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DEAR INSOLVENCY PRACTITIONER

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Dear Reader

Please find enclosed the latest articles from the Insolvency Service.

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67) Permanent rules for the new Part A1 moratorium

Permanent procedural rules for England and Wales and Scotland for the new Part A1 moratorium introduced by the Corporate Insolvency and Governance Act 2020 (CIG Act) are due to come into force on 1st October 2021. The permanent rules will replace the temporary rules in Schedule 4 of the CIG Act.

The Insolvency (England and Wales) (Amendment) (No.2) Rules 2021, and the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) (Amendment) Rules 2021, and the Insolvency (Scotland) (Receivership and Winding up) (Amendment) Rules 2021 incorporate rules for the moratorium into the principal 2016 and 2018 Rules for England and Wales and Scotland respectively.

The policy of the permanent rules follows closely that of the temporary rules.

Following feedback from users of the temporary rules, the opportunity has been taken to improve the operation of the moratorium by making some policy changes. For example, many of the notice periods relating to the moratorium are now expressed as “business days” to align with the convention used in the 2016 and 2018 Rules for other insolvency procedures. Also, for the purpose of deciding whether to bring a moratorium to an end, the permanent rules provide that the monitor must disregard debts they have reasonable grounds for thinking are likely to be paid or compounded to the satisfaction of the creditor within 5 days of the monitor’s decision. This will provide additional flexibility for companies to explore rescue and restructure of their businesses.

In Scotland, rules for court procedure are contained in the Rules for the Court of Session and the Sheriff Court Company Insolvency Rules and the Scottish insolvency rules should be read together with those court rules.

*Any enquiries regarding this article should be directed towards
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68) New targeted criteria for Winding Up Petitions

On Thursday 9 September 2021, the Government laid regulations to replace the current temporary restrictions on the use of statutory demands and company winding up petitions that were introduced by the Corporate Insolvency and Governance Act 2020 to protect businesses affected by the Coronavirus pandemic, and which are due to expire on 30 September 2021.

The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Amendment of Schedule 10) Regulations 2021 are due to come into force on 1 October 2021 and introduce the following new targeted criteria to taper the effects of the current measures:

1. Increasing the debt that must be owed to present a company winding up petition to £10k;
2. Creditors must seek proposals from the debtor business for repayment of the debt, giving 21 days to respond before they can proceed with a winding up petition; and
3. Commercial Landlords must still demonstrate to a court that debts are not Coronavirus related until the end of March 2022.

This will promote a gradual return to the normal functioning of the insolvency framework, minimising the possible effects following withdrawal of the current provisions and extending some of the support to companies impacted by the effects of Coronavirus.

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