

EXPLANATORY MEMORANDUM TO

[The Corporate Insolvency and Governance Act 2020 (Amendment of Certain Relevant Periods) (No. 2) Regulations (Northern Ireland) 2020]

S.R. No. 321

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 42(1)(b) of the Corporate Insolvency and Governance Act 2020 ("the CIG Act) and is subject to the [Confirmatory] resolution procedure.

2. Purpose

- 2.1. [This Statutory Rule makes provision to extend the duration of the temporary measures restricting the use of statutory demands and winding up petitions introduced the Act beyond their current expiration date of 31 December 2020. This Rule extends these measures to 31 March 2021]

3. Background

- 3.1. [The CIG Act was made at Westminster as a piece of emergency legislation and extends to the whole of the UK. Provision for Northern Ireland was included under a Legislative Consent Motion passed by the Northern Ireland Assembly.
- 3.2. The Rule is made using the powers to extend temporary provision in the CIG Act given by section 42 to amend primary legislation.
- 3.3. The power to extend the insolvency measures under section 42(1)(b) of the CIG Act includes a condition which must be met for the relevant measures to be extended. The condition requires the Department to consider it reasonable to prolong the relevant period of the temporary measures to mitigate an effect of coronavirus.
- 3.4. The CIG Act makes provision about corporate insolvency as well as changes to the law relating to the governance and regulation of companies and other entities. The provisions concerning corporate governance, and some of the provisions concerning corporate insolvency, are intended to be temporary. These temporary provisions are designed to help UK companies and other entities during the difficult time caused by coronavirus. The CIG Act, as amended by the Corporate Insolvency and Governance Act 2020 (Amendment of Certain Relevant Periods) Regulations (Northern Ireland) 2020 (2020 No.199), provides that some of the temporary restrictions on the use of statutory demands and issuing of winding up petitions will automatically expire on 31 December 2020 unless regulations are made to prolong the period within which some of the temporary provisions have effect.

- 3.5. The powers to prolong the duration of the temporary provisions are given by section 42(1)(b) of the CIG Act. The power given by section 42 is exercisable in respect of four provisions specified in section 42(2). Section 42(1) provides that the maximum period of any single extension must not exceed 6 months, and the power can only be exercised if the Department considers it reasonable to mitigate an effect of coronavirus. Section 42(11) provides that regulations made under that section may make different provision for the purposes of different temporary provisions.
- 3.6. This Rule is the second exercise of the powers given by sections 42(1)(b) of, and paragraph 2(1)(b) to, the CIG Act. The Rule prolongs the duration of one of the four temporary provisions specified in section 42(2), specifically: paragraph 1(3)(b) and 18(1)(b) of Schedule 11 (WINDING-UP-PETITIONS: NORTHERN IRELAND). The Rule provides that the temporary provision to which it applies are to expire on 31 March 2021.
- 3.7. This Rule extends two temporary insolvency measures relating to the restriction on the use of statutory demands and winding-up petitions.
- 3.8. The reason for extending the duration of these temporary insolvency measures is to continue to provide protection to companies from aggressive creditor enforcement whilst the adverse effects from the coronavirus pandemic continue and the related social distancing restrictions remain in place, including regional lockdowns, which affect normal trading.
- 3.9. The extension of these measures means creditors cannot rely on statutory demands as evidence of a company's inability to pay its debts and therefore it's insolvency, to bring winding-up petitions as they will be void. Where company winding up petitions are made, a petitioner will have to satisfy the Court that the company's inability to pay is not due to coronavirus. It is recognised that this temporary measure is a significant intervention into the normal working of insolvency law, in particular the rights of creditors, therefore the Government will keep the measure under constant review.

4. Consultation

- 4.1. It is not intended to carry out any consultation. The proposed Regulations are to extend measures already included in primary legislation and are needed so that companies and mutual societies in Northern Ireland can continue to avail of the same relief as available to their counterparts in the rest of the United Kingdom. A number of the insolvency measures in the CIG Act were the result of UK Government consultation in 2016 and were brought forward as a matter of urgency to assist businesses during this time of financial difficulty and economic uncertainty.

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 CIG Act, they simply extend the time period during which some 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 extend the period during which certain provisions in the Act are to have effect. 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 similar regulations applying GB.]

11. Additional Information

- 11.1. The Regulations were laid in breach of the 21 day rule.