a) substitute “If it appears to the supervisor that any past or present officer of the company has committed an offence in connection with the voluntary arrangement, the supervisor must forthwith”;
- (b) in paragraph (b), omit “nominee or”.
- (4) In subsection (8), omit “nominee or”.
- 8 In section 7B (arrangements coming to an end prematurely) omit –
- (a) “or paragraph 36 of Schedule A1”;
- (b) “or, as the case may be, paragraph 37(2)(b)(i) of Schedule A1”.
- 9 In section 115 (expenses of voluntary winding up), at the beginning insert “After the payment of any liabilities to which section 174A applies,”.
- 10 In section 122 (circumstances in which company may be wound up by the court), in subsection (1), omit paragraph (fa).
- 11 In section 124 (winding up by the court), omit subsection (3A).
- 12 In section 127 (avoidance of property dispositions etc), after subsection (2) insert –
- “(3) This section has no effect in respect of anything done during a moratorium under Part A1, or during a period mentioned in section 5(4)(a) following the end of a moratorium, where the winding-up order was made on a petition presented before the moratorium begins, unless the petition was presented under section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in section 367(3)(b) of that Act.”
- 13 Before section 175 (and before the italic heading “Preferential debts” above

that section) insert –

*“Moratorium: order of priority of payment of debts*

**174A Moratorium debts etc: priority**

- (1) This section applies where proceedings for the winding up of a company are begun before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the company under Part A1.
- (2) In the winding up, the following are payable out of the company’s assets (in the order of priority shown) in preference to all other claims –
  - (a) any prescribed fees or expenses of the official receiver acting in any capacity in relation to the company;
  - (b) moratorium debts and priority pre-moratorium debts.
- (3) In subsection (2)(b) “priority pre-moratorium debt” means –
  - (a) any pre-moratorium debt that is payable in respect of –
    - (i) the monitor’s remuneration or expenses,
    - (ii) goods or services supplied during the moratorium,
    - (iii) rent in respect of a period during the moratorium, or
    - (iv) wages or salary arising under a contract of employment, so far as relating to a period of employment before or during the moratorium,
  - (b) any pre-moratorium debt that –
    - (i) consists of a liability to make a redundancy payment, and
    - (ii) fell due before or during the moratorium, and
  - (c) any pre-moratorium debt that –
    - (i) arises under a contract or other instrument involving financial services,
    - (ii) fell due before or during the moratorium, and
    - (iii) is not relevant accelerated debt (see subsection (4)).
- (4) For the purposes of subsection (3)(c) –
 

“relevant accelerated debt” means any pre-moratorium debt that fell due during the relevant period by reason of the operation of, or the exercise of rights under, an acceleration or early termination clause in a contract or other instrument involving financial services;

“the relevant period” means the period –

  - (a) beginning with the day on which the statement under section A6(1)(e) is made, and
  - (b) ending with the last day of the moratorium.
- (5) The rules may make provision as to the order in which the debts mentioned in subsection (2)(b) rank among themselves in a case where the assets of the company are insufficient to meet them in full.
- (6) The Secretary of State may by regulations made by statutory instrument amend this section for the purposes of changing the

definition of “moratorium debt” or “priority pre-moratorium debt” in this section.

- (7) Regulations under subsection (6) may make consequential, supplementary, incidental or transitional provision or savings.
- (8) A statutory instrument containing regulations under subsection (6) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (9) For the purposes of this section proceedings for the winding up of a company are begun when –
  - (a) a winding-up petition is presented, or
  - (b) a resolution for voluntary winding up is passed.
- (10) Any rules made under section A18(4) (meaning of supply of goods or services) apply also for the purposes of subsection (3)(a)(ii) of this section.
- (11) In this section –
  - “acceleration or early termination clause”, in relation to a contract or other instrument involving financial services, means a provision of the contract or other instrument –
    - (a) under which, on the happening of an event –
      - (i) a debt or other liability falls due earlier than it otherwise would, or
      - (ii) a debt or other liability is terminated and replaced by another debt or liability, or
    - (b) which confers on a party a right which, if exercised, will result in –
      - (i) a debt or other liability falling due earlier than it otherwise would, or
      - (ii) a debt or other liability being terminated and replaced by another debt or liability;
  - “contract or other instrument involving financial services” has the same meaning as it has for the purposes of section A18 (see Schedule ZA2);
  - “monitor’s remuneration or expenses” has the meaning given by section A18;
  - “moratorium debt” has the meaning given by section A53;
  - “pre-moratorium debt” has the meaning given by section A53;
  - “redundancy payment” has the meaning given by section A18;
  - “wages or salary” has the meaning given by section A18.”

14 (1) Section 175 (preferential debts: general provision) is amended as follows.

- (2) In subsection (1), at the end insert “after the payment of –
  - (a) any liabilities to which section 174A applies, and
  - (b) expenses of the winding up.”

(3) In subsection (1A), omit “after the expenses of the winding up”.

15 (1) Section 233 (supplies of gas, water, electricity etc) is amended as follows.

- (2) In subsection (1) –

- (a) omit paragraph (ba);
  - (b) in the words after paragraph (e), omit “the nominee,”.
- (3) In subsection (4), omit paragraph (ba).
- 16 In section 246ZD (power to assign certain causes of action), in subsection (2) –
- (a) after “under” insert “or by virtue of”;
  - (b) before paragraph (a) insert –
    - “(za) section A43 (challenges to monitor remuneration in subsequent insolvency proceedings);”.
- 17 In section 246A (remote attendance at meetings), in subsection (10), before paragraph (a) insert –
- “(za) the monitor in relation to a moratorium under Part A1,”.
- 18 In section 246B (use of websites), in subsection (3), before paragraph (a) insert –
- “(za) the monitor in relation to a moratorium under Part A1,”.
- 19 In section 247 (meaning of “insolvency” etc), in subsection (1), after “includes” insert “the coming into force of a moratorium for the company under Part A1,”.
- 20 In section 387 (“the relevant date” in relation to preferential debts), omit subsection (2A).
- 21 (1) Section 388 (meaning of “act as insolvency practitioner”) is amended as follows.
- (2) In subsection (1)(a), for “or administrative receiver” substitute “, administrative receiver or monitor”.
  - (3) In subsection (4), at the appropriate place insert –
    - ““monitor” has the same meaning as in Part A1 (moratorium);”.
- 22 (1) Section 411 (company insolvency rules) is amended as follows.
- (2) In subsection (1), in the words after paragraph (b), for “Parts I” substitute “Parts A1”.
  - (3) In subsection (3), for “Parts I” substitute “Parts A1”.
- 23 (1) Section 414 (fees orders) is amended as follows.
- (2) In subsection (1)(a), for “Parts I” substitute “Parts A1”.
  - (3) In subsection (8), for “Parts I” substitute “Parts A1”.
- 24 Before section 416 (monetary limits (companies winding up)) insert –
- “415B Monetary limits (company moratorium)**
- (1) The Secretary of State may by regulations increase or reduce any of the money sums for the time being specified in the following provisions of Part A1 –
    - (a) section A25(1) (maximum amount of credit which company may obtain without disclosing moratorium);
    - (b) section A28(2) (maximum amount for certain payments without obtaining monitor consent etc);

- (c) section A46(2) (minimum value of company property concealed or fraudulently removed, affecting criminal liability of company's officer).
  - (2) Regulations under this section may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.
  - (3) Regulations under this section are to be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”
- 25 Omit section 417A (money sums: company moratorium).
- 26 In section 430 (provision introducing Schedule of punishments), after subsection (4) insert –
- “(4A) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, a reference in Schedule 10 to 12 months on summary conviction in England and Wales is to be read as a reference to 6 months.”
- 27 In section 431 (summary proceedings), in subsection (1), for “Parts I” substitute “Parts A1”.
- 28 In section 432 (offences by bodies corporate), in subsection (4) –
- (a) after “sections” insert “A19(5), A25(3), A26(4), A27(1), A28(5), A29(6), A30(2), A31(10), A32(4),”;
  - (b) omit from “and those under” to the end.
- 29 In section 434 (Crown application), after “Insolvency Act 1985” insert “and Part A1”.
- 30 Omit Schedule A1 (moratorium where directors propose voluntary arrangement).
- 31 (1) Schedule B1 (administration) is amended as follows.
- (2) Omit paragraph 24.
  - (3) Before paragraph 65 (but after the italic heading “Distribution”) insert –
- “64A(1) This paragraph applies where a company enters administration before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the company under Part A1.
- (2) The administrator must make a distribution to the creditors of the company in respect of –
- (a) moratorium debts (within the meaning given by section 174A), and
  - (b) priority pre-moratorium debts (within the meaning given by section 174A).
- (3) A sum payable under sub-paragraph (2) is to be paid in priority to –
- (a) any security to which paragraph 70 applies or paragraph 115(1) applies;
  - (b) any sums payable under paragraph 99.

- (4) The administrator must realise any property necessary to comply with sub-paragraph (2).
- (5) The rules may make provision as to the order in which the moratorium and priority pre-moratorium debts rank among themselves for the purposes of this paragraph in a case where the assets of the company are insufficient to meet them in full.”
- (4) In paragraph 65, for sub-paragraph (1) substitute –
- “(1) If the assets of a company are sufficient to meet any debts or other liabilities payable under paragraph 64A in full, the administrator of the company may make a distribution to any other creditor of the company.”
- (5) In paragraph 66, for “The administrator of a company” substitute “If the debts and other liabilities payable under paragraph 64A have been met, the administrator of a company”.
- 32 (1) Schedule 8 (provision capable of inclusion in company insolvency rules) is amended as follows.
- (2) In paragraph 2, for “Parts I” substitute “Parts A1”.
- (3) In paragraph 8, after “is,” insert “the monitor in relation to a moratorium under Part A1 or”.
- 33 (1) Schedule 10 (punishment of offences under the Act) is amended as follows.
- (2) Omit the entries relating to Schedule A1.
- (3) At the appropriate place insert –

“A8(4)	Directors failing to notify monitor of beginning of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A8(5)	Monitor failing to notify creditors etc of beginning of moratorium.	Summary.	Level 3 on the standard scale.

A17(6)	Directors failing to notify monitor of change in end of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both.  On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A17(7)	Monitor failing to notify creditors etc of change in end of moratorium.	Summary.	Level 3 on the standard scale.
A19(5)	Company or officer failing to state in correspondence etc that moratorium in force.	Summary.	Level 3 on the standard scale.
A24(4)	Directors failing to notify monitor of insolvency proceedings etc.	1. On indictment. 2. Summary.	2 years or a fine or both.  On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A25(3)(a)	Company obtaining credit without disclosing existence of moratorium.	1. On indictment. 2. Summary.	A fine.  On conviction in England and Wales: a fine. On conviction in Scotland: the statutory maximum.

A25(3)(b)	Obtaining credit for company without disclosing existence of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both.  On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A26(4)(a)	Company granting security without monitor's consent.	1. On indictment. 2. Summary.	A fine.  On conviction in England and Wales: a fine. On conviction in Scotland: the statutory maximum.
A26(4)(b)	Authorising or permitting company to do so.	1. On indictment. 2. Summary.	2 years or a fine or both.  On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A27(1)(a)	Company entering into market contract, etc.	1. On indictment. 2. Summary.	A fine.  On conviction in England and Wales: a fine. On conviction in Scotland: the statutory maximum.



A27(1)(b)	Authorising or permitting company to do so.	1. On indictment. 2. Summary.	2 years or a fine or both.  On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A28(5)(a)	Company making unauthorised payments.	1. On indictment. 2. Summary.	A fine.  On conviction in England and Wales: a fine. On conviction in Scotland: the statutory maximum.
A28(5)(b)	Authorising or permitting company to do so.	1. On indictment. 2. Summary.	2 years or a fine or both.  On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A29(6)(a)	Company making unauthorised disposal of property.	1. On indictment. 2. Summary.	A fine.  On conviction in England and Wales: a fine. On conviction in Scotland: the statutory maximum.

A29(6)(b)	Authorising or permitting such a disposal.	1. On indictment. 2. Summary.	2 years or a fine or both.  On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A30(2)(a)	Unauthorised disposal of hire-purchase property.	1. On indictment. 2. Summary.	A fine.  On conviction in England and Wales: a fine. On conviction in Scotland: the statutory maximum.
A30(2)(b)	Authorising or permitting such a disposal.	1. On indictment. 2. Summary.	2 years or a fine or both.  On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A31(8)	Directors failing to send to registrar copy of court order permitting disposal of charged property.	Summary.	Level 3 on the standard scale.

A31(10)(a)	Company failing to comply with requirements relating to disposal of charged property.	1. On indictment. 2. Summary.	A fine. On conviction in England and Wales: a fine. On conviction in Scotland: the statutory maximum.
A31(10)(b)	Authorising or permitting such a failure.	1. On indictment. 2. Summary.	2 years or a fine or both. On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A32(4)(a)	Company failing to comply with requirements relating to disposal of hire-purchase property.	1. On indictment. 2. Summary.	A fine. On conviction in England and Wales: a fine. On conviction in Scotland: the statutory maximum.
A32(4)(b)	Authorising or permitting such a failure.	1. On indictment. 2. Summary.	2 years or a fine or both. On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.

A32(6)	Directors failing to send to registrar copy of court order permitting disposal of hire-purchase property.	Summary.	Level 3 on the standard scale.
A39(9)	Monitor failing to notify creditors etc of change in monitor.	Summary.	Level 3 on the standard scale.
A46(1)	Fraud or privity to fraud during or in anticipation of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A46(4)	Knowingly taking in pawn or pledge, or otherwise receiving, company property.	1. On indictment. 2. Summary.	2 years or a fine or both. On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.

A47(1)	False representation or fraud for purpose of obtaining or extending moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both.  On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.
A49(5)	Directors failing to notify regulator of qualifying decision procedure in relation to regulated company	1. On indictment. 2. Summary.	2 years or a fine or both.  On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.”

*Building Societies Act 1986*

- 34 In Schedule 15A to the Building Societies Act 1986 (application of other companies insolvency legislation to building societies), in paragraph 1(2)(a), omit “(except section 1A)”.

*The Financial Markets and Insolvency (Settlement Finality) Regulations 1999*

- 35 In regulation 19 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979) (administration orders, etc), omit paragraph (4).

*Limited Liability Partnerships Act 2000*

- 36 In section 14 of the Limited Liability Partnerships Act 2000 (regulations to make provision about insolvency and winding up), in subsection (1)(a), for “Parts 1” substitute “Parts A1”.
- 37 The provision that may be made under section 16(1) of the Limited Liability Partnerships Act 2000 (consequential amendments) includes provision in consequence of the amendment made by paragraph 38.

*The Limited Liability Partnerships Regulations 2001*

- 38 In the Limited Liability Partnerships Regulations 2001 (S.I. 2001/1090), in Part 4 (winding up and insolvency), in regulation 5 (application of the Insolvency Act 1986 to limited liability partnerships), in paragraph (1)(a) after “Parts” insert “A1,”.

*The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001*

- 39 In Schedule 2 to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188) (disclosure of confidential information), at the end of the table insert –

<p>“The monitor in relation to a moratorium under Part A1 of the Insolvency Act 1986</p>	<p>The monitor’s functions in relation to the moratorium”.</p>
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*The Financial Collateral Arrangements (No.2) Regulations 2003*

- 40 In regulation 8 of the Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226) (certain legislation restricting enforcement of security not to apply to financial collateral arrangements), omit paragraph (5).

*The Insolvency Practitioners Regulations 2005*

- 41 In regulation 2 of the Insolvency Practitioners Regulations 2005 (S.I. 2005/524) (interpretation: general), in paragraph (2), before sub-paragraph (a) insert –
- “(za) where the insolvency practitioner acts as the monitor in relation to a moratorium under Part A1 of the Act, whichever is the earlier of the date on which –
- (i) the moratorium comes to an end, or
- (ii) the insolvency practitioner otherwise ceases to act as the monitor in relation to the moratorium;”.

*Banking Act 2009*

- 42 In section 154 of the Banking Act 2009 (winding-up or voluntary arrangement), in subsection (3A) –
- (a) omit “and Schedule A1”;
- (b) for “9” substitute “8”.

*Charities Act 2011*

- 43 The Charities Act 2011 is amended as follows.

- 44 (1) Section 245 is amended as follows.

- (2) After subsection (1), insert –

“(1A) Regulations under subsection (1)(b) may not apply Part A1 of the Insolvency Act 1986 (moratorium) in relation to a CIO that is

registered as a social landlord under Part 1 of the Housing Act 1996 (but see section 247A).”

(3) After subsection (3), insert –

“(3A) In relation to a CIO that is a private registered provider of social housing, the power under section 347(3)(b) may be used to amend, disapply, or modify (in ways specified in the regulations) any provision made by or under Part 2 of the Housing and Regeneration Act 2008 or Chapter 5 of Part 4 of the Housing and Planning Act 2016.”

45 After section 247 insert –

**“247A Regulations about moratorium for certain CIOs**

- (1) The Welsh Ministers may by regulations made by statutory instrument provide for Part A1 of the Insolvency Act 1986 to apply (with such modifications as may be specified in the regulations) in relation to a CIO that is a registered social landlord.
- (2) The regulations may make provision in connection with the interaction between Part A1 of the Insolvency Act 1986 as applied by the regulations and any other insolvency procedure in relation to a CIO that is a registered social landlord.
- (3) The regulations may make –
  - (a) different provision for different purposes, and
  - (b) such supplemental, incidental, consequential, transitory or transitional provision or savings as the Welsh Ministers consider appropriate.
- (4) The power to make regulations under this section includes power to amend, disapply, or modify (in ways specified in the regulations) any provision made by legislation.
- (5) A statutory instrument containing the regulations may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of Senedd Cymru.
- (6) Before making any regulations under this section the Welsh Ministers must consult such persons or bodies of persons as the Welsh Ministers consider appropriate.
- (7) In this section –
  - “insolvency procedure” includes the provision made by sections 39 to 50 of the Housing Act 1996;
  - “legislation” means –
    - (a) an Act of Parliament or an Act or Measure of Senedd Cymru; or
    - (b) subordinate legislation (within the meaning of the Interpretation Act 1978) made under such an Act or Measure;
  - “registered social landlord” means registered as a social landlord under Part 1 of the Housing Act 1996.”

*The Investment Bank Special Administration Regulations 2011*

- 46 The Investment Bank Special Administration Regulations 2011 (S.I. 2011/245) are amended as follows.
- 47 In regulation 21 (dissolution or voluntary arrangement), in paragraph (5A) –
- (a) omit “and Schedule A1”;
  - (b) for the first “9” substitute “8”.
- 48 In Schedule 2 (bank administration), in paragraph 16(3)(ba) –
- (a) omit “and Schedule A1”;
  - (b) for the first “9” substitute “8”.

*The Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012*

- 49 (1) Paragraph 1 of Schedule 1 to the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (S.I. 2012/3013) (application of the Insolvency Act 1986) is amended as follows.
- (2) In sub-paragraph (1), at the beginning insert “Subject to sub-paragraph (2A)”.
- (3) In sub-paragraph (2)(a), for “Parts 1” substitute “Parts A1”.
- (4) After sub-paragraph (2), insert –
- “(2A) Part A1 of the 1986 Act does not apply in relation to a CIO that is –
- (a) a private registered provider of social housing;
  - (b) registered as a social landlord under Part 1 of the Housing Act 1996.”

*Co-operative and Community Benefit Societies Act 2014*

- 50 The Co-operative and Community Benefit Societies Act 2014 is amended as follows.
- 51 In section 106 (appointment of inspectors and calling of special meetings), omit subsection (2).
- 52 (1) Section 118 (power to apply provisions about company arrangements and administration) is amended as follows.
- (2) At the end of the heading insert “etc”.
- (3) In subsection (1), after “by order” insert “ –
- (a) provide for Part A1 of the Insolvency Act 1986 (moratorium) to apply (with or without modifications) in relation to registered societies;
  - (b) ”.
- (4) After subsection (3), insert –
- “(3A) The order may not make any provision that could be made under subsection (3B) or (3C).
- (3B) The Welsh Ministers may by regulations made by statutory instrument make provision under the law of England and Wales for



Part A1 of the Insolvency Act 1986 to apply (with or without modifications) in relation to a society that is registered as a social landlord under Part 1 of the Housing Act 1996.

- (3C) The Scottish Ministers may by regulations make provision under the law of Scotland for Part A1 of the Insolvency Act 1986 to apply (with or without modifications) in relation to a society that is registered as a social landlord under Part 2 of the Housing (Scotland) Act 2010 (asp 17).”
- (5) In subsection (4), for “The order” substitute “An order or regulations under this section”.
- (6) After subsection (5) insert –
- “(5A) A statutory instrument containing regulations under subsection (3B) is subject to annulment in pursuance of a resolution of Senedd Cymru.
- (5B) Regulations made by the Scottish Ministers under subsection (3C) are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).”
- 53 In section 147 (regulations and orders), in subsection (3), for “97 or 118” substitute “or 97, or an order under section 118,”.

*The Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 (S.I. 2014/229)*

- 54 In Article 1 of the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 (citation, commencement and interpretation) –
- (a) in paragraph (2), in the definition of “the 1986 Act”, at the end insert “(see also paragraph (5))”;
- (b) after paragraph (4) insert –
- “(5) In this Order a reference to the 1986 Act is to the 1986 Act without the amendments made by section 1 of, and Schedules 1 to 3 to, the Corporate Insolvency and Governance Act 2020.”

*The International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015*

- 55 (1) Regulation 37 of the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 (S.I. 2015/912) is amended as follows.
- (2) After paragraph (3) insert –
- “(3A) Where the insolvency-related event is the coming into force of a moratorium for a company under Part A1 of the Insolvency Act 1986, references in this regulation to the “insolvency office holder” are to the company.”
- (3) In paragraph (12) –
- (a) in sub-paragraph (a) omit “Part 1 of the Insolvency Act 1986 (in the case of company voluntary arrangements) and”;
- (b) omit sub-paragraph (i).

(4) After paragraph (12) insert—

“(12A) Where this regulation applies by virtue of a moratorium for a company coming into force under Part A1 of the Insolvency Act 1986—

- (a) the provisions of this regulation are in addition to the provisions of Part A1 of that Act;
- (b) the notices under section A8 of that Act must include a statement that this regulation applies, together with a statement of the effect of the application of this regulation;
- (c) section A21 of that Act (restrictions on enforcement) does not apply in relation to the aircraft object after the end of the waiting period under this regulation;
- (d) sections A29 to A32 of that Act (provisions about disposal of property) do not apply to the aircraft object;
- (e) the end of the waiting period under this regulation is without prejudice to the application of the provisions of Part A1 of that Act in respect of assets to which these Regulations do not apply.”

## SCHEDULE 4

Section 3

### MORATORIUMS IN GREAT BRITAIN: TEMPORARY PROVISION

#### PART 1

##### “RELEVANT PERIOD” AND POWERS TO TURN OFF TEMPORARY PROVISION

###### *“Relevant period”*

- 1 In this Schedule “relevant period” means the period which—
  - (a) begins with the day on which this Schedule comes into force, and
  - (b) ends with 30 September 2020.

###### *Power to turn off particular provisions of Part 2 of this Schedule early*

- 2 (1) The Secretary of State may by regulations made by statutory instrument provide for any provision made by Part 2 of this Schedule to cease to have effect before the end of the relevant period.
- (2) The regulations may include transitional provision or savings.
- (3) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.

###### *Power to turn off provisions of Parts 3 and 4 of this Schedule early etc*

- 3 Rules under section 411 of the Insolvency Act 1986 may provide for any provision made by paragraphs 13 to 51 or 53 to 90 to cease to have effect before the end of the relevant period.

- 4 Rules under section 411 of the Insolvency Act 1986 may make transitional provision or savings in connection with any provision made by paragraphs 13 to 51 or 53 to 90 ceasing to have effect (whether by virtue of paragraph 3 or 12).

## PART 2

### MODIFICATIONS TO PRIMARY LEGISLATION

#### *“Eligible” company: additional exclusion*

- 5 During the relevant period, a company is not eligible for the purposes of section A3, A4 or A5 of the Insolvency Act 1986 if the company –
- (a) has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on a regulated activity within the meaning of that Act, and
  - (b) is not subject to a requirement imposed under that Act to refrain from holding money for clients.

#### *Relaxation of conditions for obtaining moratorium etc*

- 6 (1) For the purposes of obtaining a moratorium under section A3 of the Insolvency Act 1986 during the relevant period –
- (a) section A3 of that Act has effect as if subsection (1)(a) were omitted;
  - (b) section A6(1)(e) of that Act has effect as if at the end there were inserted “or would do so if it were not for any worsening of the financial position of the company for reasons relating to coronavirus”;
  - (c) Schedule ZA1 to that Act has effect as if paragraph 2(1)(b) and (2)(b) were omitted.
- (2) During the relevant period, only an overseas company may obtain a moratorium under section A4 of the Insolvency Act 1986.
- 7 In relation to an application for a moratorium made under section A4 or A5 of the Insolvency Act 1986 during the relevant period –
- (a) section A6(1)(e) of that Act has effect as if at the end there were inserted “or would do so if it were not for any worsening of the financial position of the company for reasons relating to coronavirus”;
  - (b) Schedule ZA1 to that Act has effect as if paragraph 2(1)(b) and (2)(b) were omitted.

#### *Relaxation of conditions for extending moratorium obtained during relevant period*

- 8 (1) This paragraph applies in relation to a moratorium that comes into force during the relevant period.
- (2) For the purposes of extending the moratorium under section A10 or A11 of the Insolvency Act 1986, subsection (1)(d) of that section has effect as if at the end there were inserted “or would do so if it were not for any worsening of the financial position of the company for reasons relating to coronavirus”.
- (3) In relation to an application under section A13 of the Insolvency Act 1986 that the moratorium be extended, subsection (2)(d) of that section has effect

as if at the end there were inserted “or would do so if it were not for any worsening of the financial position of the company for reasons relating to coronavirus”.

*Monitoring of moratorium obtained during relevant period*

- 9 In relation to a moratorium that comes into force during the relevant period, section A35(1) of the Insolvency Act 1986 has effect as if for the words from “it remains likely” to the end there were substituted “–
- (a) it is likely that the moratorium will result in the rescue of the company as a going concern, or
  - (b) that, if one were to disregard any worsening of the financial position of the company for reasons relating to coronavirus, it is likely that the moratorium would result in the rescue of the company as a going concern.”

*Termination of moratorium obtained during relevant period*

- 10 In relation to a moratorium that comes into force during the relevant period, section A38(1) of the Insolvency Act 1986 has effect as if for paragraph (a) there were substituted –
- “(a) the monitor thinks –
    - (i) that the moratorium is not likely to result in the rescue of the company as a going concern, and
    - (ii) that, even if one were to disregard any worsening of the financial position of the company for reasons relating to coronavirus, the moratorium would not be likely to result in the rescue of the company as a going concern.”.

*“Coronavirus”*

- 11 In the modifications made by this Part of this Schedule “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

PART 3

TEMPORARY RULES: ENGLAND AND WALES

*Introductory*

- 12 Paragraphs 13 to 51 cease to have effect at the end of the relevant period, subject to paragraph 3.

*Definition of “the court”*

- 13 Section A54(1) of the Insolvency Act 1986 has effect as if for the definition of “the court” there were substituted –
- ““the court”, in relation to a company, means a court having jurisdiction to wind up the company;”.

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

- 14 A notice or statement under section A6(1), A8(2), A10(1), A11(1) or A13(2) of the Insolvency Act 1986 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 company to which it relates.

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

- 15 (1) A notice or statement under section A6(1), A10(1), A11(1) or A13(2) of the Insolvency Act 1986 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 Insolvency Act 1986 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 directors wish to obtain a moratorium*

- 16 A notice under section A6(1)(a) of the Insolvency Act 1986 must state –
- (a) the company’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*

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

- 18 Each statement under section A6(1)(b) to (e) of the Insolvency Act 1986 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*

- 19 A notice under section A8(2) of the Insolvency Act 1986 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 directors wish to extend a moratorium*

- 20 A notice under section A10(1)(a) or A11(1)(a) of the Insolvency Act 1986 must state –
- (a) the company’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 Insolvency Act 1986: notices and statements*

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

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

- 22 Each statement under section A10(1)(b) to (d) or A11(1)(b) to (e) of the Insolvency Act 1986 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*

- 23 (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 Insolvency Act 1986 –
- (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 24 to 28.
- 24 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	the pre-	5 days”.
	pre-	moratorium	
	creditors	creditors	
	under section		
	A12 of the Act		

- 25 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, and
  - (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.”
- 26 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.”
- 27 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 company 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 company coming into force.”
- 28 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*

- 29 (1) An application by the directors of a company for the extension of a moratorium under section A13 of the Insolvency Act 1986 must state –
- (a) that it is made under that section,
  - (b) the length of the extension sought,
  - (c) identification details for the company to which the application relates,
  - (d) the company’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 directors.
- (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*

- 30 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*

- 31 (1) A notice under section A17(1) of the Insolvency Act 1986 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 company to which it relates, and
  - (b) the provision by virtue of which the moratorium was extended or came to an end.
- 32 (1) A notice under section A17(2) or (3) of the Insolvency Act 1986 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 company to which it relates.
  - (3) A notice under section A17(2) or (3) of the Insolvency Act 1986 that is given to the registrar of companies 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).
- 33 Where a moratorium comes to an end under section A16 of the Insolvency Act 1986 because the company 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 company 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.
- 34 (1) A notice under section A17(4) of the Insolvency Act 1986 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 directors of insolvency proceedings etc*

- 35 (1) A notice under section A24(1) of the Insolvency Act 1986 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 Insolvency Act 1986 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*

- 36 (1) A notice under section A38(1) of the Insolvency Act 1986 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 company 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 Insolvency Act 1986*

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

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

- 39 (1) A notice under section A39(8) of the Insolvency Act 1986 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 company 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 this paragraph.

*Challenge to monitor’s remuneration*

- 40 (1) An administrator or liquidator of a company may apply to the court on the ground that remuneration charged by the monitor in relation to a prior moratorium for the company under Part A1 of the Insolvency Act 1986 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 directors’ actions: qualifying decision procedure*

- 41 Where the court makes an order by virtue of section A44(4)(c) of the Insolvency Act 1986 requiring a decision of a company’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*

- 42 (1) Where section 174A of the Insolvency Act 1986 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 Insolvency Act 1986.

*Priority of moratorium debts etc in subsequent administration*

- 43 (1) Where paragraph 64A(1) of Schedule B1 to the Insolvency Act 1986 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 Insolvency Act 1986.

*Prescribed format of documents*

- 44 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 Insolvency Act 1986.
- 45 (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 –
- rule 1.8 (prescribed format of documents), and
  - rule 1.9(1) (variations from prescribed contents).
- (2) In 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*

- 46 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 Insolvency Act 1986 as if rule 1.36(1) included a reference to such proceedings –
- rule 1.36(2) (delivery to registrar of companies);
  - rule 1.40 (delivery of documents to authorised recipients);
  - rule 1.41 (delivery of documents to joint office-holders);
  - rule 1.42 (postal delivery of documents);
  - rule 1.43 (delivery by document exchange);
  - rule 1.44 (personal delivery of documents);
  - rule 1.45 (electronic delivery of documents).

*Applications to court*

- 47 (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 Insolvency Act 1986;
  - (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 Insolvency Act 1986 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 applications	
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 regulated company (within the meaning of section A49 of the Insolvency Act 1986), it also required the application to be served on the appropriate regulator (within the meaning of that section).
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	<ol style="list-style-type: none"> <li>(a) Rule 12.36(2) has effect as if the list of office-holders included the monitor in relation to a moratorium.</li> <li>(b) Rule 12.37(2) and (3) have effect as if the list of provisions included section A39 of the Insolvency Act 1986.</li> </ol>
Rules 12.39 and 12.40	The court file	

<i>Insolvency Rules</i>	<i>Topic</i>	<i>Modifications</i>
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 company 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 company*

- 48 (1) Where a provision of this Part of this Schedule requires a document to contain identification details for a company that is registered under the Companies Act 2006 in England and Wales, the following information must be given—
- (a) the company's registered name;
  - (b) its registered number;
- (2) Where a provision of this Part of this Schedule requires a document to contain identification details for a company that has registered particulars under section 1046(1) of the Companies Act 2006 (registered overseas companies), the following information must be given—
- (a) the name registered by the company under section 1047 of that Act,
  - (b) the number under which it is registered, and
  - (c) the country or territory in which it is incorporated.
- (3) Where a provision of this Part of this Schedule requires a document to contain identification details for an unregistered company that does not come within sub-paragraph (2) the following information must be given—
- (a) the company's name, and
  - (b) the postal address of any principal place of business.

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

- 49 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.

*“The England and Wales Insolvency Rules”*

- 50 In this Part of this Schedule “the England and Wales Insolvency Rules” means the Insolvency (England and Wales) Rules 2016.

*Interpretation: general*

- 51 Expressions used in this Part of this Schedule are to be construed as if this Part of this Schedule were contained in Part A1 of the Insolvency Act 1986.

PART 4

TEMPORARY RULES: SCOTLAND

*Introductory*

- 52 Paragraphs 53 to 90 cease to have effect at the end of the relevant period, subject to paragraph 3.

*Definition of “the court”*

- 53 Section A54(1) of the Insolvency Act 1986 has effect as if for the definition of “the court” there were substituted –  
    ““the court”, in relation to a company, means a court having jurisdiction to wind up the company;”.

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

- 54 A notice or statement under section A6(1), A8(2), A10(1), A11(1) or A13(2) of the Insolvency Act 1986 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 company to which it relates.

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

- 55 (1) A notice or statement under section A6(1), A10(1), A11(1) or A13(2) of the Insolvency Act 1986 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 Insolvency Act 1986 must be authenticated by the monitor.  
(3) Rule 1.6 of the Scottish Insolvency Rules applies for the purposes of authentication under this paragraph.

*Notice that directors wish to obtain a moratorium*

- 56 A notice under section A6(1)(a) of the Insolvency Act 1986 must state –  
    (a) the company’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*

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

- 58 Each statement under section A6(1)(b) to (e) of the Insolvency Act 1986 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*

- 59 A notice under section A8(2) of the Insolvency Act 1986 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 directors wish to extend a moratorium*

- 60 A notice under section A10(1)(a) or A11(1)(a) of the Insolvency Act 1986 must state—
- (a) the company’s address for service,
  - (b) the court in which the notice is to be lodged.

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

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

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

- 62 Each statement under section A10(1)(b) to (d) or A11(1)(b) to (e) of the Insolvency Act 1986 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*

- 63 (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 Insolvency Act 1986 –
- (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 64 to 68.
- 64 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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- 65 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.”
- 66 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.”
- 67 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 company 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 company coming into force.”
- 68 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*

- 69 (1) An application by the directors of a company for the extension of a moratorium under section A13 of the Insolvency Act 1986 must state –  
 (a) that it is made under that section,  
 (b) the length of the extension sought,

- (c) identification details for the company to which the application relates,
  - (d) the company'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 directors.
- (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*

- 70 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*

- 71 (1) A notice under section A17(1) of the Insolvency Act 1986 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 company to which it relates, and
  - (b) the provision by virtue of which the moratorium was extended or came to an end.
- 72 (1) A notice under section A17(2) or (3) of the Insolvency Act 1986 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 company to which it relates.
- (3) A notice under section A17(2) or (3) of the Insolvency Act 1986 that is given to the registrar of companies 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).
- 73 Where a moratorium comes to an end under section A16 of the Insolvency Act 1986 because the company 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 company 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.

- 74 (1) A notice under section A17(4) of the Insolvency Act 1986 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 directors of insolvency proceedings etc*

- 75 (1) A notice under section A24(1) of the Insolvency Act 1986 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 Insolvency Act 1986 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*

- 76 (1) A notice under section A38(1) of the Insolvency Act 1986 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 company 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 Insolvency Act 1986*

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

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

- 79 (1) A notice under section A39(8) of the Insolvency Act 1986 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 company 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*

- 80 (1) An administrator or liquidator of a company may apply to the court on the ground that remuneration charged by the monitor in relation to a prior moratorium for the company under Part A1 of the Insolvency Act 1986 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 directors’ actions: qualifying decision procedure*

- 81 Where the court makes an order by virtue of section A44(4)(c) of the Insolvency Act 1986 requiring a decision of a company’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*

- 82 (1) Where section 174A of the Insolvency Act 1986 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 Insolvency Act 1986.

*Priority of moratorium debts etc in subsequent administration*

- 83 (1) Where paragraph 64A(1) of Schedule B1 to the Insolvency Act 1986 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 Insolvency Act 1986.

*Prescribed format of documents*

- 84 Rule 1.5 of the Scottish Insolvency Rules (requirement for writing and form of documents) applies for the purposes of Part A1 of the Insolvency Act 1986.
- 85 (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 –
- rule 1.9 (prescribed format of documents), and
  - 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*

- 86 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 Insolvency Act 1986 as if rule 1.32(1) included a reference to such proceedings –
- rule 1.32(2) to (3) (delivery to registrar of companies);
  - rule 1.36 (delivery of documents to authorised recipients);
  - rule 1.37 (delivery of documents to joint office-holders);
  - rule 1.38 (postal delivery of documents);
  - rule 1.39 (delivery by document exchange);
  - rule 1.40 (personal delivery of documents);
  - rule 1.41 (electronic delivery of documents).

*Identification details for a company*

- 87 (1) Where a provision of this Part of this Schedule requires a document to contain identification details for a company that is registered under the Companies Act 2006 in Scotland, the following information must be given –
- (a) the company’s registered name;
  - (b) its registered number;
- (2) Where a provision of this Part of this Schedule requires a document to contain identification details for a company that has registered particulars under section 1046(1) of the Companies Act 2006 (registered overseas companies), the following information must be given –
- (a) the name registered by the company under section 1047 of that Act,
  - (b) the number under which it is registered, and
  - (c) the country or territory in which it is incorporated.
- (3) Where a provision of this Part of this Schedule requires a document to contain identification details for an unregistered company that does not come within sub-paragraph (2) the following information must be given –
- (a) the company’s name, and
  - (b) the postal address of any principal place of business.

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

- 88 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.

*“The Scottish Insolvency Rules”*

- 89 In this Part of this Schedule “the Scottish Insolvency Rules” means the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 (S.I. 2018/1082).

*Interpretation: general*

- 90 Expressions used in this Part of this Schedule are to be construed as if this Part of this Schedule were contained in Part A1 of the Insolvency Act 1986.

PART 5

ENTITIES OTHER THAN COMPANIES

- 91 Regulations under section 14(1) of the Limited Liability Partnership Act 2000 may make provision applying or incorporating provision made by or under this Schedule, with such modifications as appear appropriate, in relation to a limited liability partnership registered in Great Britain.
- 92 An order or regulations under section 118(1)(a), (3B) or (3C) of the Co-operative and Community Benefit Societies Act 2014 may provide for provision made by or under this Schedule to apply (with or without modifications) in relation to registered societies (or to registered societies of the kind mentioned there).

SCHEDULE 5

Section 4(2)

MORATORIUMS IN NORTHERN IRELAND: ELIGIBLE COMPANIES

In the Insolvency (Northern Ireland) Order 1989, before Schedule A1 (which is repealed by Schedule 7 to this Act) insert –

“SCHEDULE ZA1

Article 13AA

MORATORIUM: ELIGIBLE COMPANIES

*Eligible companies*

- 1 A company is “eligible” for the purposes of this Part unless it is excluded from being eligible by any of the following –
- paragraph 2 (current or recent insolvency procedure);
  - paragraph 3 (insurance companies);
  - paragraph 4 (banks);
  - paragraph 5 (electronic money institutions);
  - paragraph 6 (investment banks and investment firms);
  - paragraph 7 (market contracts, market charges, etc);
  - paragraph 8 (participants in designated systems);
  - paragraph 9 (payment institutions);
  - paragraph 10 (operators of payment systems, infrastructure providers etc);
  - paragraph 11 (recognised investment exchanges, clearing houses and CSDs);
  - paragraph 12 (securitisation companies);
  - paragraph 13 (parties to capital market arrangements);
  - paragraph 15 (public-private partnership project companies);
  - paragraph 18 (certain overseas companies).



*Companies subject to, or recently subject to, moratorium or an insolvency procedure*

- 2 (1) A company is excluded from being eligible if—
  - (a) on the filing date, a moratorium for the company is in force, or
  - (b) at any time during the period of 12 months ending with the filing date, a moratorium for the company was in force (but see Article 13F(6) for power of the High Court to modify the effect of this paragraph).
- (2) A company is excluded from being eligible if—
  - (a) on the filing date, the company is subject to an insolvency procedure, or
  - (b) at any time during the period of 12 months ending with the filing date, the company was subject to an insolvency procedure within sub-paragraph (3)(a) or (b).
- (3) For the purposes of sub-paragraph (2), a company is subject to an insolvency procedure at any time if at that time—
  - (a) a voluntary arrangement has effect in relation to the company,
  - (b) the company is in administration,
  - (c) paragraph 45 of Schedule B1 applies in relation to the company (administration: interim moratorium),
  - (d) there is an administrative receiver of the company,
  - (e) there is a provisional liquidator of the company,
  - (f) the company is being wound up, or
  - (g) a relevant petition for the winding up of the company has been presented and has not been withdrawn or determined.
- (4) In sub-paragraph (3)(g) “relevant petition” means a petition under—
  - (a) Article 104A (winding up on grounds of public interest),
  - (b) Article 104B (winding up of SE), or
  - (c) Article 104C (winding up of SCE).

*Insurance companies*

- 3 (1) A company is excluded from being eligible if—
  - (a) it carries on the regulated activity of effecting or carrying out contracts of insurance, and
  - (b) it is not an exempt person in relation to that activity.
- (2) In this paragraph—

“exempt person”, in relation to a regulated activity, has the meaning given by section 417 of the Financial Services and Markets Act 2000;

“regulated activity” has the meaning given by section 22 of that Act, taken with Schedule 2 to that Act and any order under that section.

*Banks*

- 4 (1) A company is excluded from being eligible if –
- (a) it has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits,
  - (b) it is a banking group company within the meaning of Part 1 of the Banking Act 2009 (see section 81D of that Act), or
  - (c) it has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 or the Banking Act 1987.
- (2) In sub-paragraph (1)(a) “regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section.

*Electronic money institutions*

- 5 A company is excluded from being eligible if it is an electronic money institution within the meaning of the Electronic Money Regulations 2011 (S.I. 2011/99) (see regulation 2 of those Regulations).

*Investment banks and investment firms*

- 6 (1) A company is excluded from being eligible if it is an investment bank or an investment firm.
- (2) In this paragraph –
- “investment bank” means a company that has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of –
    - (a) safeguarding and administering investments,
    - (b) managing an AIF or a UCITS,
    - (c) acting as trustee or depositary of an AIF or a UCITS,
    - (d) dealing in investments as principal, or
    - (e) dealing in investments as agent,but does not include a company that has permission to arrange for one or more others to carry on the activity mentioned in paragraph (a) if it does not otherwise have permission to carry on any of the activities mentioned in paragraphs (a) to (e);
  - “investment firm” has the same meaning as in the Banking Act 2009 (see section 258A of that Act), disregarding any order made under section 258A(2)(b) of that Act;
  - “regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section.

*Companies that are party to market contracts or subject to market charges, etc*

- 7 (1) A company is excluded from being eligible if it is a party to a market contract for the purposes of Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990 (see Article 80 of that Order).

- (2) A company is excluded from being eligible if any of its property is subject to a market charge for the purposes of Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990 (see Article 95 of that Order).
- (3) A company is excluded from being eligible if any of its property is subject to a charge that is a system-charge, within the meaning of the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (S.R. (N.I.) 1996/252) (see regulation 2 of those Regulations).

*Participants in designated systems*

- 8 A company is excluded from being eligible if –
  - (a) it is a participant in a designated system, within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979) (see regulation 2 of those Regulations), or
  - (b) any of its property is subject to a collateral security charge within the meaning of those Regulations (see regulation 2 of those Regulations).

*Payment institutions*

- 9 A company is excluded from being eligible if it is an authorised payment institution, a small payment institution or a registered account information service provider within the meaning of the Payment Services Regulations 2017 (S.I. 2017/752) (see regulation 2 of those Regulations).

*Operators of payment systems, infrastructure providers etc*

- 10 A company is excluded from being eligible if –
  - (a) it is the operator of a payment system or an infrastructure provider within the meaning of Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 42 of that Act), or
  - (b) it is an infrastructure company, within the meaning of Part 6 of that Act (see section 112 of that Act).

*Recognised investment exchanges, clearing houses and CSDs*

- 11 A company is excluded from being eligible if it is a recognised investment exchange, a recognised clearing house or a recognised CSD within the meaning of the Financial Services and Markets Act 2000 (see section 285 of that Act).

*Securitisation companies*

- 12 A company is excluded from being eligible if it is a securitisation company within the meaning of the Taxation of Securitisation Companies Regulations 2006 (S.I. 2006/3296) (see regulation 4 of those Regulations).

*Parties to capital market arrangement*

- 13 (1) A company is excluded from being eligible if, on the filing date –
- (a) it is a party to an agreement which is or forms part of a capital market arrangement (see sub-paragraph (2)),
  - (b) a party has incurred, or when the agreement was entered into was expected to incur, a debt of at least £10 million under the arrangement (at any time during the life of the capital market arrangement), and
  - (c) the arrangement involves the issue of a capital market investment (see paragraph 14).
- (2) For the purposes of this paragraph, an arrangement is a “capital market arrangement” if any of the following applies –
- (a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement;
  - (b) at least one party guarantees the performance of obligations of another party;
  - (c) at least one party provides security in respect of the performance of obligations of another party;
  - (d) the arrangement involves an investment of a kind described in articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (options, futures and contracts for differences).
- (3) For the purposes of sub-paragraph (2) –
- (a) a reference to holding a security as trustee includes a reference to holding it as nominee or agent,
  - (b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and
  - (c) a reference to holding a capital market investment is to holding a legal or beneficial interest in it.
- (4) For the purposes of sub-paragraph (1)(b), where a debt is denominated wholly or partly in a foreign currency, the sterling equivalent is to be calculated as at the time when the arrangement is entered into.
- 14 (1) For the purposes of paragraph 13 an investment is a “capital market investment” if condition A or B is met.
- (2) Condition A is that the investment –
- (a) is within article 77 or 77A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (debt instruments), and
  - (b) is rated, listed or traded or designed to be rated, listed or traded.
- (3) In sub-paragraph (2) –

“listed” means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (interpretation);

“rated” means rated for the purposes of investment by an internationally recognised rating agency;

“traded” means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.

(4) In sub-paragraph (3) –

“foreign market” has the same meaning as “relevant market” in article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529) (foreign markets);

“recognised investment exchange” has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange).

(5) Condition B is that the investment consists of a bond or commercial paper issued to one or more of the following –

(a) an investment professional within the meaning of article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529);

(b) a person who, when the agreement mentioned in paragraph 13(1) is entered into, is a certified high net worth individual in relation to a communication within the meaning of article 48(2) of that Order;

(c) a person to whom article 49(2) of that Order applies (high net worth company, etc);

(d) a person who, when the agreement mentioned in paragraph 13(1) is entered into, is a certified sophisticated investor in relation to a communication within the meaning of article 50(1) of that Order;

(e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.

(6) For the purposes of sub-paragraph (5) –

(a) in applying article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 –

(i) in article 19(5)(b), ignore the words after “exempt person”,

(ii) in article 19(5)(c)(i), for the words from “the controlled activity” to the end substitute “a controlled activity”, and

(iii) in article 19(5)(e), ignore the words from “where the communication” to the end;

(b) in applying article 49(2) of that Order, ignore article 49(2)(e);

(c) “bond” means –

(i) a bond that is within article 77(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, or

- (ii) an alternative finance investment bond within the meaning of article 77A of that Order;
- (d) “commercial paper” has the meaning given by article 9(3) of that Order.

*Public-private partnership project companies*

- 15 (1) A company is excluded from being eligible if, on the filing date, it is a project company of a project which –
- (a) is a public-private partnership project (see paragraph 16), and
  - (b) includes step-in rights (see paragraph 17).
- (2) For the purposes of this paragraph a company is a “project company” of a project if any of the following applies –
- (a) it holds property for the purpose of the project;
  - (b) it has sole or principal responsibility under an agreement for carrying out all or part of the project;
  - (c) it is one of a number of companies which together carry out the project;
  - (d) it has the purpose of supplying finance to enable the project to be carried out;
  - (e) it is the holding company of a company within any of paragraphs (a) to (d).
- (3) But a company is not a “project company” of a project if –
- (a) it performs a function within sub-paragraph (2)(a) to (d) or is within sub-paragraph (2)(e), but
  - (b) it also performs a function which is not –
    - (i) within sub-paragraph (2)(a) to (d),
    - (ii) related to a function within sub-paragraph (2)(a) to (d), or
    - (iii) related to the project.
- (4) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.
- 16 (1) For the purposes of paragraph 15 “public-private partnership project” means a project –
- (a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or
  - (b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.
- (2) In sub-paragraph (1) “public body” means –
- (a) a body which exercises public functions,
  - (b) a body specified for the purposes of this paragraph by the Department, or
  - (c) a body within a class specified for the purposes of this paragraph by the Department.
- (3) In sub-paragraph (1)(a) “resources” includes –

- (a) funds (including payment for the provision of services or facilities);
  - (b) assets;
  - (c) professional skill;
  - (d) the grant of a concession or franchise;
  - (e) any other commercial resource.
- (4) A specification under sub-paragraph (2) may be –
- (a) general, or
  - (b) for the purpose of the application of paragraph 15 to a specified case.
- 17 (1) For the purposes of paragraph 15 a project has “step-in rights” if a person who provides finance in connection with the project has a conditional entitlement under an agreement to –
- (a) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or
  - (b) make arrangements for carrying out all or part of the project.
- (2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.

*Overseas companies with corresponding functions*

- 18 A company is excluded from being eligible if its registered office or head office is outside the United Kingdom and –
- (a) its functions correspond to those of a company mentioned in any of the previous paragraphs of this Schedule apart from paragraph 2 and, if it were a company registered under the Companies Act 2006 in Northern Ireland, it would be excluded from being eligible by that paragraph, or
  - (b) it has entered into a transaction or done anything else that, if done in Northern Ireland by a company registered under the Companies Act 2006 in Northern Ireland, would result in the company being excluded by any of the previous paragraphs of this Schedule apart from paragraph 2.

*Interpretation of Schedule*

- 19 (1) This paragraph applies for the purposes of this Schedule.
- (2) “Agreement” includes any agreement or undertaking effected by –
- (a) contract,
  - (b) deed, or
  - (c) any other instrument intended to have effect in accordance with the law of Northern Ireland or another jurisdiction.
- (3) “The filing date” means the date on which documents are filed with the High Court under Article 13B, 13BA or 13BB.
- (4) “Party” to an arrangement includes a party to an agreement which –

- (a) forms part of the arrangement,
- (b) provides for the raising of finance as part of the arrangement, or
- (c) is necessary for the purposes of implementing the arrangement.

*Power to amend Schedule*

- 20 (1) Regulations may amend this Schedule, apart from paragraph 2, so as to alter the circumstances in which a company is “eligible” for the purposes of this Part.
- (2) Regulations may not be made under this paragraph unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”

SCHEDULE 6

Section 4(3)

MORATORIUMS IN NORTHERN IRELAND: CONTRACTS INVOLVING FINANCIAL SERVICES

In the Insolvency (Northern Ireland) Order 1989, after Schedule ZA1 (inserted by Schedule 5 to this Act) insert—

“SCHEDULE ZA2

Article 13D

MORATORIUM: CONTRACT OR OTHER INSTRUMENT INVOLVING FINANCIAL SERVICES

*Introductory*

- 1 For the purposes of Article 13D “contract or other instrument involving financial services” means a contract or other instrument to which any of the following paragraphs applies.

*Financial contracts*

- 2 (1) This paragraph applies to a financial contract.
- (2) “Financial contract” means—
- (a) a contract for the provision of financial services consisting of—
    - (i) lending (including the factoring and financing of commercial transactions),
    - (ii) financial leasing, or
    - (iii) providing guarantees or commitments;
  - (b) a securities contract, including—
    - (i) a contract for the purchase, sale or loan of a security, group or index of securities;
    - (ii) an option on a security or group or index of securities;
    - (iii) a repurchase or reverse repurchase transaction on any such security, group or index;



- (c) a commodities contract, including –
    - (i) a contract for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;
    - (ii) an option on a commodity or group or index of commodities;
    - (iii) a repurchase or reverse repurchase transaction on any such commodity, group or index;
  - (d) a futures or forwards contract, including a contract (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;
  - (e) a swap agreement, including –
    - (i) a swap or option relating to interest rates, spot or other foreign exchange agreements, currency, an equity index or equity, a debt index or debt, commodity indexes or commodities, weather, emissions or inflation;
    - (ii) a total return, credit spread or credit swap;
    - (iii) any agreement or transaction that is similar to an agreement that is referred to in sub-paragraph (i) or (ii) and is the subject of recurrent dealing in the swaps or derivatives markets;
  - (f) an inter-bank borrowing agreement where the term of the borrowing is three months or less;
  - (g) a master agreement for any of the contracts or agreements referred to in paragraphs (a) to (f).
- (3) For the purposes of this paragraph “commodities” includes –
- (a) units recognised for compliance with the requirements of EU Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading,
  - (b) allowances under paragraph 5 of Schedule 2 to the Climate Change Act 2008 relating to a trading scheme dealt with under Part 1 of that Schedule (schemes limiting activities relating to emissions of greenhouse gas), and
  - (c) renewables obligation certificates issued –
    - (i) by the Gas and Electricity Markets Authority under an order made under section 32B of the Electricity Act 1989, or
    - (ii) by the Northern Ireland Authority for Utility Regulation under the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) and pursuant to an order made under Articles 52 to 55F of that Order.

*Securities financing transactions*

- 3 (1) This paragraph applies to –
- (a) a securities financing transaction, and
  - (b) a master agreement for securities financing transactions.

- (2) “Securities financing transaction” has the meaning given by Article 3(11) of Regulation (EU) 2015/2365 on the transparency of securities financing transactions.
- (3) But for the purposes of that Article as it applies for the purposes of this paragraph, references to “commodities” in that Regulation are to be taken as including the units, allowances and certificates referred to in paragraph 2(3)(a), (b) and (c).

#### *Derivatives*

- 4 (1) This paragraph applies to—
  - (a) a derivative, and
  - (b) a master agreement for derivatives.
- (2) “Derivative” has the meaning given by Article 2(5) of Regulation (EU) No. 648/2012.

#### *Spot contracts*

- 5 (1) This paragraph applies to—
  - (a) a spot contract, and
  - (b) a master agreement for spot contracts.
- (2) “Spot contract” has the meaning given by Article 7(2) or 10(2) of Commission Delegated Regulation of 25.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

#### *Capital market investments*

- 6 (1) This paragraph applies to an agreement which is, or forms part of, an arrangement involving the issue of a capital market investment.
- (2) “Capital market investment” has the meaning given by paragraph 14 of Schedule ZA1.

#### *Contracts forming part of a public-private partnership*

- 7 This paragraph applies to a contract forming part of a public-private partnership project within the meaning given by paragraph 16 of Schedule ZA1.

#### *Market contracts*

- 8 This paragraph applies to a market contract within the meaning of Part 5 of the Companies (No.2) (Northern Ireland) Order 1990 (see Article 80 of that Order).

*Qualifying collateral arrangements and qualifying property transfers*

- 9 This paragraph applies to qualifying collateral arrangements and qualifying property transfers within the meaning of Part 7 of the Companies Act 1989 (see section 155A of that Act).

*Contracts secured by certain charges or arrangements*

- 10 This paragraph applies to a contract where any obligation under the contract is –
- (a) secured by a market charge within the meaning of Part 5 of the Companies (No.2) (Northern Ireland) Order 1990 (see Article 95 of that Order),
  - (b) secured by a system-charge within the meaning of the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (S.R. (N.I.) 1996/252) (see regulation 2 of those Regulations), or
  - (c) secured or otherwise covered by a financial collateral arrangement within the meaning of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226) (see regulation 3 of those Regulations).

*Default arrangements and transfer orders*

- 11 This paragraph applies to a contract which is included in default arrangements, or a transfer order, within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979) (see regulation 2 of those Regulations).

*Card-based payment transactions*

- 12 This paragraph applies to a contract to accept and process card-based payment transactions within the meaning given by Regulation (EU) 2015/751 of the European Parliament and of the Council of 29th April 2015 on interchange fees for card-based payment transactions.

*Power to amend Schedule*

- 13 (1) Regulations may amend this Schedule so as to change the meaning of “contract or other instrument involving financial services” for the purposes of Article 13D.
- (2) Regulations may not be made under this paragraph unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”

## SCHEDULE 7

Section 5

## MORATORIUMS IN NORTHERN IRELAND: FURTHER AMENDMENTS

*The Insolvency (Northern Ireland) Order 1989*

- 1 The Insolvency (Northern Ireland) Order 1989 is amended as follows.
- 2 In each of the following places, for “Parts II to VII” substitute “Parts 1A to 7” –
  - the heading before Article 5;
  - Article 5(1);
  - Article 6(1) and (2);
  - Article 7;
  - Article 8;
  - the heading before Parts 2 to 7;
  - Article 315(6);
  - Article 366(1);
  - Article 374(1).
- 3 In Article 2(2), in the definition of “regulations” –
  - (a) after “(except in” insert “Part 1A, Article 148A(6),”;
  - (b) omit “and paragraph 16 of Schedule A1”.
- 4 (1) Article 3 (meaning of “act as insolvency practitioner”) is amended as follows.
  - (2) In paragraph (1)(a), for “or administrative receiver” substitute “, administrative receiver or monitor”.
  - (3) In paragraph (4), at the appropriate place insert –
 

““monitor” has the same meaning as in Part 1A (moratorium).”
- 5 In Article 6 (meaning of “insolvency” etc), in paragraph (1), after “includes” insert “the coming into force of a moratorium for the company under Part 1A,”.
- 6 Omit Article 14A (moratorium where directors propose voluntary arrangement).
- 7 In Article 15 (procedure where nominee is not the liquidator or administrator), in paragraph (1), omit from “and the directors” to the end.
- 8 (1) Article 17 (decision of the company and its creditors in relation to voluntary arrangement) is amended as follows.
  - (2) After paragraph (4) insert –
 

“(4A) Where the nominee’s report under Article 15(2) is submitted to the Court before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the company under Part 1A, a meeting so summoned may not approve any proposal or modification under which the following are to be paid otherwise than in full –

    - (a) moratorium debts (within the meaning given by Article 148A);

- (b) priority pre-moratorium debts (within the meaning given by Article 148A);  
but this is subject to paragraph (4B).
  - (4B) Paragraph (4A) does not prevent the approval of such a proposal or modification with the concurrence of the creditor concerned.”
  - (3) In paragraph (5), for “and (4)” substitute “to (4B)”.
- 9
- (1) Article 17A (approval of voluntary arrangement) is amended as follows.
  - (2) In paragraph (2)(b), for “(4)” substitute “(6)”.
  - (3) In paragraph (5) –
    - (a) for “within the meaning given by paragraph 54 of Schedule A1” substitute “as defined by Article 13H(13)”;
    - (b) for “within the meaning of paragraph 54 of Schedule A1” substitute “as defined by Article 13H(13)”.
- 10
- (1) Article 18 (effect of approval of voluntary arrangement) is amended as follows.
  - (2) In paragraph (3), for “paragraph (4)” substitute “paragraphs (3A) and (4)”.
  - (3) After paragraph (3) insert –
    - “(3A) Where immediately before the voluntary arrangement took effect a moratorium for the company was in force under Part 1A and a petition for the winding up of the company, other than an excepted petition within the meaning of Article 13DB, was presented before the beginning of the moratorium, the High Court must dismiss the petition.”
  - (4) In paragraph (4) after “paragraph (3)(a)” insert “or dismiss a petition under paragraph (3A)”.
- 11
- (1) Article 20A (prosecution of delinquent officers of company) is amended as follows.
  - (2) For paragraph (1) substitute –
    - “(1) This Article applies where the approval of a voluntary arrangement in relation to a company has taken effect under Article 17A.”
  - (3) In paragraph (2) –
    - (a) for the words before sub-paragraph (a) substitute “If it appears to the supervisor that any past or present officer of the company has committed an offence in connection with the voluntary arrangement, the supervisor must forthwith”;
    - (b) in sub-paragraph (b), omit “nominee or”.
  - (4) In paragraph (8), omit “nominee or”.
- 12
- In Article 20B (arrangements coming to an end prematurely) omit –
    - (a) “or paragraph 46 of Schedule A1”;
    - (b) “or, as the case may be, paragraph 47(2)(b)(i) of Schedule A1”.
- 13
- In Article 100 (expenses of voluntary winding up), at the beginning insert “After the payment of any liabilities to which Article 148A applies,”.

- 14 In Article 102 (circumstances in which company may be wound up by the High Court), omit sub-paragraph (fa).
- 15 In Article 104 (application for winding up by the High Court), omit paragraph (4A).
- 16 In Article 107 (avoidance of property dispositions etc), after paragraph (2) insert –
- “(3) This Article has no effect in respect of anything done during a moratorium under Part 1A, or during a period mentioned in Article 18(4)(a) following the end of a moratorium, where the winding-up order was made on a petition presented before the moratorium begins, unless the petition was presented under section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in section 367(3)(b) of that Act.”
- 17 Before Article 149 (and before the italic heading “Preferential debts” above that Article) insert –

*“Moratorium: order of priority of payment of debts*

#### **148A Moratorium debts etc: priority**

- (1) This Article applies where proceedings for the winding up of a company are begun before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the company under Part 1A.
- (2) In the winding up, the following are payable out of the company’s assets (in the order of priority shown) in preference to all other claims –
- (a) any prescribed fees or expenses of the official receiver acting in any capacity in relation to the company;
  - (b) moratorium debts and priority pre-moratorium debts.
- (3) In paragraph (2)(b) “priority pre-moratorium debt” means –
- (a) any pre-moratorium debt that is payable in respect of –
    - (i) the monitor’s remuneration or expenses,
    - (ii) goods or services supplied during the moratorium,
    - (iii) rent in respect of a period during the moratorium, or
    - (iv) wages or salary arising under a contract of employment, so far as relating to a period of employment before or during the moratorium,
  - (b) any pre-moratorium debt that –
    - (i) consists of a liability to make a redundancy payment, and
    - (ii) fell due before or during the moratorium, and
  - (c) any pre-moratorium debt that –
    - (i) arises under a contract or other instrument involving financial services,
    - (ii) fell due before or during the moratorium, and
    - (iii) is not relevant accelerated debt (see paragraph (4)).
- (4) For the purposes of paragraph (3)(c) –

- “relevant accelerated debt” means any pre-moratorium debt that fell due during the relevant period by reason of the operation of, or the exercise of rights under, an acceleration or early termination clause in a contract or other instrument involving financial services;
- “the relevant period” means the period –
- (a) beginning with the day on which the statement under Article 13BC(1)(e) is made, and
  - (b) ending with the last day of the moratorium.
- (5) The rules may make provision as to the order in which the debts mentioned in paragraph (2)(b) rank among themselves in a case where the assets of the company are insufficient to meet them in full.
  - (6) Regulations may amend this Article for the purposes of changing the definition of “moratorium debt” or “priority pre-moratorium debt” in this Article.
  - (7) Regulations under paragraph (6) may make consequential, supplementary, incidental or transitional provision or savings.
  - (8) Regulations may not be made under paragraph (6) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
  - (9) For the purposes of this Article proceedings for the winding up of a company are begun when –
    - (a) a winding-up petition is presented, or
    - (b) a resolution for voluntary winding up is passed.
  - (10) Any rules made under Article 13D(4) (meaning of supply of goods or services) apply also for the purposes of paragraph (3)(a)(ii) of this Article.
  - (11) In this Article –

“acceleration or early termination clause”, in relation to a contract or other instrument involving financial services, means a provision of the contract or other instrument –

    - (a) under which, on the happening of an event –
      - (i) a debt or other liability falls due earlier than it otherwise would, or
      - (ii) a debt or other liability is terminated and replaced by another debt or liability, or
    - (b) which confers on a party a right which, if exercised, will result in –
      - (i) a debt or other liability falling due earlier than it otherwise would, or
      - (ii) a debt or other liability being terminated and replaced by another debt or liability;

“contract or other instrument involving financial services” has the same meaning as it has for the purposes of Article 13D (see Schedule ZA2);

“monitor’s remuneration or expenses” has the meaning given by Article 13D;

“moratorium debt” has the meaning given by Article 13HD;

“pre-moratorium debt” has the meaning given by Article 13HD;  
“redundancy payment” has the meaning given by Article 13D;  
“wages or salary” has the meaning given by Article 13D.”

- 18 (1) Article 149 (preferential debts: general provision) is amended as follows.
- (2) In paragraph (1), at the end insert “after the payment of –
- (a) any liabilities to which Article 148A applies, and
- (b) expenses of the winding up.”
- (3) In paragraph (1A), omit “after the expenses of the winding up”.
- 19 (1) Article 197 (supplies of water, electricity, etc) is amended as follows.
- (2) In paragraph (1) –
- (a) omit sub-paragraph (ba) (including the “or” at the end);
- (b) in the words after sub-paragraph (e), omit “the nominee,”.
- (3) In paragraph (4), omit sub-paragraph (ba).
- 20 In Article 208ZA (remote attendance at meetings), as inserted by section 1(1) of the Insolvency (Amendment) Act (Northern Ireland) 2016, in paragraph (9), before sub-paragraph (a) insert –
- “(za) the monitor in relation to a moratorium under Part 1A;”.
- 21 In Article 208ZB (use of websites), as inserted by section 1(1) of the Insolvency (Amendment) Act (Northern Ireland) 2016, in paragraph (2), before sub-paragraph (a) insert –
- “(za) the monitor in relation to a moratorium under Part 1A;”.
- 22 In Article 347 (“the relevant date” in relation to preferential debts), omit paragraph (2A).
- 23 (1) Article 362 (monetary limits) is amended as follows.
- (2) In paragraph (1), before sub-paragraph (a) insert –
- “(za) increase or reduce any of the money sums for the time being specified in the following provisions of Part 1A –
- Article 13DG(1) (maximum amount of credit which company may obtain without disclosing moratorium);
- Article 13DJ(2) (maximum amount for certain payments without obtaining monitor consent etc);
- Article 13G(2) (minimum value of company property concealed or fraudulently removed, affecting criminal liability of company’s officer); or”.
- (3) Omit paragraph (1)(c) (money sums: company moratorium) and the “or” before it.
- 24 In Article 373 (offences: disapplication of section 20(2) of the 1954 Act), in paragraph (4), after “Articles” insert “13DA(5), 13DG(3), 13DH(4), 13DI(1), 13DJ(5), 13DK(6), 13DL(2), 13DM(9), 13DN(4),”.
- 25 In Article 383(a), for “Parts 2 to 7” substitute “Parts 1A to 7”.
- 26 Omit Schedule A1 (moratorium where directors propose voluntary arrangement).



- 27 (1) Schedule B1 (administration) is amended as follows.
- (2) Omit paragraph 25.
- (3) Before paragraph 66 (but after the italic heading “Distribution”) insert –
- “65A(1) This paragraph applies where a company enters administration before the end of the period of 12 weeks beginning with the day after the end of any moratorium under Part 1A.
- (2) The administrator must make a distribution to the creditors of the company in respect of –
- (a) moratorium debts (within the meaning given by Article 148A), and
- (b) priority pre-moratorium debts (within the meaning given by Article 148A).
- (3) A sum payable under sub-paragraph (2) is to be paid in priority to –
- (a) any security to which paragraph 71 applies;
- (b) any sums payable under paragraph 100.
- (4) The administrator must realise any property necessary to comply with sub-paragraph (2).
- (5) The rules may make provision as to the order in which the moratorium and priority pre-moratorium debts rank among themselves for the purposes of this paragraph in a case where the assets of the company are insufficient to meet them in full.”
- (4) In paragraph 66, for sub-paragraph (1) substitute –
- “(1) If the assets of a company are sufficient to meet any debts or other liabilities payable under paragraph 65A in full, the administrator of the company may make a distribution to any other creditor of the company.”
- (5) In paragraph 67, for “The administrator of a company” substitute “If the debts or other liabilities payable under paragraph 65A have been met, the administrator of a company”.
- 28 (1) Schedule 5 (provision capable of inclusion in company insolvency rules) is amended as follows.
- (2) In paragraph 8, after “is,” insert “the monitor in relation to a moratorium under Part 1A or”.
- 29 (1) Schedule 7 (punishment of offences under the Order) is amended as follows.
- (2) Omit the entries relating to Schedule A1.
- (3) At the appropriate place insert –

“13BE(4)	Directors failing to notify monitor of beginning of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13BE(5)	Monitor failing to notify creditors etc of beginning of moratorium.	Summary.	Level 3 on the standard scale.
13CH(6)	Directors failing to notify monitor of change in end of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13CH(7)	Monitor failing to notify creditors etc of change in end of moratorium.	Summary.	Level 3 on the standard scale.
13DA(5)	Company or officer failing to state in correspondence etc that moratorium in force.	Summary.	Level 3 on the standard scale.
13DF(4)	Directors failing to notify monitor of insolvency proceedings etc.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13DG(3)(a)	Company obtaining credit without disclosing existence of moratorium.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
13DG(3)(b)	Obtaining credit for company without disclosing existence of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.

13DH(4)(a)	Company granting security without monitor's consent.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
13DH(4)(b)	Authorising or permitting company to do so.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13DI(1)(a)	Company entering into market contract, etc.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
13DI(1)(b)	Authorising or permitting company to do so.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13DJ(5)(a)	Company making unauthorised payments.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
13DJ(5)(b)	Authorising or permitting company to do so.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13DK(6)(a)	Company making unauthorised disposal of property.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
13DK(6)(b)	Authorising or permitting such a disposal.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.

13DL(2)(a)	Unauthorised disposal of hire-purchase property.	1. On indictment. 2. Summary.	A fine.  The statutory maximum.
13DL(2)(b)	Authorising or permitting such a disposal.	1. On indictment. 2. Summary.	2 years or a fine or both.  6 months or the statutory maximum or both.
13DM(8)	Directors failing to send to registrar copy of court order permitting disposal of charged property.	Summary.	Level 3 on the standard scale.
13DM(9)(a)	Company failing to comply with requirements relating to disposal of charged property.	1. On indictment. 2. Summary.	A fine.  The statutory maximum.
13DM(9)(b)	Authorising or permitting such a failure.	1. On indictment. 2. Summary.	2 years or a fine or both.  6 months or the statutory maximum or both.
13DN(4)(a)	Company failing to comply with requirements relating to disposal of hire-purchase property.	1. On indictment. 2. Summary.	A fine.  The statutory maximum.
13DN(4)(b)	Authorising or permitting such a failure.	1. On indictment. 2. Summary.	2 years or a fine or both.  6 months or the statutory maximum or both.

13DN(6)	Directors failing to send to registrar copy of court order permitting disposal of hire-purchase property.	Summary.	Level 3 on the standard scale.
13EE(9)	Monitor failing to notify creditors etc of change in monitor.	Summary.	Level 3 on the standard scale.
13G(1)	Fraud or privity to fraud during or in anticipation of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13G(4)	Knowingly taking in pawn or pledge, or otherwise receiving, company property.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13GA(1)	False representation or fraud for purpose of obtaining or extending moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13H(5)	Directors failing to notify regulator of qualifying decision procedure in relation to regulated company	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.”

*Building Societies Act 1986*

- 30 In Schedule 15A to the Building Societies Act 1986 (application of other companies insolvency legislation to building societies), in paragraph 1(2)(b), omit “(except Article 14A)”.

*Limited Liability Partnerships Act 2000*

- 31 In section 14 of the Limited Liability Partnerships Act 2000 (regulations to make provision about insolvency and winding up), in subsection (1)(b), for “Parts 2” substitute “Parts 1A”.

*The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001*

- 32 In Schedule 2 to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188) (disclosure of confidential information), at the end of the table (after the entry inserted by Schedule 3) insert –

“The monitor in relation to a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989	The monitor’s functions in relation to the moratorium”.
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*The Insolvency Practitioners Regulations (Northern Ireland) 2006*

- 33 In regulation 2 of the Insolvency Practitioners Regulations (Northern Ireland) 2006 (S.R. (N.I.) 2006/33) (interpretation: general), in paragraph (2), before sub-paragraph (a) insert –
- “(za) where the insolvency practitioner acts as the monitor in relation to a moratorium under Part 1A of the Order, whichever is the earlier of the date on which –
- (i) the moratorium comes to an end, or
  - (ii) the insolvency practitioner otherwise ceases to act as the monitor in relation to the moratorium;”.

*Insolvency (Northern Ireland) Order 2002 (S.I. 2002/3152 (N.I. 6))*

- 34 (1) The Insolvency (Northern Ireland) Order 2002 is amended as follows.
- (2) In Schedule 1, omit –
- (a) paragraphs 2 to 5, 7 and 8;
  - (b) paragraph 9(2)(a) and (c) and (3)(a);
  - (c) paragraphs 10 to 12.

*Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10))*

- 35 The Insolvency (Northern Ireland) Order 2005 is amended as follows.
- 36 (1) Article 10 is amended as follows.
- (2) At the end of the heading insert “etc”.
- (3) In paragraph (2) –
- (a) after “by order provide for” insert “–
    - (i) Part 1A of the 1989 Order (moratorium), or”;
  - (b) the words “a company arrangement or administration provision” become sub-paragraph (ii) of that paragraph.
- 37 Omit Article 11.
- 38 In Schedule 2, omit paragraph 45.

*Insolvency (Amendment) Act (Northern Ireland) 2016*

- 39 In Schedule 3 to the Insolvency (Amendment) Act (Northern Ireland) 2016 omit paragraph 17.

SCHEDULE 8

Section 6

MORATORIUMS IN NORTHERN IRELAND: TEMPORARY PROVISION

PART 1

“RELEVANT PERIOD” AND POWERS TO TURN OFF TEMPORARY PROVISION

*“Relevant period”*

- 1 In this Schedule “relevant period” means the period which—  
(a) begins with the day on which this Schedule comes into force, and  
(b) ends with 30 September 2020.

*Power to turn off particular provisions of Part 2 of this Schedule early*

- 2 (1) The Department for the Economy in Northern Ireland may by regulations provide for any provision made by Part 2 of this Schedule to cease to have effect before the end of the relevant period.  
(2) The regulations may include transitional provision or savings.  
(3) The power of the Department to make regulations under this paragraph is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)) (and not by statutory instrument).  
(4) Regulations made under this paragraph are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.

*Power to turn off provisions of Part 3 of this Schedule early etc*

- 3 Rules under Article 359 of the Insolvency (Northern Ireland) Order 1989 may provide for any provision made by paragraphs 13 to 54 to cease to have effect before the end of the relevant period.  
4 Rules under Article 359 of the Insolvency (Northern Ireland) Order 1989 may make transitional provision or savings in connection with any provision made by paragraphs 13 to 54 ceasing to have effect (whether by virtue of paragraph 3 or 12).

PART 2

MODIFICATIONS TO PRIMARY LEGISLATION

*“Eligible” company: additional exclusion*

- 5 During the relevant period, a company is not eligible for the purposes of Article 13B, 13BA or 13BB of the Insolvency (Northern Ireland) Order 1989 if the company –
- (a) has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on a regulated activity within the meaning of that Act, and
  - (b) is not subject to a requirement imposed under that Act to refrain from holding money for clients.

*Relaxation of conditions for obtaining moratorium etc*

- 6 (1) For the purposes of obtaining a moratorium under Article 13B of the Insolvency (Northern Ireland) Order 1989 during the relevant period –
- (a) Article 13B of that Order has effect as if paragraph (1)(a) were omitted;
  - (b) Article 13BC(1)(e) of that Order has effect as if at the end there were inserted “or would do so if it were not for any worsening of the financial position of the company for reasons relating to coronavirus”;
  - (c) Schedule ZA1 to that Order has effect as if paragraph 2(1)(b) and (2)(b) were omitted.
- (2) During the relevant period, only an overseas company may obtain a moratorium under Article 13BA of the Insolvency (Northern Ireland) Order 1989.
- 7 In relation to an application for a moratorium made under Article 13BA or 13BB of the Insolvency (Northern Ireland) Order 1989 during the relevant period –
- (a) Article 13BC(1)(e) of that Order has effect as if at the end there were inserted “or would do so if it were not for any worsening of the financial position of the company for reasons relating to coronavirus”;
  - (b) Schedule ZA1 to that Order has effect as if paragraph 2(1)(b) and (2)(b) were omitted.

*Relaxation of conditions for extending moratorium obtained during relevant period*

- 8 (1) This paragraph applies in relation to a moratorium that comes into force during the relevant period.
- (2) For the purposes of extending the moratorium under Article 13CA or 13CB of the Insolvency (Northern Ireland) Order 1989, paragraph (1)(d) of that Article has effect as if at the end there were inserted “or would do so if it were not for any worsening of the financial position of the company for reasons relating to coronavirus”.
- (3) In relation to an application under Article 13CD of the Insolvency (Northern Ireland) Order 1989 that the moratorium be extended, paragraph (2)(d) of



that Article has effect as if at the end there were inserted “or would do so if it were not for any worsening of the financial position of the company for reasons relating to coronavirus”.

*Monitoring of moratorium obtained during relevant period*

- 9 In relation to a moratorium that comes into force during the relevant period, Article 13EA(1) of the Insolvency (Northern Ireland) Order 1989 has effect as if for the words from “it remains likely” to the end there were substituted “–
- (a) it is likely that the moratorium will result in the rescue of the company as a going concern, or
  - (b) that, if one were to disregard any worsening of the financial position of the company for reasons relating to coronavirus, it is likely that the moratorium would result in the rescue of the company as a going concern.”

*Termination of moratorium obtained during relevant period*

- 10 In relation to a moratorium that comes into force during the relevant period, Article 13ED(1) of the Insolvency (Northern Ireland) Order 1989 has effect as if for sub-paragraph (a) there were substituted –
- “(a) the monitor thinks –
    - (i) that the moratorium is not likely to result in the rescue of the company as a going concern, and
    - (ii) that, even if one were to disregard any worsening of the financial position of the company for reasons relating to coronavirus, the moratorium would not be likely to result in the rescue of the company as a going concern.”

*“Coronavirus”*

- 11 In the modifications made by this Part of this Schedule “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

PART 3

TEMPORARY RULES

*Introductory*

- 12 Paragraphs 13 to 54 cease to have effect at the end of the relevant period, subject to paragraph 3.

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

- 13 A notice or statement under Article 13BC(1), 13BE(2), 13CA(1), 13CB(1) or 13CD(2) of the Insolvency (Northern Ireland) Order 1989 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 company to which it relates.

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

- 14 (1) A notice or statement under Article 13BC(1), 13CA(1), 13CB(1) or 13CD(2) of the Insolvency (Northern Ireland) Order 1989 must be authenticated by or on behalf of the person giving the notice or making the statement (see paragraph 49).
- (2) A notice under Article 13BE(2)(a) of the Insolvency (Northern Ireland) Order 1989 must be authenticated by the monitor (see paragraph 49).

*Notice that directors wish to obtain a moratorium*

- 15 A notice under Article 13BC(1)(a) of the Insolvency (Northern Ireland) Order 1989 must state the company's address for service.

*Proposed monitor's statement and consent to act*

- 16 (1) A statement under Article 13BC(1)(b) of the Insolvency (Northern Ireland) Order 1989 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 company,
  - (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 company, and
  - (d) a statement that the proposed monitor consents to act as monitor in relation to the company.
- (2) In this paragraph "IP number" means the identifying number or reference issued to the insolvency practitioner by a professional body recognised under Article 350 of the Insolvency (Northern Ireland) Order 1989.

*Timing of statements for obtaining moratorium*

- 17 Each statement under Article 13BC(1)(b) to (e) of the Insolvency (Northern Ireland) Order 1989 must be made within the period of 5 days ending with the day on which the documents under Article 13BC(1)(a) to (e) are filed with the High Court (or, if the documents are filed on different days, the last of those days).

*Notice by monitor where moratorium comes into force*

- 18 A notice under Article 13BE(2) of the Insolvency (Northern Ireland) Order 1989 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 directors wish to extend a moratorium*

- 19 A notice under Article 13CA(1)(a) or 13CB(1)(a) of the Insolvency (Northern Ireland) Order 1989 must state the company's address for service.

*Extension under Article 13CA or 13CB of the Insolvency (Northern Ireland) Order 1989:  
notices and statements*

- 20 A statement by the monitor under Article 13CA(1)(d) or 13CB(1)(d) of the Insolvency (Northern Ireland) Order 1989 must contain contact details of the monitor.

*Timing of statements for extension under Article 13CA or 13CB*

- 21 Each statement under Article 13CA(1)(b) to (d) or 13CB(1)(b) to (e) of the Insolvency (Northern Ireland) Order 1989 must be made within the period of 3 days ending with the day on which the documents under Article 13CA(1)(a) to (d) or 13CB(1)(a) to (e) are filed with the High Court (or, if the documents are filed on different days, the last of those days).

*Obtaining creditor consent at meeting*

- 22 If a meeting under Article 13CC(2) of the Insolvency (Northern Ireland) Order 1989 is held during the relevant period (within the meaning given by paragraph 1), paragraph 3 of Schedule 14 applies to the meeting as if it were a meeting within sub-paragraph (2) of that paragraph (even if the meeting is not held within the relevant period within the meaning of that Schedule).
- 23 (1) In their application for the purposes of a decision by pre-moratorium creditors to consent to a revised end date for a moratorium under Article 13CC of the Insolvency (Northern Ireland) Order 1989, the Insolvency Rules have effect with the following modifications.
- (2) References to creditors are to be read as references to the pre-moratorium creditors.
- (3) The following rules have effect with the further modifications set out in paragraphs 24 to 30—
- (a) Rule 4.061;
  - (b) Rule 4.062;
  - (c) Rule 4.065;
  - (d) Rule 4.068;
  - (e) Rule 4.070;
  - (f) Rule 4.073;
  - (g) Rule 4.077.
- 24 Rule 4.061 has effect as if for paragraphs (1) to (6) there were substituted—
- “(1) For the purposes of Rules 4.061 to 4.077 the directors summoning a meeting of pre-moratorium creditors under Article 13CC of the Order are referred to (collectively) as “the convener”.
  - (2) When a venue for such a meeting has been fixed, notice of it must be given by the convener to every pre-moratorium creditor who is known to the convener.
  - (3) Notice of the meeting must be given at least 5 days before the date fixed for it, and must specify the purpose of the meeting.
  - (4) The notice shall state that proofs and (if applicable) proxies shall be lodged at a specified place not later than 12.00 hours on the business

- day before the date fixed for the meeting in order for pre-moratorium creditors to be entitled to vote at the meeting.”
- 25 Rule 4.062 has effect as if for paragraphs (2) to (5) there were substituted –
- “(2) The convener must nominate a person to act as chairman.”
- 26 Rule 4.065 has effect as if, in paragraph (2), for “21 days” there were substituted “5 days”.
- 27 Rule 4.068 has effect as if for it there were substituted –
- “4.068. The expenses of summoning and holding a meeting of pre-moratorium creditors at the instance of the directors of the company are to be paid by the company.”
- 28 Rule 4.070 has effect as if for it (and its heading) there were substituted –
- “Requisite majorities*
- 4.070. (1) A decision to consent to a revised end date for a moratorium under Article 13CC of the Order 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.
- (2) But a decision to consent to a revised end date for a moratorium under Article 13CC of the Order 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.
- (3) For the purposes of paragraph (2) –
- (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.”
- 29 Rule 4.073 has effect as if –
- (a) after paragraph (3) there were inserted –
- “(3A) Votes are calculated according to the amount of each pre-moratorium creditor’s claim at the date of the meeting.”;
- (b) for paragraph (4) there were substituted –
- “(4) A debt of an unliquidated or unascertained amount is to be valued at £1 for the purposes of voting unless the convener or the chairman decides to put a higher value on it.”;

- (c) for paragraph (5) there were substituted –
  - “(5) If a debt is partly or wholly secured the value of the debt for voting purposes is its full value without deduction of the value of the security.”;
- (d) for paragraph (6) there were substituted –
  - “(6) 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 company at the date of the meeting.
  - (6A) In calculating the amount of any debt for the purpose of paragraph (6), 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 company coming into force.”

- 30 Rule 4.077 has effect as if –
- (a) in paragraph (1) for “liquidation” there were substituted “moratorium”;
  - (b) paragraph (4) were omitted.

*Content of application to the High Court for extension of moratorium*

- 31 (1) An application by the directors of a company for the extension of a moratorium under Article 13CD of the Insolvency (Northern Ireland) Order 1989 must state –
- (a) that it is made under that Article,
  - (b) the length of the extension sought,
  - (c) identification details for the company to which the application relates, and
  - (d) the company’s address for service.
- (2) The application must be authenticated by or on behalf of the directors (see paragraph 49).

*Timing of statements accompanying application to High Court for extension of moratorium*

- 32 A statement under Article 13CD(2) must be made within the period of 3 days ending with the day on which the application under that Article is made.

*Notices about change in end of moratorium*

- 33 (1) A notice under Article 13CH(1) of the Insolvency (Northern Ireland) Order 1989 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 company to which it relates, and
  - (b) the provision by virtue of which the moratorium was extended or came to an end.
- 34 (1) A notice under Article 13CH(2) or (3) of the Insolvency (Northern Ireland) Order 1989 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 company to which it relates.
- (3) A notice under Article 13CH(2) or (3) of the Insolvency (Northern Ireland) Order 1989 that is given to the registrar must be authenticated by or on behalf of the monitor (see paragraph 49).
- 35 Where a moratorium comes to an end under Article 13CG of the Insolvency (Northern Ireland) Order 1989 because the company has entered into a relevant insolvency procedure within the meaning of that Article, the notices under Article 13CH(1) and (2) must state –
- (a) the date on which the company 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.
- 36 (1) A notice under Article 13CH(4) of the Insolvency (Northern Ireland) Order 1989 must be given within the period of 3 business days beginning with the day on which the notice under Article 13ED(1) of that Order is filed with the High Court.
- (2) The notice under Article 13CH(4) of that Order must be accompanied by the notice that the monitor has filed with the High Court under Article 13ED(1) of that Order.

*Notification by directors of insolvency proceedings etc*

- 37 (1) A notice under Article 13DF(1) of the Insolvency (Northern Ireland) Order 1989 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 Article 13DF(2) of the Insolvency (Northern Ireland) Order 1989 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*

- 38 (1) A notice under Article 13ED(1) of the Insolvency (Northern Ireland) Order 1989 must be filed with the High Court as soon as practicable after the duty in that paragraph 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 company 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, and

- (h) the date on which the monitor concluded that those grounds were made out.
- (3) The notice must be authenticated by or on behalf of the monitor (see paragraph 49).

*Termination of moratorium under Article 13ED(1)(d) of the Insolvency (Northern Ireland) Order 1989*

- 39 For the purposes of deciding whether to bring a moratorium to an end under Article 13ED(1)(d) of the Insolvency (Northern Ireland) Order 1989 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*

- 40 (1) A statement under Article 13EE(4) of the Insolvency (Northern Ireland) Order 1989 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 company,
  - (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 company, and
  - (d) a statement that the proposed monitor consents to act as monitor in relation to the company.
- (2) The statement must be made within the period of 5 days ending with the day on which it is filed with the High Court.
- (3) In this paragraph “IP number” means the identifying number or reference issued to the insolvency practitioner by a professional body recognised under Article 350 of the Insolvency (Northern Ireland) Order 1989.

*Replacement of monitor or additional monitor: notification*

- 41 (1) A notice under Article 13EE(8) of the Insolvency (Northern Ireland) Order 1989 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 company 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 (see paragraph 49).

*Challenge to monitor’s remuneration*

- 42 (1) An administrator or liquidator of a company may apply to the High Court on the ground that remuneration charged by the monitor in relation to a prior moratorium for the company under Part 1A of the Insolvency (Northern Ireland) Order 1989 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 directors’ actions: meeting*

- 43 Where the High Court makes an order by virtue of Article 13FB(4)(c) of the Insolvency (Northern Ireland) Order 1989 requiring the summoning of a meeting of a company’s creditors, the following provisions of the Insolvency Rules apply for the purposes of that meeting to the extent set out in the Court’s order and subject to any modifications set out in the Court’s order –
- (a) Rules 4.061 to 4.077 (meetings);
  - (b) Part 8 (proxies);
  - (c) Rule 12.05 (quorum).

*Priority of moratorium debts etc in subsequent winding up*

- 44 (1) Where Article 148A of the Insolvency (Northern Ireland) Order 1989 applies, the moratorium debts and pre-moratorium debts mentioned in paragraph (2)(b) of that Article 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 Article 197B(3) or (4) of that Order, 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 Article 13D of the Insolvency (Northern Ireland) Order 1989.

*Priority of moratorium debts etc in subsequent administration*

- 45 (1) Where paragraph 65A(1) of Schedule B1 to the Insolvency (Northern Ireland) Order 1989 applies, the moratorium debts and pre-moratorium debts mentioned in paragraph 65A(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 Article 197B(3) or (4) of that Order, 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 Article 13D of the Insolvency (Northern Ireland) Order 1989.

*Prescribed format of documents*

- 46 (1) Rule 12.04 of the Insolvency Rules applies to applications and statements referred to in Part 1A of the Insolvency (Northern Ireland) Order 1989 as it applies to notices under that Order.
- (2) The requirement in Rule 12.04 that a notice, application or statement required or authorised by or under the Order or the Insolvency Rules must be in writing is satisfied if the notice, application or statement is in electronic form.
- (3) But sub-paragraph (2) does not apply in relation to the filing of a notice, application or statement with the High Court.
- (4) A document in electronic form must be capable of being –
- (a) read by the recipient in electronic form, and
  - (b) reproduced by the recipient in hard-copy form.
- 47 (1) This paragraph applies where a provision of this Part of this Schedule sets out requirements as to the contents of a document.
- (2) Any title required by the provision must appear at the beginning of the document.
- (3) Any other contents required by the provision (or provisions where more than one applies to a particular document) must be provided in the order listed in the provision (or provisions) or in another order which the maker of the document considers would be convenient for the intended recipient.
- 48 Where a provision of this Part of this Schedule sets out the required contents of a document, the document may depart from the required contents if –
- (a) the circumstances require such a departure (including where the requirement is not applicable in the particular case), or
  - (b) the departure (whether or not intentional) is immaterial.

*Authentication of applications, notices and statements*

- 49 (1) This paragraph sets out how an application, notice or statement is to be authenticated for the purposes of this Part of this Schedule.
- (2) An application, notice or statement in electronic form is authenticated –
- (a) if the identity of the sender is confirmed in a manner specified by the recipient, or
  - (b) where the recipient has not so specified, if the communication contains or is accompanied by a statement of the identity of the sender and the recipient has no reason to doubt the truth of that statement.

- (3) An application, notice or statement in hard-copy form is authenticated if it is signed.
- (4) If an application, notice or statement is authenticated by the signature of an individual on behalf of—
  - (a) a body of persons, the document must also state the position of that individual in relation to the body;
  - (b) a body corporate of which the individual is the sole member, the document must also state that fact.

*Modifications to the Insolvency Rules*

- 50 (1) For the purposes of proceedings under Part 1A of the Insolvency (Northern Ireland) Order 1989 and proceedings under this Part of this Schedule the Insolvency Rules have effect with—
  - (a) the modifications set out in sub-paragraphs (3) to (13), and
  - (b) any other necessary modifications.
- (2) Sub-paragraph (1)(b) is subject to—
  - (a) paragraphs 23 to 30 and 46 of this Schedule;
  - (b) any modifications set out in an order under paragraph 43 of this Schedule.
- (3) Rule 0.2 has effect as if, in the definition of “insolvency proceedings”, after “the Order” there were inserted “, Part 3 of Schedule 8 to the Corporate Insolvency and Governance Act 2020”.
- (4) Rule 7.01 has effect as if for “Parts II to VII of the Order” there were substituted “Part 1A of the Order or Part 3 of Schedule 8 to the Corporate Insolvency and Governance Act 2020”.
- (5) Rule 7.07(1)(a) has effect as if after “the Order” there were inserted “or Part 3 of Schedule 8 to the Corporate Insolvency and Governance Act 2020”.
- (6) Rule 7.08 has effect in relation to a regulated company (within the meaning of Article 13H of the Insolvency (Northern Ireland) Order 1989) as if it also required the application to be served on the appropriate regulator (within the meaning of that Article).
- (7) Rule 7.12(1)(b) has effect as if after sub-paragraph (v) there were inserted—  
 “(vi) a monitor in relation to a moratorium.”
- (8) Rule 7.13B has effect as if—
  - (a) the references to an office-holder included a monitor in relation to a moratorium, and
  - (b) after paragraph (2)(d) there were inserted “, or  
 (e) monitor in relation to a moratorium.”
- (9) Rule 7.13C has effect as if after each of paragraph (2)(f) and (3)(f) there were inserted “; and  
 (g) Article 13EE (replacement of monitor or appointment of additional monitor).”
- (10) Rule 7.36(2) has effect as if it required the applicant to serve a sealed copy of the application on the monitor and the company to which the moratorium relates.

- (11) Omit Rules 7.07A and 7.08A.
- (12) Rule 7.27 has effect as if paragraph (2)(a) included a reference to proceedings under Part 1A of the Insolvency (Northern Ireland) Order 1989 or this Part of this Schedule.
- (13) After Rule 12.23 insert –

*“Court orders*

12.24. Notwithstanding any requirement in these Rules as to the contents of a court order the court may make such other order or in such form as the court thinks fit.”

*Identification details for a company*

- 51 (1) Where a provision of this Part of this Schedule requires a document to contain identification details for a company that is registered under the Companies Act 2006 in Northern Ireland, the following information must be given –
  - (a) the company’s registered name;
  - (b) its registered number.
- (2) Where a provision of this Part of this Schedule requires a document to contain identification details for a company that has registered particulars under section 1046(1) of the Companies Act 2006 (registered overseas companies), the following information must be given –
  - (a) the name registered by the company under section 1047 of that Act,
  - (b) the number under which it is registered, and
  - (c) the country or territory in which it is incorporated.
- (3) Where a provision of this Part of this Schedule requires a document to contain identification details for an unregistered company that does not come within sub-paragraph (2) the following information must be given –
  - (a) the company’s name, and
  - (b) the postal address of any principal place of business.

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

- 52 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.

*“The Insolvency Rules”*

- 53 In this Part of this Schedule “the Insolvency Rules” means the Insolvency Rules (Northern Ireland) 1991 (S.R. (N.I.) 1991/364).

*Interpretation: general*

- 54 Expressions used in this Part of this Schedule are to be construed as if this Part of this Schedule were contained in Part 1A of the Insolvency (Northern Ireland) Order 1989.

PART 4

ENTITIES OTHER THAN COMPANIES

- 55 Regulations under section 14(1) of the Limited Liability Partnership Act 2000 may make provision applying or incorporating provision made by or under this Schedule, with such modifications as appear appropriate, in relation to a limited liability partnership registered in Northern Ireland.
- 56 An order under Article 10(2) of the Insolvency (Northern Ireland) Order 2005 may provide for provision made by or under this Schedule to apply (with or without modification) in relation to –
- (a) a registered society within the meaning of the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969, or
  - (b) a credit union within the meaning of the Credit Unions (Northern Ireland) Order 1985.

SCHEDULE 9

Section 7

ARRANGEMENTS AND RECONSTRUCTIONS FOR COMPANIES IN FINANCIAL DIFFICULTY

PART 1

MAIN PROVISIONS

- 1 In the Companies Act 2006, after Part 26 insert –

**“PART 26A**

ARRANGEMENTS AND RECONSTRUCTIONS: COMPANIES IN FINANCIAL  
DIFFICULTY

*Application of this Part*

**901A Application of this Part**

- (1) The provisions of this Part apply where conditions A and B are met in relation to a company.
- (2) Condition A is that the company has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern.
- (3) Condition B is that –
  - (a) a compromise or arrangement is proposed between the company and –
    - (i) its creditors, or any class of them, or

- (ii) its members, or any class of them, and
  - (b) the purpose of the compromise or arrangement is to eliminate, reduce or prevent, or mitigate the effect of, any of the financial difficulties mentioned in subsection (2).
- (4) In this Part –
  - “arrangement” includes a reorganisation of the company’s share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods;
  - “company” –
    - (a) in section 901J (powers of court to facilitate reconstruction or amalgamation) means a company within the meaning of this Act, and
    - (b) elsewhere in this Part means any company liable to be wound up under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (5) The provisions of this Part have effect subject to Part 27 (mergers and divisions of public companies) where that Part applies (see sections 902 and 903).

#### **901B Power to exclude companies providing financial services, etc**

- (1) The Secretary of State may by regulations provide that this Part does not apply –
  - (a) where the company in respect of which a compromise or arrangement is proposed is an authorised person, or an authorised person of a specified description;
  - (b) where –
    - (i) a compromise or arrangement is proposed between a company, or a company of a specified description, and any creditors of the company, and
    - (ii) those creditors consist of or include creditors of a specified description.
- (2) In this section –
  - “authorised person” has the same meaning as in the Financial Services and Markets Act 2000 (see section 31 of that Act);
  - “specified” means specified in the regulations.
- (3) Regulations under this section are subject to affirmative resolution procedure.

#### *Meeting of creditors or members*

#### **901C Court order for holding of meeting**

- (1) The court may, on an application under this subsection, order a meeting of the creditors or class of creditors, or of the members of the company or class of members (as the case may be), to be summoned in such manner as the court directs.
- (2) An application under subsection (1) may be made by –
  - (a) the company,

- (b) any creditor or member of the company,
  - (c) if the company is being wound up, the liquidator, or
  - (d) if the company is in administration, the administrator.
- (3) Every creditor or member of the company whose rights are affected by the compromise or arrangement must be permitted to participate in a meeting ordered to be summoned under subsection (1).
- (4) But subsection (3) does not apply in relation to a class of creditors or members of the company if, on an application under this subsection, the court is satisfied that none of the members of that class has a genuine economic interest in the company.
- (5) An application under subsection (4) is to be made by the person who made the application under subsection (1) in respect of the compromise or arrangement.
- (6) Section 323 (representation of corporations at meetings) applies to a meeting of creditors under this section as to a meeting of the company (references to a member of the company being read as references to a creditor).
- (7) This section is subject to section 901H (moratorium debts, etc).

#### **901D Statement to be circulated or made available**

- (1) Where a meeting is summoned under section 901C –
- (a) every notice summoning the meeting that is sent to a creditor or member must be accompanied by a statement complying with this section, and
  - (b) every notice summoning the meeting that is given by advertisement must either –
    - (i) include such a statement, or
    - (ii) state where and how creditors or members entitled to attend the meeting may obtain copies of such a statement.
- (2) The statement must –
- (a) explain the effect of the compromise or arrangement, and
  - (b) in particular, state –
    - (i) any material interests of the directors of the company (whether as directors or as members or as creditors of the company or otherwise), and
    - (ii) the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.
- (3) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement must give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.
- (4) Where a notice given by advertisement states that copies of an explanatory statement can be obtained by creditors or members entitled to attend the meeting, every such creditor or member is entitled, on making application in the manner indicated by the

notice, to be provided by the company with a copy of the statement free of charge.

- (5) If a company makes default in complying with any requirement of this section, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.This is subject to subsection (7).
- (6) For this purpose the following are treated as officers of the company –
  - (a) a liquidator or administrator of the company, and
  - (b) a trustee of a deed for securing the issue of debentures of the company.
- (7) A person is not guilty of an offence under this section if the person shows that the default was due to the refusal of a director or trustee for debenture holders to supply the necessary particulars of the director's or (as the case may be) the trustee's interests.
- (8) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction in England and Wales, to a fine;
  - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

#### **901E Duty of directors and trustees to provide information**

- (1) It is the duty of –
  - (a) any director of the company, and
  - (b) any trustee for its debenture holders,to give notice to the company of such matters relating to that director or trustee as may be necessary for the purposes of section 901D (explanatory statement to be circulated or made available).
- (2) Any person who makes default in complying with this section commits an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### *Court sanction for compromise or arrangement*

#### **901F Court sanction for compromise or arrangement**

- (1) If a number representing 75% in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting summoned under section 901C, agree a compromise or arrangement, the court may, on an application under this section, sanction the compromise or arrangement.
- (2) Subsection (1) is subject to –
  - (a) section 901G (sanction for compromise or arrangement where one or more classes dissent), and
  - (b) section 901H (moratorium debts, etc).

- (3) An application under this section may be made by –
  - (a) the company,
  - (b) any creditor or member of the company,
  - (c) if the company is being wound up, the liquidator, or
  - (d) if the company is in administration, the administrator.
- (4) Where the court makes an order under this section in relation to a company that is in administration or is being wound up, the court may by the order –
  - (a) provide for the appointment of the administrator or liquidator to cease to have effect;
  - (b) stay or sist all proceedings in the administration or the winding up;
  - (c) impose any requirements with respect to the conduct of the administration or the winding up which the court thinks appropriate for facilitating the compromise or arrangement.
- (5) A compromise or arrangement sanctioned by the court is binding –
  - (a) on all creditors or the class of creditors or on the members or class of members (as the case may be), and
  - (b) on the company or, in the case of a company in the course of being wound up, the liquidator and contributories of the company.
- (6) The court’s order has no effect until a copy of it has been –
  - (a) in the case of an overseas company that is not required to register particulars under section 1046, published in the Gazette, or
  - (b) in any other case, delivered to the registrar.

**901G Sanction for compromise or arrangement where one or more classes dissent**

- (1) This section applies if the compromise or arrangement is not agreed by a number representing at least 75% in value of a class of creditors or (as the case may be) of members of the company (“the dissenting class”), present and voting either in person or by proxy at the meeting summoned under section 901C.
- (2) If conditions A and B are met, the fact that the dissenting class has not agreed the compromise or arrangement does not prevent the court from sanctioning it under section 901F.
- (3) Condition A is that the court is satisfied that, if the compromise or arrangement were to be sanctioned under section 901F, none of the members of the dissenting class would be any worse off than they would be in the event of the relevant alternative (see subsection (4)).
- (4) For the purposes of this section “the relevant alternative” is whatever the court considers would be most likely to occur in relation to the company if the compromise or arrangement were not sanctioned under section 901F.
- (5) Condition B is that the compromise or arrangement has been agreed by a number representing 75% in value of a class of creditors or (as the case may be) of members, present and voting either in person or



by proxy at the meeting summoned under section 901C, who would receive a payment, or have a genuine economic interest in the company, in the event of the relevant alternative.

- (6) The Secretary of State may by regulations amend this section for the purpose of—
  - (a) adding to the conditions that must be met for the purposes of this section;
  - (b) removing or varying any of those conditions.
- (7) Regulations under subsection (6) are subject to affirmative resolution procedure.

#### *Special cases*

#### **901H Moratorium debts, etc**

- (1) This section applies where—
  - (a) an application under section 901C(1) in respect of a compromise or arrangement is made before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the company under Part A1 of the Insolvency Act 1986 or Part 1A of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), and
  - (b) the creditors with whom the compromise or arrangement is proposed include any relevant creditors (see subsection (2)).
- (2) In this section “relevant creditor” means—
  - (a) a creditor in respect of a moratorium debt, or
  - (b) a creditor in respect of a priority pre-moratorium debt.
- (3) The relevant creditors may not participate in the meeting summoned under section 901C.
- (4) For the purposes of section 901D (statement to be circulated or made available)—
  - (a) the requirement in section 901D(1)(a) is to be read as including a requirement to send each relevant creditor a statement complying with section 901D;
  - (b) any reference to creditors entitled to attend the meeting summoned under section 901C includes a reference to relevant creditors.
- (5) The court may not sanction the compromise or arrangement under section 901F if it includes provision in respect of any relevant creditor who has not agreed to it.
- (6) In this section—

“moratorium debt”—

  - (a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;
  - (b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order;

“priority pre-moratorium debt”—

- (a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;
- (b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order.

### **901I Pension schemes**

- (1) In a case where the company in respect of which a compromise or arrangement is proposed is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, any notice or other document required to be sent to a creditor of the company must also be sent to the Pensions Regulator.
- (2) In a case where the company in respect of which a compromise or arrangement is proposed is an employer in respect of an eligible scheme, any notice or other document required to be sent to a creditor of the company must also be sent to the Board of the Pension Protection Fund (“the Board”).
- (3) The Secretary of State may by regulations provide that, in a case where—
  - (a) the company in respect of which a compromise or arrangement is proposed is an employer in respect of an eligible scheme, and
  - (b) the trustees or managers of the scheme are a creditor of the company,the Board may exercise any rights, or any rights of a specified description, that are exercisable under this Part by the trustees or managers as a creditor of the company.
- (4) Regulations under this section may provide that the Board may exercise any such rights—
  - (a) to the exclusion of the trustees or managers of the scheme, or
  - (b) in addition to the exercise of those rights by the trustees or managers of the scheme.
- (5) Regulations under this section—
  - (a) may specify conditions that must be met before the Board may exercise any such rights;
  - (b) may provide for any such rights to be exercisable by the Board for a specified period;
  - (c) may make provision in connection with any such rights ceasing to be so exercisable at the end of such a period.
- (6) Regulations under this section are subject to affirmative resolution procedure (but see subsection (7)).
- (7) During the period of six months beginning with the day on which this section comes into force, regulations under this section are subject to approval after being made (and subsection (6) does not apply).
- (8) For the purposes of subsection (7), section 1291 has effect as if any reference in that section to a period of 28 days were to a period of 40 days.

(9) In this section –

“eligible scheme” means any pension scheme that is an eligible scheme for the purposes of section 126 of the Pensions Act 2004 or Article 110 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1));

“employer” –

(a) in subsection (1), means an employer within the meaning of section 318(1) of the Pensions Act 2004 or Article 2(2) of the Pensions (Northern Ireland) Order 2005;

(b) in subsections (2) and (3) –

(i) in the case of a pension scheme that is an eligible scheme for the purposes of section 126 of the Pensions Act 2004, has the same meaning as it has for the purposes of Part 2 of that Act (see section 318(1) and (4) of that Act);

(ii) in the case of a pension scheme that is an eligible scheme for the purposes of Article 110 of the Pensions (Northern Ireland) Order 2005, has the same meaning as it has for the purposes of Part 3 of that Order (see Article 2(2) and (5) of that Order);

“money purchase scheme” means a pension scheme that is a money purchase scheme for the purposes of the Pension Schemes Act 1993 (see section 181(1) of that Act) or the Pension Schemes (Northern Ireland) Act 1993 (see section 176(1) of that Act);

“occupational pension scheme” and “pension scheme” have the meaning given by section 1 of the Pension Schemes Act 1993;

“specified” means specified in regulations under this section.

#### *Reconstructions and amalgamations*

### **901J Powers of court to facilitate reconstruction or amalgamation**

(1) This section applies where application is made to the court under section 901F to sanction a compromise or arrangement and it is shown that –

(a) the compromise or arrangement is proposed in connection with a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies, and

(b) under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (a “transferor company”) is to be transferred to another company (“the transferee company”).

(2) The court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters –

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
  - (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
  - (d) the dissolution, without winding up, of any transferor company;
  - (e) the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement;
  - (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.
- (3) If an order under this section provides for the transfer of property or liabilities –
- (a) the property is by virtue of the order transferred to, and vests in, the transferee company, and
  - (b) the liabilities are, by virtue of the order, transferred to and become liabilities of that company.
- (4) The property (if the order so directs) vests freed from any charge that is by virtue of the compromise or arrangement to cease to have effect.
- (5) In this section –
- “property” includes property, rights and powers of every description; and
  - “liabilities” includes duties.
- (6) Every company in relation to which an order is made under this section must cause a copy of the order to be delivered to the registrar within seven days after its making.
- (7) If default is made in complying with subsection (6) an offence is committed by –
- (a) the company, and
  - (b) every officer of the company who is in default.
- (8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

*Obligations of company with respect to articles etc*

**901K Obligations of company with respect to articles etc**

- (1) This section applies –
- (a) to any order under section 901F (order sanctioning compromise or arrangement), and

- (b) to any order under section 901J (order facilitating reconstruction or amalgamation) that alters the company's constitution.
- (2) If—
- (a) the order amends—
    - (i) the company's articles, or
    - (ii) any resolution or agreement to which Chapter 3 of Part 3 applies (resolution or agreement affecting a company's constitution), and
  - (b) a copy of the order is required to be delivered to the registrar by the company under section 901F(6)(b) or section 901J(6), the copy of the order delivered to the registrar must be accompanied by a copy of the company's articles, or the resolution or agreement in question, as amended.
- (3) Every copy of the company's articles issued by the company after the order is made must be accompanied by a copy of the order, unless the effect of the order has been incorporated into the articles by amendment.
- (4) In this section—
- (a) references to the effect of the order include the effect of the compromise or arrangement to which the order relates, and
  - (b) in the case of a company not having articles, references to its articles are to be read as references to the instrument constituting the company or defining its constitution.
- (5) If a company makes default in complying with this section an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Power to amend Act*

**901L Power to amend Act**

- (1) The Secretary of State may by regulations make any amendment of this Act which the Secretary of State considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to this Part.
- (2) Regulations under this section are subject to affirmative resolution procedure.”

PART 2

CONSEQUENTIAL AMENDMENTS

*Finance Act 1986*

- 2      The Finance Act 1986 is amended as follows.

- 3 In section 80D (repurchases and stock lending: replacement stock on insolvency), in subsection (9)(f), after “Part 26” insert “or 26A”.
- 4 In section 89AB (stamp duty reserve tax: exception for repurchases and stock lending in case of insolvency), in subsection (9)(f), after “Part 26” insert “or 26A”.

*Insolvency Act 1986*

- 5 The Insolvency Act 1986 is amended as follows.
- 6 (1) In Part 4 (winding up of companies registered under the Companies Acts), Chapter 8 (provisions of general application in winding up) is amended as follows.
- (2) In section 176ZB (application of proceeds of office-holder claims), in subsection (4)(b), after “Part 26” insert “or 26A”.
- (3) In section 176A (share of assets for unsecured creditors), in subsection (4)(b), after “Part 26” insert “or 26A”.
- 7 (1) Schedule B1 (administration) is amended as follows.
- (2) In paragraph 49 (administrator’s proposals), in sub-paragraph (3)(b), after “Part 26” insert “or 26A”.
- (3) In paragraph 73 (protection for priority creditor), in sub-paragraph (2)(c), after “Part 26” insert “or 26A”.
- (4) In paragraph 74 (challenge to administrator’s conduct of company), in sub-paragraph (6)(b), after “Part 26” insert “or 26A”.

*Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19))*

- 8 The Insolvency (Northern Ireland) Order 1989 is amended as follows.
- 9 In Article 150A (share of assets for unsecured creditors), in paragraph (4)(b), after “Part 26” insert “or 26A”.
- 10 (1) Schedule B1 (administration) is amended as follows.
- (2) In paragraph 50 (administrator’s proposals), in sub-paragraph (3)(b), after “Part 26” insert “or 26A”.
- (3) In paragraph 74 (protection for secured or preferential creditor), in sub-paragraph (2)(c), after “Part 26” insert “or 26A”.
- (4) In paragraph 75 (challenge to administrator’s conduct of company), in sub-paragraph (6)(b), after “Part 26” insert “or 26A”.

*Water Industry Act 1991*

- 11 In section 23 of the Water Industry Act 1991 (meaning and effect of special administration order), in subsection (2D)(b), after “Part 26” insert “or 26A”.

*Taxation of Chargeable Gains Act 1992*

- 12 The Taxation of Chargeable Gains Act 1992 is amended as follows.

- 13 In section 263CA (stock lending: insolvency etc of borrower), in subsection (9)(f), after “Part 26” insert “or 26A”.
- 14 In Schedule 5AA (meaning of “scheme of reconstruction” for purposes of section 136), in paragraph 5(a)(i), after “Part 26” insert “or 26A”.

*Value Added Tax Act 1994*

- 15 In section 26AA of the Value Added Tax Act 1994 (disapplication of disallowance under section 26A in insolvency), in subsection (8), after paragraph (k) insert—
  - “(ka) a compromise or arrangement sanctioned by the court and delivered to the registrar or (as the case may be) published in the Gazette in accordance with section 901F of the Companies Act 2006 is in place in relation to that person.”

*Housing Act 1996*

- 16 (1) In Part 2 of Schedule 1 to the Housing Act 1996 (registered social landlords: constitution, change of rules, amalgamation and dissolution), paragraph 13 (arrangement, reconstruction, etc of company) is amended as follows.
  - (2) After sub-paragraph (3) insert—
    - “(3A) If a court makes an order under section 901F of the Companies Act 2006 (sanction of compromise or arrangement with creditors or members) in relation to the company, the company must notify the Welsh Ministers of the order.
    - (3B) If a court makes an order under section 901J of the Companies Act 2006 (powers of court to facilitate reconstruction or amalgamation) in relation to the company, the company must notify the Welsh Ministers of the order.”
  - (3) In sub-paragraph (8), after “sub-paragraph (3)” insert “, (3B)”.

*Financial Services and Markets Act 2000*

- 17 The Financial Services and Markets Act 2000 is amended as follows.
- 18 In section 105 (insurance business transfer schemes), in subsection (5), for “Part 26 of that Act” substitute “Part 26 or 26A of that Act, as the case may be”.
- 19 In Schedule 17A (further provision in relation to exercise of Part 18 functions by Bank of England), in paragraph 24 (insolvency)—
  - (a) in sub-paragraph (1), before paragraph (a) insert—
    - “(za) sections 355A and 355B (powers to participate in proceedings under Part 26A of the Companies Act 2006);”;
  - (b) in sub-paragraph (2), after “recognised investment exchange” insert “(other than the reference to “an authorised person” in section 355B(2)(a))”.
- 20 (1) Part 24 (insolvency) is amended as follows.

(2) After section 355 insert –

*“Arrangements and reconstructions: companies in financial difficulty*

**355A Powers of FCA and PRA to participate in proceedings**

- (1) This section applies where Part 26A of the Companies Act 2006 (“the 2006 Act”) (arrangements and reconstructions: companies in financial difficulty) applies in relation to a company which –
  - (a) is, or has been, an authorised person or recognised investment exchange;
  - (b) is, or has been, any of the following –
    - (i) an electronic money institution;
    - (ii) an authorised payment institution;
    - (iii) a small payment institution;
    - (iv) a registered account information service provider;
  - (c) is, or has been, an appointed representative; or
  - (d) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (2) A relevant applicant must give notice to the appropriate regulator of –
  - (a) any application which the relevant applicant intends to make under section 901C(1) of the 2006 Act, and
  - (b) any application which the relevant applicant believes a creditor or member of the company has made, or intends to make, under section 901C(1) of that Act in relation to the company.
- (3) A relevant applicant may not make an application under section 901C(1) of the 2006 Act in relation to a company that is a PRA-regulated person without the consent of the PRA.
- (4) In this section “relevant applicant”, in relation to a company, means –
  - (a) the company;
  - (b) if the company is being wound up, the liquidator;
  - (c) if the company is in administration, the administrator.
- (5) The appropriate regulator is entitled to be heard at any hearing of an application made under section 901C or 901F of the 2006 Act in relation to the company.
- (6) Any notice or other document required to be sent to a creditor of the company must also be sent to the appropriate regulator.
- (7) A person appointed for the purpose by the appropriate regulator is entitled –
  - (a) to attend any meeting of creditors of the company summoned under section 901C of the 2006 Act;
  - (b) to make representations as to any matter for decision at such a meeting.
- (8) In this section –

“the appropriate regulator” means –



- (a) where the company is a PRA-regulated person, each of the FCA and the PRA, except that the reference in subsection (7) to a person appointed by the appropriate regulator is to be read as a reference to a person appointed by either the FCA or the PRA;
  - (b) in any other case, the FCA;
- “authorised payment institution”, “small payment institution” and “registered account information service provider” have the same meaning as in the Payment Services Regulations 2017 (S.I. 2017/752) (see regulation 2 of those Regulations);
- “electronic money institution” has the same meaning as in the Electronic Money Regulations 2011 (S.I. 2011/99) (see regulation 2 of those Regulations).

### **355B Enforcement of requirements imposed by section 355A**

- (1) For the purpose of enforcing a requirement imposed on a company by section 355A(2) or (3), the appropriate regulator may exercise any of the following powers (so far as it would not otherwise be exercisable) –
    - (a) the power to publish a statement under section 205 (public censure);
    - (b) the power to impose a financial penalty under section 206.
  - (2) Accordingly, sections 205 and 206, and so much of this Act as relates to either of those sections, have effect in relation to a requirement imposed by section 355A(2) or (3) as if –
    - (a) any reference to an authorised person included (so far as would not otherwise be the case) a reference to a company falling within any of paragraphs (a) to (d) of section 355A(1),
    - (b) any reference to a relevant requirement included (so far as would not otherwise be the case) a reference to a requirement imposed by section 355A(2) or (3), and
    - (c) “the appropriate regulator” had the same meaning as in section 355A.
  - (3) In this section “the appropriate regulator” has the same meaning as in section 355A.”
- (3) In section 362 (powers of FCA and PRA to participate in administration proceedings) –
- (a) in subsection (6) –
    - (i) after “arrangement” insert “in relation to which Part 26 of the Companies Act 2006 applies”, and
    - (ii) for “the Companies Act 2006” substitute “that Act”;
  - (b) after that subsection insert –

“(6A) If, during the course of the administration of a company, a compromise or arrangement in relation to which Part 26A of the Companies Act 2006 applies is proposed between the company and its creditors, or any class of them, the appropriate regulator may apply to the court under section 901C or 901F of that Act.”

- (4) In section 365 (powers of FCA and PRA to participate in voluntary winding up proceedings) –
- (a) in subsection (7) –
    - (i) after “arrangement” insert “in relation to which Part 26 of the Companies Act 2006 applies”, and
    - (ii) for “the Companies Act 2006” substitute “that Act”;
  - (b) after that subsection insert –
    - “(7A) If, during the course of the winding up of the company, a compromise or arrangement in relation to which Part 26A of the Companies Act 2006 applies is proposed between the company and its creditors, or any class of them, the appropriate regulator may apply to the court under section 901C or 901F of that Act.”
- (5) In section 371 (powers of FCA and PRA to participate in proceedings for winding up by court) –
- (a) in subsection (5) –
    - (i) after “arrangement” insert “in relation to which Part 26 of the Companies Act 2006 applies”, and
    - (ii) for “the Companies Act 2006” substitute “that Act”;
  - (b) after that subsection insert –
    - “(5A) If, during the course of the winding up of a company, a compromise or arrangement in relation to which Part 26A of the Companies Act 2006 applies is proposed between the company and its creditors, or any class of them, the appropriate regulator may apply to the court under section 901C or 901F of that Act.”

*Limited Liability Partnerships Act 2000*

- 21 In section 17 of the Limited Liability Partnerships Act 2000, in subsection (5)(b) (procedure for regulations applying provisions of Companies Act 2006) –
- (a) in the entry for Part 26 of the Companies Act 2006, after “reconstructions” insert “: general”;
  - (b) after that entry insert –
    - “Part 26A (arrangements and reconstructions: companies in financial difficulty);”.

*Enterprise Act 2002*

- 22 In section 255 of the Enterprise Act 2002 (application of law about company arrangement or administration to non-company), in subsection (2), omit the “and” before paragraph (c) and after that paragraph insert “, and
- (d) Part 26A of that Act (compromise or arrangement with creditors where company in financial difficulty).”

*Income Tax (Earnings and Pensions) Act 2003*

- 23 The Income Tax (Earnings and Pensions) Act 2003 is amended as follows.
- 24 (1) Schedule 3 (SAYE option schemes) is amended as follows.

- (2) In Part 6 (requirements etc relating to share options), in paragraph 37 (exercise of options: company events) –
- (a) in sub-paragraph (1), after “(4)” insert “, (4ZA)”;
  - (b) after sub-paragraph (4) insert –
    - “(4ZA) The relevant date for the purposes of this sub-paragraph is the date when the court sanctions under section 901F of the Companies Act 2006 (court sanction for compromise or arrangement) a compromise or arrangement applicable to or affecting –
    - (a) all the ordinary share capital of the company or all the shares of the same class as the shares to which the option relates, or
    - (b) all the shares, or all the shares of that same class, which are held by a class of shareholders identified otherwise than by reference to their employment or directorships or their participation in a Schedule 3 SAYE option scheme.”;
  - (c) in sub-paragraph (6C)(b), after “sub-paragraph (4)” insert “or (4ZA)”;
  - (d) in sub-paragraph (6E)(a), after “(4)” insert “, (4ZA)”;
  - (e) in sub-paragraph (6F)(a)(i) and (b)(i), after “(4)” insert “, (4ZA)”.
- (3) In Part 7 (exchange of share options), in paragraph 38 (exchange of options on company reorganisation), in sub-paragraph (2)(b), after “section 899” insert “or 901F”.
- 25 (1) Schedule 4 (CSOP schemes) is amended as follows.
- (2) In Part 5 (requirements etc relating to share options), in paragraph 25A (exercise of options: company events) –
- (a) in sub-paragraph (1), after “(6)” insert “, (6ZA)”;
  - (b) after sub-paragraph (6) insert –
    - “(6ZA) The relevant date for the purposes of this sub-paragraph is the date when the court sanctions under section 901F of the Companies Act 2006 (court sanction for compromise or arrangement) a compromise or arrangement applicable to or affecting –
    - (a) all the ordinary share capital of the company or all the shares of the same class as the shares to which the option relates, or
    - (b) all the shares, or all the shares of that same class, which are held by a class of shareholders identified otherwise than by reference to their employment or directorships or their participation in a Schedule 4 CSOP scheme.”;
  - (c) in sub-paragraph (7C)(b), after “sub-paragraph (6)” insert “or (6ZA)”;
  - (d) in sub-paragraph (7E)(a), after “(6)” insert “, (6ZA)”;
  - (e) in sub-paragraph (7F)(a)(i) and (b)(i), after “(6)” insert “, (6ZA)”.
- (3) In Part 6 (exchange of share options), in paragraph 26 (exchange of options on company reorganisation), in sub-paragraph (2)(b), after “section 899” insert “or 901F”.

- 26 In Schedule 5 (enterprise management incentives), in paragraph 39 (company reorganisations), in sub-paragraph (2)(b), after “section 899” insert “or 901F”.

*Energy Act 2004*

- 27 In Part 2 of Schedule 20 to the Energy Act 2004 (conduct of energy administration: modifications of Schedule B1 to the Insolvency Act 1986), in paragraph 16(2), after “section 899” insert “or 901F”.

*Income Tax (Trading and Other Income) Act 2005*

- 28 In Part 2 of the Income Tax (Trading and Other Income) Act 2005 (trading income), in section 259 (meaning of “statutory insolvency arrangement”), in paragraph (b), after “Part 26” insert “or 26A”.

*Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10))*

- 29 In Article 10 of the Insolvency (Northern Ireland) Order 2005 (application of law about company arrangement or administration to non-company), in paragraph (3), omit the “and” before sub-paragraph (c) and after that sub-paragraph insert “, and  
 (d) Part 26A of that Act (compromise or arrangement with creditors where company in financial difficulty).”

*Companies Act 2006*

- 30 The Companies Act 2006 is amended as follows.
- 31 In section 32(1) (constitutional documents to be provided to members), after paragraph (d) insert –  
 “(da) a copy of any court order under section 901F (order sanctioning compromise or arrangement for company in financial difficulty) or section 901J (order facilitating reconstruction or amalgamation);”.
- 32 In section 93 (recent allotment of shares for non-cash consideration), in subsection (7)(b)(i), after “Part 26” insert “or 26A”.
- 33 (1) Part 17 (a company’s share capital) is amended as follows.
- (2) In section 549 (exercise by directors of powers to allot shares etc), after subsection (3) insert –  
 “(3A) Subsection (1) does not apply to anything done for the purposes of a compromise or arrangement sanctioned in accordance with Part 26A (arrangements and reconstructions: companies in financial difficulty).”
- (3) In Chapter 3 (allotment of equity securities: existing shareholders’ right of pre-emption) –  
 (a) in section 561 (existing shareholders’ right of pre-emption), in subsection (5)(a), for “566” substitute “566A”;

(b) after section 566 insert –

**“566A Exception to pre-emption right: companies in financial difficulty**

Section 561(1) (existing shareholders’ right of pre-emption) does not apply to an allotment of equity securities that is carried out as part of a compromise or arrangement sanctioned in accordance with Part 26A (arrangements and reconstructions: companies in financial difficulty).”

- (4) In section 594 (exception to valuation requirement: arrangement with another company), in subsection (6)(a)(i), after “Part 26” insert “or 26A”.
- (5) In section 616(1) (interpretation of Chapter 7), in paragraph (a) of the definition of “arrangement”, after “Part 26” insert “or 26A”.
- (6) In section 617 (alteration of share capital of limited company), in subsection (5)(e)(i), after “Part 26” insert “or 26A”.
- (7) In section 632 (variation of class rights: saving for court’s powers under other provisions) –
- (a) in the entry for Part 26, after “reconstructions” insert “: general”;
  - (b) after that entry (but before the “or”) insert –  
“Part 26A (arrangements and reconstructions: companies in financial difficulty);”.
- (8) In section 641 (circumstances in which a company may reduce its share capital) –
- (a) in subsection (2C), in the definition of “scheme”, after “Part 26” insert “or 26A”;
  - (b) in subsection (7), for the words from “the phrase” to “Part 26” substitute “the phrases “sanctioned by the court under Part 26” and “sanctioned by the court under Part 26A””.
- (9) In section 649 (registration of order and statement of capital), in subsection (3) –
- (a) in paragraph (a), after “reconstructions” insert “: general”;
  - (b) after that paragraph insert –
    - “(aa) in the case of a reduction of share capital that forms part of a compromise or arrangement sanctioned by the court under Part 26A (arrangements and reconstructions: companies in financial difficulty) –
      - (i) in the case of any company other than one to which sub-paragraph (ii) applies, on delivery of the order and statement of capital to the registrar;
      - (ii) in the case of an overseas company that is not required to register particulars under section 1046, on publication of the order and statement of capital in the Gazette;
      - (iii) in either case, if the court so orders, on the registration of the order and statement of capital;”;
  - (c) in paragraph (b), for “any other case” substitute “any case not falling within paragraph (a) or (aa)”.

- 34 In section 681 (unconditional exceptions to prohibition against financial assistance), in subsection (2)(e), after “Part 26” insert “or 26A”.
- 35 (1) Part 26 (arrangements and reconstructions) is amended as follows.
- (2) The heading becomes “ARRANGEMENTS AND RECONSTRUCTIONS: GENERAL”.
- (3) In section 896, at the end insert –
- “(4) This section is subject to section 899A (moratorium debts, etc).”
- (4) In section 899 (court sanction for compromise or arrangement) –
- (a) after subsection (1) insert –
- “(1A) Subsection (1) is subject to section 899A (moratorium debts, etc).”;
- (b) omit subsection (5).
- (5) After section 899 insert –

*“Special cases*

**899A Moratorium debts, etc**

- (1) This section applies where –
- (a) an application under section 896 in respect of a compromise or arrangement is made before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the company under Part A1 of the Insolvency Act 1986 or Part 1A of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), and
- (b) the creditors with whom the compromise or arrangement is proposed include any relevant creditors (see subsection (2)).
- (2) In this section “relevant creditor” means –
- (a) a creditor in respect of a moratorium debt, or
- (b) a creditor in respect of a priority pre-moratorium debt.
- (3) The relevant creditors may not participate in the meeting summoned under section 896.
- (4) For the purposes of section 897 (statement to be circulated or made available) –
- (a) the requirement in section 897(1)(a) is to be read as including a requirement to send each relevant creditor a statement complying with section 897;
- (b) any reference to creditors entitled to attend the meeting summoned under section 896 includes a reference to relevant creditors.
- (5) The court may not sanction the compromise or arrangement under section 899 if it includes provision in respect of any relevant creditor who has not agreed to it.
- (6) In this section –
- “moratorium debt” –

- (a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;
    - (b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order;
  - “priority pre-moratorium debt” –
    - (a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;
    - (b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order.”
- 36 (1) Part 27 (mergers and divisions of public companies) is amended as follows.
- (2) In section 903 (relationship of Part 27 to Part 26) –
    - (a) in the heading, for “**Part 26**” substitute “**Parts 26 and 26A**”;
    - (b) in subsection (1), for “Part 26 (arrangements and reconstructions)” substitute “Part 26 (arrangements and reconstructions: general) or Part 26A (arrangements and reconstructions: companies in financial difficulty)”;
    - (c) in subsections (2) and (3), for “Part 26” substitute “Parts 26 and 26A”.
  - (3) In section 907 (approval of members of merging companies), in subsection (2), after “917” insert “, 917A”.
  - (4) In section 908 (directors’ explanatory report (merger)) –
    - (a) in subsection (2), for paragraph (a) (but not the “and” following it) substitute –
      - “(a) the required statement explaining the effect of the compromise or arrangement,”;
    - (b) after that subsection insert –
      - “(2A) In subsection (2) “the required statement explaining the effect of the compromise or arrangement” means –
        - (a) in a case where a meeting is summoned under section 896 in relation to the compromise or arrangement, the statement required by section 897;
        - (b) in a case where a meeting is summoned under section 901C in relation to the compromise or arrangement, the statement required by section 901D.”
  - (5) In section 912 (approval of articles of new transferee company (merger)) –
    - (a) the wording of the section becomes subsection (1) of that section;
    - (b) at the end of that subsection insert –
      - “This is subject to subsection (2).”;
    - (c) after that subsection insert –
      - “(2) In the case of a compromise or arrangement to be sanctioned under Part 26A, it is not necessary for the articles of the transferee company (or a draft of them) to be approved by ordinary resolution of the company in respect of which the compromise or arrangement is proposed.”

- (6) In section 915 (circumstances in which certain particulars and reports not required (merger)) –
- (a) in subsection (3), for “Section 897” substitute “In a case where a meeting has been summoned under section 896 in relation to the compromise or arrangement, section 897”;
  - (b) after that subsection insert –
 

“(3A) In a case where a meeting has been summoned under section 901C in relation to the compromise or arrangement, section 901D (explanatory statement to be circulated or made available) does not apply.”
- (7) In section 915A (other circumstances in which reports and inspection not required (merger)), in subsection (5), after “section 900(2)” insert “or, as the case may be, section 901J(2)”.
- (8) Before section 918 (but after the heading “*Other exceptions*”) insert –
- “917A Other circumstances in which meeting of members of transferor company not required (merger)**
- In the case of a compromise or arrangement to be sanctioned under Part 26A, it is not necessary for the scheme to be approved by the members of the company in respect of which the compromise or arrangement is proposed.”
- (9) In section 918A (agreement to dispense with reports etc (merger)) –
- (a) in subsection (2), for “the application to the court under section 896” substitute “the relevant application”;
  - (b) after that subsection insert –
 

“(3) In subsection (2) “the relevant application” means –

    - (a) in the case of a compromise or arrangement to be sanctioned under Part 26, the application to the court under section 896;
    - (b) in the case of a compromise or arrangement to be sanctioned under Part 26A, the application to the court under section 901C(1).”
- (10) In section 922 (approval of members of companies involved in the division) –
- (a) in subsection (1), for “compromise or arrangement” substitute “scheme”;
  - (b) in subsection (2), after “931” insert “, 931A”.
- (11) In section 923 (directors’ explanatory report (division)) –
- (a) in subsection (2), for paragraph (a) (but not the “and” following it) substitute –
 

“(a) the required statement explaining the effect of the compromise or arrangement,”;
  - (b) after that subsection insert –
 

“(2A) In subsection (2) “the required statement explaining the effect of the compromise or arrangement” means –



- (a) in a case where a meeting is summoned under section 896 in relation to the compromise or arrangement, the statement required by section 897;
  - (b) in a case where a meeting is summoned under section 901C in relation to the compromise or arrangement, the statement required by section 901D.”
- (12) In section 925 (supplementary accounting statement (division)), in subsection (1)(b), after “931” insert “, 931A”.
- (13) In section 928 (approval of articles of new transferee company (division)) –
  - (a) the wording of the section becomes subsection (1) of that section;
  - (b) after that subsection insert –
    - “(2) Subsection (1) does not apply in the case of a compromise or arrangement to be sanctioned under Part 26A.”
- (14) Before section 932 (but after the heading “*Other exceptions*”) insert –
  - “**931A Other circumstances in which meeting of members of transferor company not required (division)**
  - In the case of a compromise or arrangement to be sanctioned under Part 26A, it is not necessary for the scheme to be approved by the members of the transferor company.”
- (15) In section 933 (agreement to dispense with reports etc (division)) –
  - (a) in subsection (3), for “the application to the court under section 896” substitute “the relevant application”;
  - (b) after that subsection insert –
    - “(4) In subsection (3) “the relevant application” means –
      - (a) in the case of a compromise or arrangement to be sanctioned under Part 26, the application to the court under section 896;
      - (b) in the case of a compromise or arrangement to be sanctioned under Part 26A, the application to the court under section 901C(1).”
- (16) In section 939 (court to fix date for transfer of undertaking etc of transferor company), in subsection (1)(b), after “section 900” insert “or, as the case may be, section 901J”.
- (17) In section 940 (liability of transferee companies for each other’s defaults) –
  - (a) in subsection (2), after “If” insert “, in the case of a compromise or arrangement to be sanctioned under Part 26,”;
  - (b) after that subsection insert –
    - “(2A) If, in the case of a compromise or arrangement to be sanctioned under Part 26A, a number representing 75% in value of the creditors or any class of creditors of the transferor company, present and voting either in person or by proxy at a meeting summoned for the purposes of agreeing to the scheme, so agree, subsection (1) does not apply in relation to the liabilities owed to the creditors or that class of creditors.”



- 43 (1) Part 7ZA (restrictions on obtaining certain deductions) is amended as follows.
- (2) In section 269ZH (meaning of “insolvency procedures”), in subsection (5)(a), after “Part 26” insert “or 26A”.
- (3) In section 269ZY (meaning of “relevant reversal credit”), in subsection (8)(b), after “Part 26” insert “or 26A”.
- 44 In Part 14 (change in company ownership), in section 724A (disregard of change in parent company), in subsection (7)(a), after “Part 26” insert “or 26A”.

*Third Parties (Rights against Insurers) Act 2010*

- 45 In section 6 of the Third Parties (Rights against Insurers) Act 2010 (corporate bodies etc), in subsection (1), after “section 899” insert “or 901F”.

*Housing (Scotland) Act 2010 (asp 17)*

- 46 Part 8 of the Housing (Scotland) Act 2010 (registered social landlords: organisational change etc) is amended as follows.
- 47 (1) Section 100A (restructuring by company: proposed restructuring) is amended as follows.
- (2) In subsection (1) –
- (a) for “This section applies” substitute “Subsections (2) and (3) apply”;
- (b) omit the “and” after paragraph (b);
- (c) for paragraph (c) substitute –
- “ (c) the restructuring will result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the company in respect of which the order is made, and
- (d) the company is not being wound up and is not in administration.”
- (3) In subsection (3), for “this section” substitute “this subsection”.
- (4) After subsection (3) insert –
- “(4) Subsections (5) and (6) apply where –
- (a) a court order is made in respect of the company under section 901C(1) of the Companies Act 2006,
- (b) the meeting summoned by the court order is to agree a restructuring of a type mentioned in section 901J(1) of that Act,
- (c) the restructuring will result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the company in respect of which the order is made, and
- (d) the company is not being wound up and is not in administration.
- (5) The company must comply with sections 115 to 120 (as applied by subsection (6)) in relation to the proposed restructuring.
- (6) Sections 115 to 120 apply in relation to a proposed restructuring to which this subsection applies as they apply in relation to a proposed

disposal to which section 107(4) applies, subject to the modification that section 115A(2) has effect as if, for paragraph (b), there were substituted –

“(b) before the meeting summoned by the court order under section 901C of the Companies Act 2006 takes place.”

48 (1) Section 101 (restructuring of company) is amended as follows.

(2) After subsection (1) insert –

“(1A) This section also applies where –

- (a) a court order is made in respect of a company under section 901F or 901J of the Companies Act 2006, and
- (b) the restructuring to which the order relates is of a type mentioned in section 901J(1) of that Act.”

(3) In subsection (2) –

- (a) after “subsection (1)” insert “or (1A)”;
- (b) in paragraph (b), after “section 900(6)” insert “or (as the case may be) section 901J(6)”.

(4) In subsection (3)(a), after “section 100A(3)” insert “or (6) (as the case may be)”.

(5) In subsection (5), after “section 900” insert “or 901J”.

*Financial Services (Banking Reform) Act 2013*

49 (1) Part 6 of the Financial Services (Banking Reform) Act 2013 (special administration for operators of certain infrastructure systems) is amended as follows.

(2) In section 111 (financial market infrastructure administration) –

- (a) omit the “and” after paragraph (a), and
- (b) after paragraph (b) insert “, and
- (c) confers power on the Bank of England to participate in proceedings under Part 26A of the Companies Act 2006 (arrangements and reconstructions: companies in financial difficulty).”

(3) After section 124 insert –

*“Powers to participate in Part 26A proceedings*

**124A Powers of Bank to participate in Part 26A proceedings**

- (1) This section applies where Part 26A of the Companies Act 2006 (“the 2006 Act”) (arrangements and reconstructions: companies in financial difficulty) applies in relation to an infrastructure company.
- (2) A relevant applicant must give notice to the Bank of England of –
  - (a) any application which the relevant applicant intends to make under section 901C(1) of the 2006 Act, and
  - (b) any application which the relevant applicant believes a creditor or member of the company has made, or intends to make, under section 901C(1) of that Act in relation to the company.

- (3) A relevant applicant may not make an application under section 901C(1) of the 2006 Act in relation to the company without the consent of the Bank of England.
- (4) In this section “relevant applicant”, in relation to a company, means—
  - (a) the company;
  - (b) if the company is being wound up, the liquidator;
  - (c) if the company is in administration, the administrator.
- (5) The Bank of England is entitled to be heard at any hearing of an application made under section 901C or 901F of the 2006 Act in relation to the company.
- (6) Any notice or other document required to be sent to a creditor of the company must also be sent to the Bank of England.
- (7) A person appointed for the purpose by the Bank of England is entitled—
  - (a) to attend any meeting of creditors of the company summoned under section 901C of the 2006 Act;
  - (b) to make representations as to any matter for decision at such a meeting.
- (8) Sections 197, 198 and 202A of the Banking Act 2009, and sections 201 and 202 of that Act, so far as relating to those sections, apply in relation to a failure by an infrastructure company to comply with subsection (2) or (3) above as they apply in relation to a compliance failure within the meaning of Part 5 of that Act.”

*Co-operative and Community Benefit Societies Act 2014*

- 50 In section 118 of the Co-operative and Community Benefit Societies Act 2014 (power to apply provisions about company arrangements and administration in relation to registered societies), in subsection (2), after paragraph (c) insert—
- “(d) Part 26A of that Act (compromise or arrangement with creditors where company in financial difficulty).”

*Mutuals’ Deferred Shares Act 2015*

- 51 In section 2 of the Mutuals’ Deferred Shares Act 2015 (restriction on voting rights), in subsection (2)(b), after “section 896” insert “or 901C”.

SCHEDULE 10

Section 10

WINDING-UP PETITIONS: GREAT BRITAIN

PART 1

PROHIBITION OF PETITIONS ON BASIS OF STATUTORY DEMANDS

- 1 (1) No petition for the winding up of a registered company may be presented under section 124 of the 1986 Act on or after 27 April 2020 on the ground

specified in paragraph (a) of section 123(1) of that Act, where the demand referred to in that paragraph was served during the relevant period.

- (2) No petition for the winding up of an unregistered company may be presented under section 124 of the 1986 Act on the ground set out in section 222 of that Act, where the demand referred to in section 222 was served during the relevant period.
- (3) In this Part of this Schedule, the “relevant period” is the period which—
  - (a) begins with 1 March 2020, and
  - (b) ends with 30 September 2020.
- (4) This paragraph is to be regarded as having come into force on 27 April 2020.

## PART 2

### RESTRICTION ON WINDING-UP PETITIONS AND ORDERS

#### *Restriction on winding-up petitions: registered companies*

- 2 (1) A creditor may not during the relevant period present a petition under section 124 of the 1986 Act for the winding up of a registered company on a ground specified in section 123(1)(a) to (d) of that Act (“the relevant ground”), unless the condition in sub-paragraph (2) is met.
- (2) The condition referred to in sub-paragraph (1) is that the creditor has reasonable grounds for believing that—
  - (a) coronavirus has not had a financial effect on the company, or
  - (b) the facts by reference to which the relevant ground applies would have arisen even if coronavirus had not had a financial effect on the company.
- (3) A creditor may not during the relevant period present a petition under section 124 of the 1986 Act for the winding up of a registered company on the ground specified in section 123(1)(e) or (2) of that Act (“the relevant ground”), unless the condition in sub-paragraph (4) is met.
- (4) The condition referred to in sub-paragraph (3) is that the creditor has reasonable grounds for believing that—
  - (a) coronavirus has not had a financial effect on the company, or
  - (b) the relevant ground would apply even if coronavirus had not had a financial effect on the company.
- (5) This paragraph is to be regarded as having come into force on 27 April 2020.

#### *Restriction on winding-up petitions: unregistered companies*

- 3 (1) A creditor may not during the relevant period present a petition under section 124 of the 1986 Act for the winding up of an unregistered company on a ground specified in section 222, 223 or 224(1)(a) to (c) of that Act (“the relevant ground”), unless the condition in sub-paragraph (2) is met.
- (2) The condition referred to in sub-paragraph (1) is that the creditor has reasonable grounds for believing that—
  - (a) coronavirus has not had a financial effect on the company, or

- (b) the facts by reference to which the relevant ground applies would have arisen even if coronavirus had not had a financial effect on the company.
- (3) A creditor may not during the relevant period present a petition under section 124 of the 1986 Act for the winding up of an unregistered company on the ground specified in section 224(1)(d) or (2) of that Act (“the relevant ground”), unless the condition in sub-paragraph (4) is met.
- (4) The condition referred to in sub-paragraph (3) is that the creditor has reasonable grounds for believing that –
  - (a) coronavirus has not had a financial effect on the company, or
  - (b) the relevant ground would apply even if coronavirus had not had a financial effect on the company.
- (5) This paragraph is to be regarded as having come into force on 27 April 2020.

*Restriction on winding-up petitions: petitions made before commencement*

- 4 (1) This paragraph applies where a creditor presents a petition under section 124 of the 1986 Act –
  - (a) on or after 27 April 2020, but
  - (b) before the day on which this Schedule comes into force.
- (2) If the court to which the petition is presented is satisfied that the creditor presented it without the condition in paragraph 2(2) or (4) or paragraph 3(2) or (4) (as the case may be) being met, the court may make such order as it thinks appropriate to restore the position to what it would have been if the petition had not been presented.
- (3) If it appears to the official receiver or, in Scotland, the interim liquidator that the person who presented the petition did so without the condition in paragraph 2(2) or (4) or paragraph 3(2) or (4) (as the case may be) being met, the official receiver or interim liquidator must refer the matter to the court to determine whether to make an order under sub-paragraph (2).
- (4) For the purposes of the 2016 Insolvency Rules or Rules of Court in Scotland, a reference under sub-paragraph (3) is to be treated as if it were an application under section 147 of the 1986 Act.

*Restriction on winding-up orders: registered companies*

- 5 (1) This paragraph applies where –
  - (a) a creditor presents a petition for the winding up of a registered company under section 124 of the 1986 Act in the relevant period,
  - (b) the company is deemed unable to pay its debts on a ground specified in section 123(1) or (2) of that Act, and
  - (c) it appears to the court that coronavirus had a financial effect on the company before the presentation of the petition.
- (2) The court may wind the company up under section 122(1)(f) of the 1986 Act on a ground specified in section 123(1)(a) to (d) of that Act only if the court is satisfied that the facts by reference to which that ground applies would have arisen even if coronavirus had not had a financial effect on the company.

- (3) The court may wind the company up under section 122(1)(f) of the 1986 Act on the ground specified in section 123(1)(e) or (2) of that Act only if the court is satisfied that the ground would apply even if coronavirus had not had a financial effect on the company.
- (4) This paragraph is to be regarded as having come into force on 27 April 2020.

*Restriction on winding-up orders: unregistered companies*

- 6 (1) This paragraph applies where –
  - (a) a creditor presents a petition for the winding up of an unregistered company under section 124 of the 1986 Act in the relevant period,
  - (b) the company is deemed unable to pay its debts on a ground specified in section 222, 223 or 224 of that Act, and
  - (c) it appears to the court that coronavirus had a financial effect on the company before the presentation of the petition.
- (2) The court may wind the company up under section 221(5)(b) of the 1986 Act on a ground specified in section 222, 223 or 224(1)(a) to (c) of that Act only if the court is satisfied that the facts by reference to which that ground applies would have arisen even if coronavirus had not had a financial effect on the company.
- (3) The court may wind the company up under section 221(5)(b) of the 1986 Act on the ground specified in section 224(1)(d) or (2) of that Act only if the court is satisfied that the ground would apply even if coronavirus had not had a financial effect on the company.
- (4) This paragraph is to be regarded as having come into force on 27 April 2020.

*Restriction on winding-up orders: orders made before commencement*

- 7 (1) This paragraph applies where –
  - (a) a court makes an order under section 122(1)(f) or 221(5)(b) of the 1986 Act on or after 27 April 2020 but before the day on which this Schedule comes into force, and
  - (b) the order was not one which the court would have made had paragraphs 5 and 6 been in force at the time.
- (2) The court is to be regarded as having had no power to make the order (and, accordingly, the order is to be regarded as void).
- (3) Neither the official receiver nor the liquidator or provisional liquidator is liable in any civil or criminal proceedings for anything done pursuant to the order.
- (4) The court may give such directions to the official receiver, liquidator or provisional liquidator as it thinks fit for the purpose of restoring the company to which the order relates to the position it was in immediately before the petition was presented.
- (5) If at any time it appears to the official receiver or, in Scotland, the interim liquidator that –
  - (a) an order made by the court under section 122(1)(f) or 221(5)(b) of the 1986 Act is void by virtue of sub-paragraph (2), and
  - (b) it might be appropriate for the court to give directions under sub-paragraph (4),



the official receiver or interim liquidator must refer the matter to the court to determine whether to give such directions.

- (6) For the purposes of the 2016 Insolvency Rules or Rules of Court in Scotland, a reference under sub-paragraph (5) is to be treated as if it were an application under section 147 of the 1986 Act.

*Modifications of 1986 Act*

- 8 (1) Paragraphs 9 to 18 apply where –
- (a) a creditor presents a petition under section 124 of the 1986 Act during the relevant period in relation to a registered or unregistered company, and
  - (b) the court to which it is presented makes an order under section 122(1)(f) or 221(5)(b) of that Act (“the winding-up order”).
- (2) Paragraphs 9 to 18 are to be regarded as having come into force on 27 April 2020.
- 9 If the winding up would by virtue of section 129(2) of the 1986 Act be deemed to commence at the time of the presentation of the petition, the winding up is instead for the purposes of that Act to be deemed to commence on the making of the winding-up order.
- 10 In section 74 of the 1986 Act (liability as contributories of present and past members), subsection (2)(a) has effect as if the reference to one year or more before the commencement of the winding up were to –
- (a) one year or more before the day on which the petition was presented, or
  - (b) if the winding-up order was made more than 6 months after the day on which the petition was presented, 18 months or more before the day on which the winding-up order was made.
- 11 In section 206 of the 1986 Act (fraud etc in anticipation of winding up), subsection (1) has effect as if the reference to 12 months immediately preceding the commencement of the winding up were to a period which –
- (a) begins with whichever is the later of –
    - (i) the day 12 months before the day on which the petition was presented, and
    - (ii) the day 18 months before the day on which the winding-up order was made, and
  - (b) ends with the day on which the winding-up order was made.
- 12 In section 207 of the 1986 Act (transactions in fraud of creditors), subsection (2)(a) has effect as if the reference to conduct occurring more than 5 years before the commencement of the winding up were to conduct occurring –
- (a) more than 5 years before the day on which the petition was presented, or
  - (b) if the winding-up order was made more than 6 months after the day on which the petition was presented, more than 5 years and 6 months before the day on which the winding-up order was made.
- 13 In section 208 of the 1986 Act (misconduct in course of winding up), subsection (2) has effect as if the reference to 12 months immediately preceding the commencement of the winding up were to a period which –
- (a) begins with whichever is the later of –

- (i) the day 12 months before the day on which the petition was presented, and
    - (ii) the day 18 months before the day on which the winding-up order was made, and
  - (b) ends with the day on which the winding-up order was made.
- 14 (1) Section 214A of the 1986 Act (as inserted for the purposes of limited liability partnerships by the Limited Liability Partnership Regulations 2001 (S.I. 2001/1090) and the Limited Liability Partnership (Scotland) Regulations 2001 (S.S.I. 2001/128)) has effect as follows.
  - (2) Subsection (2) has effect as if the reference to 2 years ending with the commencement of the winding up were to a period which—
    - (a) begins with whichever is the later of—
      - (i) the day 2 years before the day on which the petition was presented, and
      - (ii) the day 2 years and 6 months before the day on which the winding-up order was made, and
    - (b) ends with the day on which the winding-up order was made.
- 15 (1) Section 240 of the 1986 Act (definition of “relevant time”) has effect as follows.
  - (2) Subsection (1)(a) has effect as if the reference to the period of 2 years ending with the onset of insolvency were to the period which—
    - (a) begins with whichever is the later of—
      - (i) the day 2 years before the day on which the petition was presented, and
      - (ii) the day 2 years and 6 months before the day on which the winding-up order was made, and
    - (b) ends with the day on which the winding-up order was made.
  - (3) Subsection (1)(b) has effect as if the reference to the period of 6 months ending with the onset of insolvency were to the period which—
    - (a) begins with whichever is the later of—
      - (i) the day 6 months before the day on which the petition was presented, and
      - (ii) the day 12 months before the day on which the winding-up order was made, and
    - (b) ends with the day on which the winding-up order was made.
- 16 (1) Section 242 of the 1986 Act (gratuitous alienations (Scotland)) has effect as follows.
  - (2) Subsection (3)(a) has effect as if the reference to a day not earlier than 5 years before the date on which the winding up of the company commences were to—
    - (a) a day not earlier than 5 years before the day on which the petition was presented, or
    - (b) if the winding-up order was made more than 6 months after the day on which the petition was presented, a day not more than 5 years and 6 months before the day on which the winding-up order was made.

- (3) Subsection (3)(b) has effect as if the reference to a day not earlier than 2 years before the date on which the winding up of the company commences were to –
- (a) a day not earlier than 2 years before the day on which the petition was presented, or
  - (b) if the winding-up order was made more than 6 months after the day on which the petition was presented, a day not more than 2 years and 6 months before the day on which the winding-up order was made.
- 17 In section 243 of the 1986 Act (unfair preferences (Scotland)), subsection (1) has effect as if the reference to a preference created not earlier than 6 months before the commencement of the winding up were to a preference created –
- (a) not earlier than 6 months before the day on which the petition was presented, or
  - (b) if the winding-up order was made more than 6 months after the day on which the petition was presented, not earlier than 12 months before the day on which the winding-up order was made.
- 18 (1) Section 245 of the 1986 Act (avoidance of certain floating charges) has effect as follows.
- (2) Subsection (3)(a) has effect as if the reference to the period of 2 years ending with the onset of insolvency were to the period which –
- (a) begins with whichever is the later of –
    - (i) the day 2 years before the day on which the petition was presented, and
    - (ii) the day 2 years and 6 months before the day on which the winding-up order was made, and
  - (b) ends with the day on which the winding-up order was made.
- (3) Subsection (3)(b) has effect as if the reference to the period of 12 months ending with the onset of insolvency were to the period which –
- (a) begins with whichever is the later of –
    - (i) the day 12 months before the day on which the petition was presented, and
    - (ii) the day 18 months before the day on which the winding-up order was made, and
  - (b) ends with the day on which the winding-up order was made.

*Modification of Insolvency Rules and Rules of Court*

- 19 (1) This paragraph applies in relation to a petition which is presented in England and Wales by a creditor under section 124 of the 1986 Act –
- (a) on or after the day on which this Schedule comes into force, but
  - (b) before the end of the relevant period.
- (2) Any provision of the 2016 Insolvency Rules which requires or permits (or authorises the court to require or permit) notice, publication or advertisement of the petition does not apply until such time as the court has made a determination in relation to the question of whether it is likely that the court will be able to make an order under section 122(1)(f) or 221(5)(b) of the 1986 Act.
- (3) Rule 7.5(1) of the 2016 Insolvency Rules (contents of winding-up petition) has effect as if it also required the petition to contain a statement that the

petitioner considers that the condition described in paragraph 2(2) or (4) or 3(2) or (4) of this Schedule (as the case may be) is met.

- (4) In Rule 12.39 of the 2016 Insolvency Rules (the court file), the rights referred to in paragraphs (3) to (5) of that Rule are not exercisable without the permission of the court until such time as the court has made the determination referred to in sub-paragraph (2).
- 20 (1) This paragraph applies in relation to a petition which is presented in Scotland by a creditor under section 124 of the 1986 Act –
- (a) on or after the day on which this Schedule comes into force, but
  - (b) before the end of the relevant period.
- (2) Any provision of Rules of Court which requires or permits (or authorises the court to require or permit) notice, publication, advertisement or inspection of the petition or proceedings does not apply until such time as the court has made a determination in relation to the question of whether it is likely that the court will be able to make an order under section 122(1)(f) or 221(5)(b) of the 1986 Act.
- (3) The court may by order in any case disapply sub-paragraph (2), so far as relating to inspection of the petition or proceedings, to any extent.
- (4) Rules of Court in Scotland have effect as if they required the petition to contain an averment that the petitioner considers that the condition described in paragraph 2(2) or (4) or 3(2) or (4) of this Schedule (as the case may be) is met.

#### *Interpretation*

- 21 (1) In this Part of this Schedule, “relevant period” means the period which –
- (a) begins with 27 April 2020, and
  - (b) ends with 30 September 2020.
- (2) For the purposes of this Part of this Schedule, references to a petition presented by a creditor –
- (a) do not include a petition presented by one or more creditors together with one or more other persons, but
  - (b) subject to that, do include a petition presented by more than one creditor (in which case the condition referred to in paragraph 3(2) or (4) or 4(2) or (4) must be met in relation to each creditor presenting the petition).
- (3) For the purposes of this Part of this Schedule –
- “the 2016 Insolvency Rules” means the Insolvency (England and Wales) Rules 2016 (S.I. 2016/1024);
  - “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
  - coronavirus has a “financial effect” on a company if (and only if) the company’s financial position worsens in consequence of, or for reasons relating to, coronavirus;
  - “interim liquidator” means a person appointed under section 138(1) of the 1986 Act.

PART 3

GENERAL

- 22 In this Schedule –  
“the 1986 Act” means the Insolvency Act 1986;  
“registered company” means a company registered under the Companies Act 2006 in England and Wales or Scotland;  
“unregistered company” has the same meaning as in Part 5 of the 1986 Act.
- 23 (1) The provisions of this Schedule, so far as relating to registered companies, have effect as if they were included in Part 4 of the 1986 Act.
- (2) Sub-paragraph (1) does not apply in relation to paragraph 19 or 20 (modification of insolvency rules).
- (3) In the application of the provisions of this Schedule to charitable incorporated organisations (by virtue of sub-paragraph (1) and paragraph 1 of Schedule 1 to the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (S.I. 2012/3013)) references to section 122(1)(f) of the 1986 Act are to be taken as references to section 122(1)(c) of that Act (as inserted by that Schedule for the purposes of those organisations).

SCHEDULE 11

Section 11

WINDING-UP PETITIONS: NORTHERN IRELAND

PART 1

PROHIBITION OF PETITIONS ON BASIS OF STATUTORY DEMANDS

- 1 (1) No petition for the winding up of a registered company may be presented under Article 104 of the 1989 Order on or after 27 April 2020 on the ground specified in sub-paragraph (a) of Article 103(1) of that Order, where the demand referred to in that sub-paragraph was served during the relevant period.
- (2) No petition for the winding up of an unregistered company may be presented under Article 104 of the 1989 Order on the ground set out in Article 186 of that Order, where the demand referred to in Article 186 was served during the relevant period.
- (3) In this Part of this Schedule, the “relevant period” is the period which –  
(a) begins with 1 March 2020, and  
(b) ends with 30 September 2020.
- (4) This paragraph is to be regarded as having come into force on 27 April 2020.

## PART 2

## RESTRICTION ON WINDING-UP PETITIONS AND ORDERS

*Restriction on winding-up petitions: registered companies*

- 2 (1) A creditor may not during the relevant period present a petition under Article 104 of the 1989 Order for the winding up of a registered company on a ground specified in Article 103(1)(a) to (d) of that Order (“the relevant ground”), unless the condition in sub-paragraph (2) is met.
- (2) The condition referred to in sub-paragraph (1) is that the creditor has reasonable grounds for believing that –
- (a) coronavirus has not had a financial effect on the company, or
  - (b) the facts by reference to which the relevant ground applies would have arisen even if coronavirus had not had a financial effect on the company.
- (3) A creditor may not during the relevant period present a petition under Article 104 of the 1989 Order for the winding up of a registered company on the ground specified in Article 103(1)(e) or (2) of that Order (“the relevant ground”), unless the condition in sub-paragraph (4) is met.
- (4) The condition referred to in sub-paragraph (3) is that the creditor has reasonable grounds for believing that –
- (a) coronavirus has not had a financial effect on the company, or
  - (b) the relevant ground would apply even if coronavirus had not had a financial effect on the company.
- (5) This paragraph is to be regarded as having come into force on 27 April 2020.

*Restriction on winding-up petitions: unregistered companies*

- 3 (1) A creditor may not during the relevant period present a petition under Article 104 of the 1989 Order for the winding up of an unregistered company on a ground specified in Article 186, 187 or 188(1)(a) to (c) of that Order (“the relevant ground”), unless the condition in sub-paragraph (2) is met.
- (2) The condition referred to in sub-paragraph (1) is that the creditor has reasonable grounds for believing that –
- (a) coronavirus has not had a financial effect on the company, or
  - (b) the facts by reference to which the relevant ground applies would have arisen even if coronavirus had not had a financial effect on the company.
- (3) A creditor may not during the relevant period present a petition under Article 104 of the 1989 Order for the winding up of an unregistered company on the ground specified in Article 188(1)(d) or (2) of that Order (“the relevant ground”), unless the condition in sub-paragraph (4) is met.
- (4) The condition referred to in sub-paragraph (3) is that the creditor has reasonable grounds for believing that –
- (a) coronavirus has not had a financial effect on the company, or
  - (b) the relevant ground would apply even if coronavirus had not had a financial effect on the company.

(5) This paragraph is to be regarded as having come into force on 27 April 2020.

*Restriction on winding-up petitions: petitions made before commencement*

- 4 (1) This paragraph applies where a creditor presents a petition under Article 104 of the 1989 Order –
- (a) on or after 27 April 2020, but
  - (b) before the day on which this Schedule comes into force.
- (2) If the High Court is satisfied that the creditor presented the petition without the condition in paragraph 2(2) or (4) or paragraph 3(2) or (4) (as the case may be) being met, the Court may make such order as it thinks appropriate to restore the position to what it would have been if the petition had not been presented.
- (3) If it appears to the official receiver that the person who presented the petition did so without the condition in paragraph 2(2) or (4) or paragraph 3(2) or (4) (as the case may be) being met, the official receiver must refer the matter to the High Court to determine whether to make an order under subparagraph (2).
- (4) For the purposes of the 1991 Insolvency Rules, a reference under subparagraph (3) is to be treated as if it were an application under Article 125 of the 1989 Order.

*Restriction on winding-up orders: registered companies*

- 5 (1) This paragraph applies where –
- (a) a creditor presents a petition for the winding up of a registered company under Article 104 of the 1989 Order in the relevant period,
  - (b) the company is deemed unable to pay its debts on a ground specified in Article 103(1) or (2) of that Order, and
  - (c) it appears to the High Court that coronavirus had a financial effect on the company before the presentation of the petition.
- (2) The High Court may wind the company up under Article 102(f) of the 1989 Order on a ground specified in Article 103(1)(a) to (d) of that Order only if the Court is satisfied that the facts by reference to which that ground applies would have arisen even if coronavirus had not had a financial effect on the company.
- (3) The High Court may wind the company up under Article 102(f) of the 1989 Order on the ground specified in Article 103(1)(e) or (2) of that Order only if the Court is satisfied that the ground would apply even if coronavirus had not had a financial effect on the company.
- (4) This paragraph is to be regarded as having come into force on 27 April 2020.

*Restriction on winding-up orders: unregistered companies*

- 6 (1) This paragraph applies where –
- (a) a creditor presents a petition for the winding up of an unregistered company under Article 104 of the 1989 Order in the relevant period,
  - (b) the company is deemed unable to pay its debts on a ground specified in Article 186, 187 or 188 of that Order, and

- (c) it appears to the High Court that coronavirus had a financial effect on the company before the presentation of the petition.
- (2) The High Court may wind the company up under Article 185(4)(b) of the 1989 Order on a ground specified in Article 186, 187 or 188(1)(a) to (c) of that Order only if the Court is satisfied that the facts by reference to which that ground applies would have arisen even if coronavirus had not had a financial effect on the company.
- (3) The High Court may wind the company up under Article 185(4)(b) of the 1989 Order on the ground specified in Article 188(1)(d) or (2) of that Order only if the Court is satisfied that the ground would apply even if coronavirus had not had a financial effect on the company.
- (4) This paragraph is to be regarded as having come into force on 27 April 2020.

*Restriction on winding-up orders: orders made before commencement*

- 7 (1) This paragraph applies where –
- (a) the High Court makes an order under Article 102(f) or 185(4)(b) of the 1989 Order on or after 27 April 2020 but before the day on which this Schedule comes into force, and
  - (b) the order was not one which the Court would have made had paragraphs 5 and 6 been in force at the time.
- (2) The High Court is to be regarded as having had no power to make the order (and, accordingly, the order is to be regarded as void).
- (3) Neither the official receiver nor the liquidator or provisional liquidator is liable in any civil or criminal proceedings for anything done pursuant to the order.
- (4) The High Court may give such directions to the official receiver, liquidator or provisional liquidator as it thinks fit for the purpose of restoring the company to which the order relates to the position it was in immediately before the petition was presented.
- (5) If at any time it appears to the official receiver that –
- (a) an order made by the High Court under Article 102(f) or 185(4)(b) of the 1989 Order is void by virtue of sub-paragraph (2), and
  - (b) it might be appropriate for the Court to give directions under sub-paragraph (4),
- the official receiver must refer the matter to the Court to determine whether to give such directions.
- (6) For the purposes of the 1991 Insolvency Rules a reference under sub-paragraph (5) is to be treated as if it were an application under Article 125 of the 1989 Order.

*Modifications of 1989 Order*

- 8 (1) Paragraphs 9 to 16 apply where –
- (a) a creditor presents a petition under Article 104 of the 1989 Order during the relevant period in relation to a registered or unregistered company, and
  - (b) the High Court makes an order under Article 102(f) or 185(4)(b) of that Order (“the winding-up order”).



- (2) Paragraphs 9 to 16 are to be regarded as having come into force on 27 April 2020.
- 9 If the winding up would by virtue of Article 109(2) of the 1989 Order be deemed to commence at the time of the presentation of the petition, the winding up is instead for the purposes of that Order to be deemed to commence on the making of the winding-up order.
- 10 In Article 61 of the 1989 Order (liability as contributories of present and past members), paragraph (2)(a) has effect as if the reference to one year or more before the commencement of the winding up were to –
- (a) one year or more before the day on which the petition was presented, or
  - (b) if the winding-up order was made more than 6 months after the day on which the petition was presented, 18 months or more before the day on which the winding-up order was made.
- 11 In Article 170 of the 1989 Order (fraud etc in anticipation of winding up), paragraph (1) has effect as if the reference to 12 months immediately preceding the commencement of the winding up were to a period which –
- (a) begins with whichever is the later of –
    - (i) the day 12 months before the day on which the petition was presented, and
    - (ii) the day 18 months before the day on which the winding-up order was made, and
  - (b) ends with the day on which the winding-up order was made.
- 12 In Article 171 of the 1989 Order (transactions in fraud of creditors), paragraph (1)(a) has effect as if the reference to 5 years immediately preceding the commencement of the winding up were to –
- (a) 5 years immediately preceding the day on which the petition was presented, or
  - (b) if the winding-up order was made more than 6 months after the day on which the petition was presented, 5 years and 6 months immediately preceding the day on which the winding-up order was made.
- 13 In Article 172 of the 1989 Order (misconduct in course of winding up), paragraph (2) has effect as if the reference to 12 months immediately preceding the commencement of the winding up were to a period which –
- (a) begins with whichever is the later of –
    - (i) the day 12 months before the day on which the petition was presented, and
    - (ii) the day 18 months before the day on which the winding-up order was made, and
  - (b) ends with the day on which the winding-up order was made.
- 14 (1) Article 178A of the 1989 Order (as inserted for the purposes of limited liability partnerships by the Limited Liability Partnership Regulations (Northern Ireland) 2004 (S.R. (N.I.) 2004/307)) has effect as follows.
- (2) Paragraph (2) has effect as if the reference to 2 years ending with the commencement of the winding up were to a period which –
- (a) begins with whichever is the later of –

- (i) the day 2 years before the day on which the petition was presented, and
    - (ii) the day 2 years and 6 months before the day on which the winding-up order was made, and
  - (b) ends with the day on which the winding-up order was made.
- 15 (1) Article 204 of the 1989 Order (definition of “relevant time”) has effect as follows.
  - (2) Paragraph (1)(a) has effect as if the reference to the period of 2 years ending with the onset of insolvency were to the period which—
    - (a) begins with whichever is the later of—
      - (i) the day 2 years before the day on which the petition was presented, and
      - (ii) the day 2 years and 6 months before the day on which the winding-up order was made, and
    - (b) ends with the day on which the winding-up order was made.
  - (3) Paragraph (1)(b) has effect as if the reference to the period of 6 months ending with the onset of insolvency were to the period which—
    - (a) begins with whichever is the later of—
      - (i) the day 6 months before the day on which the petition was presented, and
      - (ii) the day 12 months before the day on which the winding-up order was made, and
    - (b) ends with the day on which the winding-up order was made.
- 16 (1) Article 207 of the 1989 Order (avoidance of certain floating charges) has effect as follows.
  - (2) Paragraph (3)(a) has effect as if the reference to the period of 2 years ending with the onset of insolvency were to the period which—
    - (a) begins with whichever is the later of—
      - (i) the day 2 years before the day on which the petition was presented, and
      - (ii) the day 2 years and 6 months before the day on which the winding-up order was made, and
    - (b) ends with the day on which the winding-up order was made.
  - (3) Paragraph (3)(b) has effect as if the reference to the period of 12 months ending with the onset of insolvency were to the period which—
    - (a) begins with whichever is the later of—
      - (i) the day 12 months before the day on which the petition was presented, and
      - (ii) the day 18 months before the day on which the winding-up order was made, and
    - (b) ends with the day on which the winding-up order was made.

#### *Modification of Insolvency Rules*

- 17 (1) This paragraph applies in relation to a petition which is presented by a creditor under Article 104 of the 1989 Order—
  - (a) on or after the day on which this Schedule comes into force, but
  - (b) before the end of the relevant period.

- (2) Any provision of the 1991 Insolvency Rules which requires or permits (or authorises the High Court to require or permit) notice, publication or advertisement of the petition does not apply until such time as the High Court has made a determination in relation to the question of whether it is likely that the Court will be able to make an order under Article 102(f) or 185(4)(b) of the 1989 Order.
- (3) The 1991 Insolvency Rules have effect as if they required the petition to contain a statement that the petitioner considers that the condition described in paragraph 2(2) or (4) or 3(2) or (4) of this Schedule (as the case may be) is met.
- (4) The rights referred to in the following provisions of the 1991 Insolvency Rules are not exercisable without the permission of the High Court –
  - (a) paragraph (1) of Rule 7.25 (right to inspect court record);
  - (b) paragraphs (1) to (3) of Rule 7.27 (right to inspect court file);
  - (c) paragraphs (1) and (2) of Rule 7.55 (right to copy of document in court file).

#### *Interpretation*

- 18 (1) In this Part of this Schedule, “relevant period” means the period which –
  - (a) begins with 27 April 2020, and
  - (b) ends with 30 September 2020.
- (2) For the purposes of this Part of this Schedule, references to a petition presented by a creditor –
  - (a) do not include a petition presented by one or more creditors together with one or more other persons, but
  - (b) subject to that, do include a petition presented by more than one creditor (in which case the condition referred to in paragraph 3(2) or (4) or 4(2) or (4) must be met in relation to each creditor presenting the petition).
- (3) For the purposes of this Part of this Schedule –

“the 1991 Insolvency Rules” means the Insolvency Rules (Northern Ireland) 1991 (S.R. (N.I.) 1991/364);

“coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

coronavirus has a “financial effect” on a company if (and only if) the company’s financial position worsens in consequence of, or for reasons relating to, coronavirus.

#### PART 3

#### GENERAL

- 19 In this Schedule –

“the 1989 Order” means the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));

“registered company” means a company registered under the Companies Act 2006 in Northern Ireland;

“unregistered company” has the same meaning as in Part 6 of the 1989 Order.

- 20 (1) The provisions of this Schedule, so far as relating to registered companies, have effect as if they were included in Part 5 of the 1989 Order.
- (2) Sub-paragraph (1) does not apply in relation to paragraph 17 (modification of insolvency rules).

## SCHEDULE 12

Section 14

### PROTECTION OF SUPPLIES OF GOODS AND SERVICES: GREAT BRITAIN

#### PART 1

#### EXCLUSIONS

- 1 In the Insolvency Act 1986, after Schedule 4 insert—

#### “SCHEDULE 4ZZA

Section 233B

#### PROTECTION OF SUPPLIES UNDER SECTION 233B: EXCLUSIONS

#### PART 1

#### ESSENTIAL SUPPLIES

#### *Essential supplies*

- 1 (1) Section 233B(3) and (4) do not apply in relation to provision of a contract if—
- (a) the company becomes subject to a relevant insolvency procedure as specified in section 233B(2)(b) or (d), and
  - (b) the provision of the contract ceases to have effect under section 233A(1).
- (2) Section 233B(7) does not apply in relation to a supply to the company if—
- (a) the company becomes subject to a relevant insolvency procedure as specified in section 233B(2)(b) to (f), and
  - (b) the supply is a supply mentioned in section 233(3).

#### PART 2

#### PERSONS INVOLVED IN FINANCIAL SERVICES

#### *Introductory*

- 2 Section 233B does not apply in relation to a contract for the supply of goods or services to a company (“the company”) where any of paragraphs 3 to 11 applies.

#### *Insurers*

- 3 (1) This paragraph applies where either the company or the supplier—

- (a) carries on the regulated activity of effecting or carrying out contracts of insurance, and
  - (b) is not an exempt person in relation to that activity.
- (2) In this paragraph—
- “exempt person”, in relation to a regulated activity, has the meaning given by section 417 of the Financial Services and Markets Act 2000;
  - “regulated activity” has the meaning given by section 22 of that Act, taken with Schedule 2 to that Act and any order under that section.

#### *Banks*

- 4 (1) This paragraph applies where either the company or the supplier—
- (a) has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits,
  - (b) is a banking group company within the meaning of Part 1 of the Banking Act 2009 (see section 81D of that Act), or
  - (c) has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 or the Banking Act 1987.
- (2) In sub-paragraph (1)(a) “regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section.

#### *Electronic money institutions*

- 5 This paragraph applies where either the company or the supplier is an electronic money institution within the meaning of the Electronic Money Regulations 2011 (S.I. 2011/99) (see regulation 2 of those Regulations).

#### *Investment banks and investment firms*

- 6 (1) This paragraph applies where either the company or the supplier is an investment bank or an investment firm.
- (2) In this paragraph—
- “investment bank” means a company or other entity that has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of—
    - (a) safeguarding and administering investments,
    - (b) managing an AIF or a UCITS,
    - (c) acting as trustee or depositary of an AIF or a UCITS,
    - (d) dealing in investments as principal, or
    - (e) dealing in investments as agent;
  - “investment firm” has the same meaning as in the Banking Act 2009 (see section 258A of that Act), disregarding any order made under section 258A(2)(b) of that Act;

“regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section.

*Payment institutions*

- 7 This paragraph applies where either the company or the supplier is an authorised payment institution, a small payment institution or a registered account information service provider within the meaning of the Payment Services Regulations 2017 (S.I. 2017/752) (see regulation 2 of those Regulations).

*Operators of payment systems, infrastructure providers etc*

- 8 This paragraph applies where either the company or the supplier is –
- (a) the operator of a payment system or an infrastructure provider within the meaning of Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 42 of that Act), or
  - (b) an infrastructure company within the meaning of Part 6 of that Act (see section 112 of that Act).

*Recognised investment exchanges etc*

- 9 This paragraph applies where either the company or the supplier is a recognised investment exchange, a recognised clearing house or a recognised CSD within the meaning of the Financial Services and Markets Act 2000 (see section 285 of that Act).

*Securitisation companies*

- 10 This paragraph applies where either the company or the supplier is a securitisation company within the meaning of the Taxation of Securitisation Companies Regulations 2006 (S.I. 2006/3296) (see regulation 4 of those Regulations).

*Overseas activities*

- 11 This paragraph applies where either the company or the supplier does or has done anything outside the United Kingdom which, if done in the United Kingdom, would cause any of the preceding paragraphs of this Part of this Schedule to apply.

PART 3

CONTRACTS INVOLVING FINANCIAL SERVICES

*Introductory*

- 12 To the extent that anything to which any of paragraphs 13 to 18 applies is a contract for the supply of goods or services, section 233B does not apply in relation to it.

*Financial contracts*

- 13 (1) This paragraph applies to a financial contract.
- (2) “Financial contract” means –
- (a) a contract for the provision of financial services consisting of –
    - (i) lending (including the factoring and financing of commercial transactions),
    - (ii) financial leasing, or
    - (iii) providing guarantees or commitments;
  - (b) a securities contract, including –
    - (i) a contract for the purchase, sale or loan of a security or group or index of securities;
    - (ii) an option on a security or group or index of securities;
    - (iii) a repurchase or reverse repurchase transaction on any such security, group or index;
  - (c) a commodities contract, including –
    - (i) a contract for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;
    - (ii) an option on a commodity or group or index of commodities;
    - (iii) a repurchase or reverse repurchase transaction on any such commodity, group or index;
  - (d) a futures or forwards contract, including a contract (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;
  - (e) a swap agreement, including –
    - (i) a swap or option relating to interest rates, spot or other foreign exchange agreements, currency, an equity index or equity, a debt index or debt, commodity indexes or commodities, weather, emissions or inflation;
    - (ii) a total return, credit spread or credit swap;
    - (iii) any agreement or transaction similar to an agreement that is referred to in sub-paragraph (i) or (ii) and is the subject of recurrent dealing in the swaps or derivatives markets;
  - (f) an inter-bank borrowing agreement where the term of the borrowing is three months or less;
  - (g) a master agreement for any of the contracts or agreements referred to in paragraphs (a) to (f).
- (3) For the purposes of this paragraph “commodities” includes –
- (a) units recognised for compliance with the requirements of EU Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading,

- (b) allowances under paragraph 5 of Schedule 2 to the Climate Change Act 2008 relating to a trading scheme dealt with under Part 1 of that Schedule (schemes limiting activities relating to emissions of greenhouse gas), and
- (c) renewables obligation certificates issued –
  - (i) by the Gas and Electricity Markets Authority under an order made under section 32B of the Electricity Act 1989, or
  - (ii) by the Northern Ireland Authority for Utility Regulation under the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) and pursuant to an order made under Articles 52 to 55F of that Order.

#### *Securities financing transactions*

- 14 (1) This paragraph applies to –
- (a) a securities financing transaction, and
  - (b) a master agreement for securities financing transactions.
- (2) “Securities financing transaction” has the meaning given by Article 3(11) of Regulation (EU) 2015/2365 on the transparency of securities financing transactions.
- (3) But for the purposes of that Article as it applies for the purposes of this paragraph, references to “commodities” in that Regulation are to be taken as including the units, allowances and certificates referred to in paragraph 13(3)(a) to (c).

#### *Derivatives*

- 15 (1) This paragraph applies to –
- (a) a derivative, and
  - (b) a master agreement for derivatives.
- (2) “Derivative” has the meaning given by Article 2(5) of Regulation (EU) No. 648/2012.

#### *Spot contracts*

- 16 (1) This paragraph applies to –
- (a) a spot contract, and
  - (b) a master agreement for spot contracts.
- (2) “Spot contract” has the meaning given by Article 7(2) or 10(2) of Commission Delegated Regulation of 25.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.



*Capital market investments*

- 17 (1) This paragraph applies to an agreement which is, or forms part of, an arrangement involving the issue of a capital market investment.
- (2) “Capital market investment” has the meaning given by paragraph 14 of Schedule ZA1.

*Contracts forming part of a public-private partnership*

- 18 This paragraph applies to a contract forming part of a public-private partnership project within the meaning given by paragraph 16 of Schedule ZA1.

PART 4

OTHER EXCLUSIONS

*Financial markets and insolvency*

- 19 Nothing in section 233B affects the operation of—
- (a) Part 7 of the Companies Act 1989 (financial markets and insolvency),
  - (b) the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469),
  - (c) the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), or
  - (d) the Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226).

*Set-off and netting*

- 20 Nothing in section 233B affects any set-off or netting arrangements (within the meanings given by section 48(1)(c) and (d) of the Banking Act 2009).

*Aircraft equipment*

- 21 Nothing in section 233B affects the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 (S.I. 2015/912).”

PART 2

CONSEQUENTIAL AMENDMENTS

*Amendments to Acts*

- 2 In Schedule 15 to the Building Societies Act 1986 (application of companies

winding up legislation to building societies), after paragraph 32 insert –

*“Protection of supplies*

32A Section 233B of the Act (protection of supplies of goods and services) does not apply.”

- 3 In Schedule 15A to the Building Societies Act 1986 (application of other companies insolvency legislation to building societies), after paragraph 27F insert –

*“Protection of supplies*

27FA Section 233B of the Act (protection of supplies of goods and services) is omitted.”

- 4 In Schedule 10 to the Friendly Societies Act 1992 (application of companies winding up legislation to friendly societies), after paragraph 35 insert –

*“Protection of supplies*

35A Section 233B of the Act (protection of supplies of goods and services) does not apply.”

*Amendments to subordinate legislation*

- 5 In the Insolvent Partnerships Order 1994 (S.I. 1994/2421), in article 4(3)(a), for “section 233 and section 233A” substitute “sections 233, 233A and 233B and Schedule 4ZZA”.

- 6 In Schedule 4 to the Limited Liability Partnerships Regulations 2001 (S.I. 2001/1090) (disapplications for Scotland), after the entry relating to section 233A insert –

“Section 233B to the extent that that section applies in the case of the appointment of an administrative receiver.”

- 7 In Schedule 2 to the Limited Liability Partnerships (Scotland) Regulations 2001 (S.S.I. 2001/128), after the entry relating to section 233A insert –

“Section 233B to the extent that that section applies in the case of the appointment of an administrative receiver.”

- 8 In Schedule 3 to the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 (S.I. 2014/229), after paragraph 3 insert –

“3A Section 233B (protection of supplies of goods and services) does not apply in relation to a registered society that is registered as a credit union.”

SCHEDULE 13

Section 18

PROTECTION OF SUPPLIES OF GOODS AND SERVICES: NORTHERN IRELAND

PART 1

EXCLUSIONS

- 1 After Schedule 2 to the Insolvency (Northern Ireland) Order 1989 insert –  
“SCHEDULE 2ZZA Article 197B

PROTECTION OF SUPPLIES UNDER ARTICLE 197B: EXCLUSIONS

PART 1

ESSENTIAL SUPPLIES

*Essential supplies*

- 1 (1) Article 197B(3) and (4) do not apply in relation to provision of a contract if –  
(a) the company becomes subject to a relevant insolvency procedure as specified in Article 197B(2)(b) or (d), and  
(b) the provision of the contract ceases to have effect under Article 197A(1).  
(2) Article 197B(7) does not apply in relation to a supply to the company if –  
(a) the company becomes subject to a relevant insolvency procedure as specified in Article 197B(2)(b) to (f), and  
(b) the supply is a supply mentioned in Article 197(3).

PART 2

PERSONS INVOLVED IN FINANCIAL SERVICES

*Introductory*

- 2 Article 197B does not apply in relation to a contract for the supply of goods or services to a company (“the company”) where any of paragraphs 3 to 11 applies.

*Insurers*

- 3 (1) This paragraph applies where either the company or the supplier –  
(a) carries on the regulated activity of effecting or carrying out contracts of insurance, and  
(b) is not an exempt person in relation to that activity.  
(2) In this paragraph –  
“exempt person”, in relation to a regulated activity, has the meaning given by section 417 of the Financial Services and Markets Act 2000;

“regulated activity” has the meaning given by section 22 of that Act, taken with Schedule 2 to that Act and any order under that section.

#### *Banks*

- 4 (1) This paragraph applies where either the company or the supplier –
- (a) has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits,
  - (b) is a banking group company within the meaning of Part 1 of the Banking Act 2009 (see section 81D of that Act), or
  - (c) has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 or the Banking Act 1987.
- (2) In sub-paragraph (1)(a) “regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section.

#### *Electronic money institutions*

- 5 This paragraph applies where either the company or the supplier is an electronic money institution within the meaning of the Electronic Money Regulations 2011 (S.I. 2011/99) (see regulation 2 of those Regulations).

#### *Investment banks and investment firms*

- 6 (1) This paragraph applies where either the company or the supplier is an investment bank or an investment firm.
- (2) In this paragraph –
- “investment bank” means a company or other entity that has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of –
- (a) safeguarding and administering investments,
  - (b) managing an AIF or a UCITS,
  - (c) acting as trustee or depositary of an AIF or a UCITS,
  - (d) dealing in investments as principal, or
  - (e) dealing in investments as agent;
- “investment firm” has the same meaning as in the Banking Act 2009 (see section 258A of that Act), disregarding any order made under section 258A(2)(b) of that Act;
- “regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section.

#### *Payment institutions*

- 7 This paragraph applies where either the company or the supplier is an authorised payment institution, a small payment institution

or a registered account information service provider within the meaning of the Payment Services Regulations 2017 (S.I. 2017/752) (see regulation 2 of those Regulations).

*Operators of payment systems, infrastructure providers etc*

- 8 This paragraph applies where either the company or the supplier is –
- (a) the operator of a payment system or an infrastructure provider within the meaning of Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 42 of that Act), or
  - (b) an infrastructure company within the meaning of Part 6 of that Act (see section 112 of that Act).

*Recognised investment exchanges etc*

- 9 This paragraph applies where either the company or the supplier is a recognised investment exchange, a recognised clearing house or a recognised CSD within the meaning of the Financial Services and Markets Act 2000 (see section 285 of that Act).

*Securitisation companies*

- 10 This paragraph applies where either the company or the supplier is a securitisation company within the meaning of the Taxation of Securitisation Companies Regulations 2006 (S.I. 2006/3296) (see regulation 4 of those Regulations).

*Overseas activities*

- 11 This paragraph applies where either the company or the supplier does or has done anything outside the United Kingdom which, if done in the United Kingdom, would cause any of the preceding paragraphs of this Part of this Schedule to apply.

PART 3

CONTRACTS INVOLVING FINANCIAL SERVICES

*Introductory*

- 12 To the extent that anything to which any of paragraphs 13 to 18 applies is a contract for the supply of goods or services, Article 197B does not apply in relation to it.

*Financial contracts*

- 13 (1) This paragraph applies to a financial contract.
- (2) “Financial contract” means –
- (a) a contract for the provision of financial services consisting of –
    - (i) lending (including the factoring and financing of commercial transactions),

- (ii) financial leasing, or
    - (iii) providing guarantees or commitments;
  - (b) a securities contract, including –
    - (i) a contract for the purchase, sale or loan of a security or group or index of securities;
    - (ii) an option on a security or group or index of securities;
    - (iii) a repurchase or reverse repurchase transaction on any such security, group or index;
  - (c) a commodities contract, including –
    - (i) a contract for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;
    - (ii) an option on a commodity or group or index of commodities;
    - (iii) a repurchase or reverse repurchase transaction on any such commodity, group or index;
  - (d) a futures or forwards contract, including a contract (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;
  - (e) a swap agreement, including –
    - (i) a swap or option relating to interest rates, spot or other foreign exchange agreements, currency, an equity index or equity, a debt index or debt, commodity indexes or commodities, weather, emissions or inflation;
    - (ii) a total return, credit spread or credit swap;
    - (iii) any agreement or transaction similar to an agreement that is referred to in sub-paragraph (i) or (ii) and is the subject of recurrent dealing in the swaps or derivatives markets;
  - (f) an inter-bank borrowing agreement where the term of the borrowing is three months or less;
  - (g) a master agreement for any of the contracts or agreements referred to in paragraphs (a) to (f).
- (3) For the purposes of this paragraph “commodities” includes –
- (a) units recognised for compliance with the requirements of EU Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading,
  - (b) allowances under paragraph 5 of Schedule 2 to the Climate Change Act 2008 relating to a trading scheme dealt with under Part 1 of that Schedule (schemes limiting activities relating to emissions of greenhouse gas), and
  - (c) renewables obligation certificates issued –
    - (i) by the Gas and Electricity Markets Authority under an order made under section 32B of the Electricity Act 1989, or
    - (ii) by the Northern Ireland Authority for Utility Regulation under the Energy (Northern Ireland)

Order 2003 (S.I. 2003/419 (N.I. 6)) and pursuant to an order made under Articles 52 to 55F of that Order.

*Securities financing transactions*

- 14 (1) This paragraph applies to –
  - (a) a securities financing transaction, and
  - (b) a master agreement for securities financing transactions.
- (2) “Securities financing transaction” has the meaning given by Article 3(11) of Regulation (EU) 2015/2365 on the transparency of securities financing transactions.
- (3) But for the purposes of that Article as it applies for the purposes of this paragraph, references to “commodities” in that Regulation are to be taken as including the units, allowances and certificates referred to in paragraph 13(3)(a) to (c).

*Derivatives*

- 15 (1) This paragraph applies to –
  - (a) a derivative, and
  - (b) a master agreement for derivatives.
- (2) “Derivative” has the meaning given by Article 2(5) of Regulation (EU) No. 648/2012.

*Spot contracts*

- 16 (1) This paragraph applies to –
  - (a) a spot contract, and
  - (b) a master agreement for spot contracts.
- (2) “Spot contract” has the meaning given by Article 7(2) or 10(2) of Commission Delegated Regulation of 25.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

*Capital market investments*

- 17 (1) This paragraph applies to an agreement which is, or forms part of, an arrangement involving the issue of a capital market investment.
- (2) “Capital market investment” has the meaning given by paragraph 14 of Schedule ZA1.

*Contracts forming part of a public-private partnership*

- 18 This paragraph applies to a contract forming part of a public-private partnership project within the meaning given by paragraph 16 of Schedule ZA1.

## PART 4

### OTHER EXCLUSIONS

#### *Financial markets and insolvency*

- 19 Nothing in Article 197B affects the operation of –
- (a) Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990 (financial markets and insolvency),
  - (b) the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (S.R. 1996/252),
  - (c) the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), or
  - (d) the Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226).

#### *Set-off and netting*

- 20 Nothing in Article 197B affects any set-off or netting arrangements (within the meanings given by section 48(1)(c) and (d) of the Banking Act 2009).

#### *Aircraft equipment*

- 21 Nothing in Article 197B affects the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 (S.I. 2015/912).”

## PART 2

### CONSEQUENTIAL AMENDMENTS

#### *Amendments to Acts*

- 2 In Schedule 15 to the Building Societies Act 1986 (application of companies winding up legislation to building societies), after paragraph 55D insert –

#### *“Protection of supplies*

- 55DA Article 197B (protection of supplies of goods and services) does not apply.”

- 3 In Schedule 15A to the Building Societies Act 1986 (application of other companies insolvency legislation to building societies), after paragraph 52 insert –

#### *“Protection of supplies*

- 52A Article 197B of the Order (protection of supplies of goods and services) is omitted.”

- 4 In Schedule 10 to the Friendly Societies Act 1992 (application of companies



winding up legislation to friendly societies), after paragraph 65 insert—

*“Protection of supplies*

65A Article 197B of the Order (protection of supplies of goods and services) does not apply.”

*Amendment to subordinate legislation*

- 5 In the Insolvent Partnerships Order (Northern Ireland) 1995 (S.R. (N.I.) 1995/225), in article 4(3)(b), for “Article 197” substitute “Articles 197 to 197B”.

## SCHEDULE 14

Section 37

### MEETINGS OF COMPANIES AND OTHER BODIES

*Meaning of “qualifying body”*

- 1 In this Schedule “qualifying body” means—
- (a) a registered society within the meaning of the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)),
  - (b) a credit union within the meaning of the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12)),
  - (c) a building society within the meaning of the Building Societies Act 1986,
  - (d) a society that is registered within the meaning of the Friendly Societies Act 1974 or incorporated under the Friendly Societies Act 1992,
  - (e) a registered branch within the meaning of the Friendly Societies Act 1992,
  - (f) a Scottish charitable incorporated organisation within the meaning of Chapter 7 of Part 1 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10),
  - (g) a company within the meaning of section 1(1) of the Companies Act 2006,
  - (h) a charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011, and
  - (i) a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014.

*Meaning of “relevant period”*

- 2 (1) In this Schedule the “relevant period” means the period which—
- (a) begins with 26 March 2020, and
  - (b) ends with 30 September 2020.
- (2) The appropriate national authority may by regulations substitute for the date for the time being specified in sub-paragraph (1)(b)—
- (a) an earlier date, or

- (b) a later date that is not more than three months after the date for the time being so specified and is not later than 5 April 2021.
- (3) Regulations under sub-paragraph (2) may make consequential or transitional provision or savings.
- (4) In sub-paragraph (2) “the appropriate national authority” means –
  - (a) in relation to a qualifying body within paragraph 1(c), (d), (e), (g), (h), or (i), the Secretary of State,
  - (b) in relation to a qualifying body within paragraph 1(f), the Scottish Ministers, and
  - (c) in relation to a qualifying body within paragraph 1(a) or (b), the Department for the Economy in Northern Ireland.

*Meetings of qualifying bodies held during the relevant period*

- 3 (1) This paragraph applies to a meeting within sub-paragraph (2) that is held during the relevant period.
- (2) A meeting is within this sub-paragraph if it is –
  - (a) a general meeting of a qualifying body,
  - (b) a meeting of any class of members of a qualifying body, or
  - (c) a meeting of delegates appointed by members of a qualifying body.
- (3) The meeting need not be held at any particular place.
- (4) The meeting may be held, and any votes may be permitted to be cast, by electronic means or any other means.
- (5) The meeting may be held without any number of those participating in the meeting being together at the same place.
- (6) A member of the qualifying body does not have a right –
  - (a) to attend the meeting in person,
  - (b) to participate in the meeting other than by voting, or
  - (c) to vote by particular means.
- (7) The provisions of any enactment relating to meetings within sub-paragraph (2) have effect subject to this paragraph.
- (8) The provisions of the constitution or rules of the qualifying body have effect subject to this paragraph.

*Meetings of qualifying bodies held during the relevant period: power to make further provision*

- 4 (1) The appropriate national authority may by regulations make provision for the purposes of, or in connection with, paragraph 3.
- (2) The appropriate national authority may by regulations make provision about the means by which, the form in which, and the period within which, any notice or other document relating to a meeting to which paragraph 3 applies or is expected to apply may be given or made available.
- (3) Regulations under this paragraph may –
  - (a) disapply or modify provisions of an enactment relating to meetings within paragraph 3(2);

- (b) disapply or modify provisions of the constitution or rules of a qualifying body;
  - (c) make different provision for different purposes;
  - (d) make consequential, incidental or supplementary provision (including provision disapplying or modifying a provision of an enactment);
  - (e) make transitional provision or savings.
- (4) In this paragraph “the appropriate national authority” means –
- (a) in relation to qualifying bodies within paragraph 1(g) or (h), the Secretary of State,
  - (b) in relation to qualifying bodies within paragraph 1(c), (d), (e) or (i), the Treasury,
  - (c) in relation to qualifying bodies within paragraph 1(f), the Scottish Ministers, and
  - (d) in relation to qualifying bodies within paragraph 1(a) or (b), the Department for the Economy in Northern Ireland.

*Extension of period for qualifying body to hold annual general meeting*

- 5
- (1) This paragraph applies where by reason of any provision a qualifying body is or was under a duty to hold a general meeting as its annual general meeting during a period (“the due period”) that ends during the relevant period.
  - (2) The provision is to be read as if it imposes (and had always imposed) a duty on the qualifying body to hold a general meeting as its annual general meeting during the period that begins with the due period and ends with the relevant period (but this is subject to regulations under paragraph 6).
  - (3) If by reason of regulations made under paragraph 2 the relevant period is a period that ends after 30 September 2020 this paragraph has effect as if the relevant period were a period that ends with 30 September 2020.
  - (4) In this paragraph a reference to “any provision” is a reference to any provision of an enactment or of the constitution or rules of the qualifying body.
  - (5) In the application of this paragraph in relation to a public company, the references to a duty to hold a general meeting as its annual general meeting are to be read as including a reference to a duty to hold an accounts meeting.

*Power to extend period for qualifying body to hold annual general meeting*

- 6
- (1) The appropriate national authority may by regulations provide for any provision that would (but for the regulations) have the effect mentioned in sub-paragraph (2) to be read as if instead it had (and always had had) the effect mentioned in sub-paragraph (3).
  - (2) The effect is that of imposing on a qualifying body a duty to hold a general meeting as its annual general meeting during a period (“the overlapping period”) that overlaps to any extent with the relevant period.
  - (3) The effect is that of imposing on the qualifying body a duty to hold a general meeting as its annual general meeting during a period that –
    - (a) begins with the overlapping period, and

- (b) ends with such period immediately following the end of the overlapping period as is specified in the regulations.
- (4) A period specified in regulations for the purposes of sub-paragraph (3)(b) must not exceed 8 months.
- (5) Regulations under this paragraph may –
  - (a) make different provision for different purposes;
  - (b) make consequential, incidental or supplementary provision (including provision disapplying or modifying a provision of an enactment);
  - (c) make transitional provision or savings.
- (6) In sub-paragraph (1) the reference to “any provision” is a reference to any provision of an enactment or of the constitution or rules of a qualifying body.
- (7) In this paragraph “the appropriate national authority” has the same meaning as in paragraph 4.
- (8) In the application of this paragraph in relation to a public company, the references to a duty to hold a general meeting as its annual general meeting are to be read as including a reference to a duty to hold an accounts meeting.

*Regulations made by the Secretary of State or the Treasury*

- 7 (1) Regulations made by the Secretary of State or the Treasury under this Schedule are to be made by statutory instrument.
- (2) A statutory instrument containing regulations made by the Secretary of State under paragraph 2(2)(a) of this Schedule is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) A statutory instrument containing regulations made by the Secretary of State under paragraph 2(2)(b) of this Schedule or containing regulations made by the Secretary of State or the Treasury under paragraph 4 or 6 of this Schedule must be laid before Parliament as soon as reasonably practicable after being made.
- (4) Sub-paragraph (3) does not apply if a draft of the statutory instrument has been laid before and approved by a resolution of each House of Parliament.
- (5) Regulations contained in a statutory instrument laid before Parliament by virtue of sub-paragraph (3) cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made, unless during that period the instrument is approved by a resolution of each House of Parliament.
- (6) In calculating the period of 40 days, no account is to be taken of any time during which –
  - (a) Parliament is dissolved or prorogued, or
  - (b) both Houses of Parliament are adjourned for more than 4 days.
- (7) Where regulations cease to have effect as a result of sub-paragraph (5) that does not –
  - (a) affect anything previously done under or by virtue of the regulations, or
  - (b) prevent the making of new regulations.

*Regulations made by the Scottish Ministers*

- 8
- (1) Regulations made by the Scottish Ministers under paragraph 2(2)(a) of this Schedule are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
  - (2) Regulations made by the Scottish Ministers under paragraph 2(2)(b), 4 or 6 of this Schedule must be laid before the Scottish Parliament as soon as reasonably practicable after being made.
  - (3) Sub-paragraph (2) does not apply if the regulations have been subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).
  - (4) Regulations laid before the Scottish Parliament by virtue of sub-paragraph (2) cease to have effect at the end of the period of 40 days beginning with the day on which they are made, unless during that period the regulations are approved by a resolution of the Scottish Parliament.
  - (5) In calculating the period of 40 days, no account is to be taken of any time during which the Scottish Parliament is –
    - (a) dissolved, or
    - (b) in recess for more than 4 days.
  - (6) Where regulations cease to have effect as a result of sub-paragraph (4) that does not –
    - (a) affect anything previously done under or by virtue of the regulations, or
    - (b) prevent the making of new regulations.
  - (7) Section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 does not apply in relation to regulations to which sub-paragraph (2) applies.

*Regulations made by the Department for the Economy in Northern Ireland*

- 9
- (1) Regulations made by the Department for the Economy in Northern Ireland under paragraph 2(2)(a) of this Schedule are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).
  - (2) Regulations made by the Department for the Economy in Northern Ireland under paragraph 2(2)(b), 4 or 6 of this Schedule must be laid before the Assembly as soon as reasonably practicable after being made.
  - (3) Sub-paragraph (2) does not apply if a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
  - (4) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of sub-paragraph (3) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.
  - (5) Regulations laid before the Assembly by virtue of sub-paragraph (2) cease to have effect at the end of the period of 40 days beginning with the day on which the regulations are made, unless during that period the regulations are approved by a resolution of the Assembly.
  - (6) In calculating the period of 40 days, no account is to be taken of any time during which the Assembly is –

- (a) dissolved,
  - (b) in recess for more than 4 days, or
  - (c) adjourned for more than 6 days.
- (7) Where regulations cease to have effect as a result of sub-paragraph (5) that does not—
- (a) affect anything previously done under or by virtue of the regulations, or
  - (b) prevent the making of new regulations.
- (8) A power of the Department for the Economy in Northern Ireland to make regulations under this Schedule is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (9) In this paragraph “the Assembly” means the Northern Ireland Assembly.

*Other interpretation*

10 In this Schedule—

- “accounts meeting” means a general meeting of a public company at which the company’s annual accounts and reports (within the meaning given by section 471 of the Companies Act 2006) are laid;
- “constitution”, in relation to a company, is to be construed in accordance with section 17 of the Companies Act 2006;
- “enactment” includes an Act of the Scottish Parliament and an instrument made under such an Act;
- “public company” has the meaning given by section 4(2) of the Companies Act 2006.