

EXPLANATORY MEMORANDUM TO

The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Suspension of Liability for Wrongful Trading) Regulations (Northern Ireland) 2021

S.R. 2021 No. 106

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 CIG Act) and is subject to the Confirmatory resolution procedure.

2. Purpose

- 2.1. This instrument is to extend until 30 June 2021 the period during which liability for wrongful trading is suspended by the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Suspension of Liability for Wrongful Trading) Regulations (Northern Ireland) 2020 (S.R. 2020 No. 320).

3. Background

- 3.1. The CIG Act included temporary modifications to corporate insolvency legislation to assist companies which are unable to trade, or which have suffered a loss of trade, as a result of the COVID-19 restrictions. These measures were intended to help UK companies and other similar entities avoid insolvency.
- 3.2. One of these modifications was the suspension, by section 13 of the CIG Act, of 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.
- 3.3. Section 13 provided for this suspension to apply during a relevant period which automatically expired on 30 September 2020.
- 3.4. Section 28(1) of the CIG Act gives the Department or the Secretary of State power to make regulations of time-limited effect to amend or modify insolvency legislation to, amongst other things, change or disapply any duty of a person with corporate responsibility or the liability of such a person to any sanction. Regulations made using this power may only have effect for a period not exceeding 6 months, but this does not prevent further regulations from being made to extend the period for which earlier regulations apply by up to a further 6 months.
- 3.5. Suspension of directors' liability, under Article 178 of the Insolvency (Northern Ireland) Order 1989, for the financial consequences of deciding to allow insolvent companies to continue to trade was reinstated by the Corporate Insolvency and Governance Act 2020 (Coronavirus)

(Suspension of Liability for Wrongful Trading) Regulations (Northern Ireland) 2020 (S.R. 2020 No. 320). These regulations, which were made under section 28(1) of the CIG Act provided for the suspension to apply during a relevant period beginning on 14 December 2020 and ending on 30 April 2021.

- 3.6. The regulations which are the subject of this memorandum extend the relevant period during which directors' personal liability is suspended by providing for the relevant period under the Corporate Insolvency and Governance Act 2020 (Suspension of Liability for Wrongful Trading) Regulations (Northern Ireland) 2020 to instead expire on 30 June 2021.

4. Consultation

- 4.1. It is not intended to carry out any consultation. The proposed Regulations are to keep in place a measure originally 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 provide for one of the Act provisions to apply for a further period.

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 correspond to what is in Regulation 2 of the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2021 to be made in GB.

11. Additional Information

11.1. None.