



Insolvency Act 1986

1986 CHAPTER 45

[^{F1}PART A1

MORATORIUM

[^{F1}CHAPTER 5

THE MONITOR

Textual Amendments

- F1** Pt. A1 inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), **ss. 1(1), 49(1)** (with **ss. 2(2), 5(2)**)

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.

Changes to legislation: Insolvency Act 1986, CHAPTER 5 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Modifications etc. (not altering text)

- C1** S. A35(1) modified (temp.) (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 4 para. 9](#) (with ss. 2(2), 5(2), [Sch. 4 para. 1](#))

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).

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Modifications etc. (not altering text)

- C2** S. A38(1) modified (temp.) (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 4 para. 10](#) (with ss. 2(2), 5(2), [Sch. 4 para. 1](#))

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—

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- (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.]

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act amendment to earlier affecting provision S.I. 1986/1999, art. 3, Sch. 1 Pt. 2 by [S.I. 2017/1119 Sch. 3 para. 1](#)
- Act savings and transitional provisions for amendments by S.I. 2022/1166 by [S.I. 2022/1172 Regulations](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 41HB(2) words substituted by [2018 c. 14 s. 1\(3\)\(b\)](#)