

**EXPLANATORY MEMORANDUM TO**  
**The Insolvency (Amendment) Rules (Northern Ireland) 2023**

**SR 2023 No. 15**

**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 Article 359 of the Insolvency (Northern Ireland) Order 1989 and is subject to the negative resolution procedure.

**2. Purpose**

- 2.1. This Statutory Rule amends the Insolvency Rules (Northern Ireland) 1991 ("the 1991 Rules") to provide permanent procedural rules for the company moratorium procedure introduced into the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") by the Corporate Insolvency and Governance Act 2020 ("the CIG Act"). The moratorium allows companies in financial distress a breathing space in which to explore rescue and restructuring options free from creditor action.

**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. Section 4 of the CIG Act inserts a new Part 1A into the 1989 Order which establishes a moratorium to be available to financially distressed companies giving them protection from action by creditors. An authorised insolvency practitioner is appointed as monitor to oversee the procedure. A moratorium lasts for an initial period of 20 business days and can be extended either by the directors filing notice with the High Court or by an order of the Court made on the application of the directors.
- 3.3. The aim of the moratorium is to facilitate a rescue of the company and a return to profitable trading. The moratorium will also encourage companies in financial distress to act earlier to restructure debt and improve their chances of success. Procedural rules are required for the moratorium to operate effectively and to provide certainty to users of the moratorium, such as directors, creditors and insolvency practitioners.
- 3.4. Schedules 5 to 7 of the CIG Act makes further provision relating to company moratoriums.
- 3.5. Schedule 8 to the CIG Act contains temporary provisions to apply alongside section 4 and schedules 5 to 7.
- 3.6. Part 2 of Schedule 8 to the CIG Act includes provisions aimed at making it easier for a company to enter a moratorium during the Coronavirus pandemic. Part 3 comprises a set of temporary rules to work along with the

moratorium provisions in the CIG Act. Part 4 gives the Department power to apply provisions made by or under Schedule 8 to limited liability partnerships, Co-operative and Community Benefit Societies and credit unions.

- 3.7. Parts 2 and 3 of Schedule 8 are stated to apply during the "relevant period" and this is defined by paragraph 1 of Schedule 8 as lasting from the day on which Schedule 8 comes into force until 30 September 2020.
- 3.8. Essential temporary rules for the moratorium were included in the CIG Act, so that the procedure could be operational immediately on commencement of the Act, without having to wait for subordinate legislation to be made. These measures were designed to assist businesses impacted by the Coronavirus pandemic and it was important to get the moratorium operational quickly. The temporary rules had been extended on three occasions and the last extension expired on 30 March 2022.
- 3.9. This instrument will replace the temporary moratorium rules for Northern Ireland by inserting permanent rules for the moratorium into the 1991 Rules, so ensuring that procedural rules for all corporate insolvency procedures are contained in one instrument. The instrument also removes references in the 1991 Rules to the little used Schedule A1 moratorium, which was repealed by the CIG Act and replaced by Part 1A to the 1989 Order.
- 3.10. The policy of the permanent Rules follows closely that of the temporary rules in Part 3 of Schedule 8 to the CIG Act but the opportunity has been taken to improve the operation of the moratorium. For example, many of the notice periods relating to the moratorium are expressed as "business days" to align with other insolvency procedures set out in the 1991 Rules. In addition, for the purpose of deciding whether to bring a moratorium to an end, this instrument provides 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.

#### **4. Consultation**

- 4.1. There has not been any public consultation. It was especially important to ensure that the scheme remained accessible during the coronavirus crisis hence the temporary rules, but it is essential to have these permanent rules in operation immediately in order to ensure the availability of the moratorium procedure to companies in financial distress.
- 4.2. The Department has consulted the Insolvency Rules Committee which has agreed to the making of these Rules.

#### **5. Equality Impact**

- 5.1. Screening was carried out at the making of the primary legislation. It was determined that there is no undue impact on section 75 groups and therefore no mitigation is needed, and no change to policy is required.

## **6. Regulatory Impact**

- 6.1. An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on businesses, charities, social enterprise or voluntary bodies is foreseen, as the instrument largely incorporates the policy of the temporary rules in the CIG Act into the existing 1991 Rules.

## **7. Financial Implications**

- 7.1. None.

## **8. Section 24 of the Northern Ireland Act 1998**

- 8.1. The Department for the Economy considers that these Rules are compliant with section 24 of the Northern Ireland Act 1998. The Rules are not incompatible with any of the Convention rights or with Article 2(1) of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement, they do not discriminate against a person or class of person on the grounds of religious belief or political opinion and they do not modify any enactment in breach of section 7 of the Northern Ireland Act 1998.]

## **9. EU Implications**

- 9.1. None.

## **10. Parity or Replicatory Measure**

- 10.1. These Rules are made in parity with the Insolvency (England and Wales) (No.2) (Amendment) Rules 2021, S.I.2021/1028.

## **11. Additional Information**

- 11.1. None.