



# Corporate Insolvency and Governance Act 2020

## 2020 CHAPTER 12

*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;

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- (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);

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- (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 [F129 April 2022].
- (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.

#### **Textual Amendments**

**F1** Words in s. 32(1) substituted (29.4.2021) by [The Corporate Insolvency and Governance Act 2020 \(Coronavirus\) \(Change of Expiry Date in section 32\(1\)\) Regulations \(Northern Ireland\) 2021 \(S.R. 2021/104\)](#), regs. 1, 2

### **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—

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- (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) of 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—

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“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—

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- (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.

**Changes to legislation:**

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