

EXPLANATORY MEMORANDUM TO

The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Suspension of Liability for Wrongful Trading Regulations (Northern Ireland) 2020

S.R. No. 320

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for the Economy to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under the powers conferred by section 28(1) of the Corporate Insolvency and Governance Act 2020 ("the Act) and is subject to the Confirmatory resolution procedure.

2. Purpose

- 2.1. This Statutory Rule will restore provision in the Corporate Insolvency and Governance Act 2020 ("the CIG Act") suspending directors' liability for wrongful trading and extend the operation of that provision until 30 April 2021

3. Background

- 3.1. The CIG Act provided for certain temporary modifications to corporate insolvency legislation, included in that Act to expire on 30 September 2020.
- 3.2. All but one of these modifications was extended for a further period by the Corporate Insolvency and Governance Act 2020 (Amendment of Certain Relevant Periods) Regulations (Northern Ireland) 2020 (S.R. 2020 No.199).
- 3.3. The one temporary modification which was not extended was section 13 of the CIG Act which suspends the application of Article 178 of the Insolvency (Northern Ireland) Order 1989, under which company directors can be held personally liable if a decision to allow an insolvent company to continue trading results in a worsening of its financial position to the detriment of creditors.
- 3.4. The operation of Article 178 was suspended for what is termed the relevant period, which, under section 13 was to last from 1 March to 30 September 2020. The aim was to temporarily remove the threat of personal liability, arising from wrongful trading, for directors who continue to trade a company through the coronavirus crisis despite uncertainty that the company may not be able to avoid insolvency in the future. This will remove the pressure on directors to close otherwise viable businesses to avoid potential personal liability. All the other checks and balances on directors remain in place.
- 3.5. However, as the ongoing impact of the pandemic on the economy continues to heighten concerns about the effect it will have on company solvency, the decision not to extend the temporary suspension of liability

for wrongful trading has been reviewed. It has been decided that it should be put back in place for a further period until 30 April 2021.

4. Consultation

- 4.1. It is not intended to carry out any consultation. The proposed Regulations are to extend a measure already included in primary legislation and are needed so that company directors in Northern Ireland can benefit from the same protection against being held personally liable for any worsening of a company's financial situation caused by allowing it to continue trading whilst insolvent as enjoyed by their counterparts in the rest of the United Kingdom. .

5. Equality Impact

- 5.1. [Due to the urgency to bring the Act into force, screening was carried out retrospectively. It was determined that there is no undue impact on section 75 groups and therefore no mitigation is required, and no change to policy is required.
- 5.2. The proposed Regulations do not alter what is in the Act, they simply extend the time period during which one of the provisions in the Act will apply]

6. Regulatory Impact

- 6.1. Impact assessment was fully addressed at the making of the primary legislation.

7. Financial Implications

- 7.1. [None.]

8. Section 24 of the Northern Ireland Act 1998

- 8.1. [The Regulations renew the application of one of the provisions in the Act. It is the view of the Secretary of State for Business, Energy and Industrial Strategy, that the provisions of the Act are compatible with the Convention rights, under section 19 of the Human Rights Act 1998.]

9. EU Implications

- 9.1. [None.]

10. Parity or Replicatory Measure

- 10.1. [These Regulations will replicate provision contained in regulations which have been made in GB.]

11. Additional Information

- 11.1. Due to the urgency to restore this temporary provision the Regulations were laid in breach of the 21 day rule.
- 11.2. These Regulations are related to the Corporate Insolvency and Governance Act 2020 (Amendment of Certain Relevant Periods) Regulations (Northern Ireland) 2020 (S.R. 2020 No. 199).