

EXPLANATORY MEMORANDUM TO

**THE CORPORATE INSOLVENCY AND GOVERNANCE ACT 2020
(CORONAVIRUS) (CHANGE OF EXPIRY DATE) REGULATIONS 2021**

2021 No. XXXX

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes provision to extend the date on which the power in section 20 of the Corporate Insolvency and Governance Act 2020 (“the CIG Act”) to make temporary amendments to, or modify the effect of, corporate insolvency and governance legislation, expires, by a year to 29 April 2022.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

- 3.1 This instrument is made using the power in section 24(3) of the CIG Act to substitute a later date in section 24(1) after which regulations using the power in section 20 of that Act may not be made. This instrument is subject to the affirmative procedure. This instrument is the first exercise of this power.
- 3.2 The effect of this instrument is to extend by a year the power in section 20 of the CIG Act, which allows primary legislation to be amended by secondary legislation. The use of the section 20 power is subject to a number of restrictions in sections 21-23. Section 24(4) imposes restrictions on the use of the power to extend in section 24(1): a single extension must not be for more than a year, although the power to extend may be used more than once.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.3 The territorial application of this instrument includes Scotland.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
- 4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

- 5.1 The Minister for Climate Change and Corporate Responsibility, Lord Callanan, has made the following statement regarding Human Rights:

“In my view the provisions of the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Change of Expiry Date) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 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.
- 6.2 Section 20 of the CIG Act gives a power to the Secretary of State to make regulations which make certain temporary amendments to, or modifications to the effect of, specified corporate governance and insolvency legislation. The use of that power is subject to restrictions in sections 21-23 about the purposes of those changes, the circumstances in which the Secretary of State may make regulations, and the duration of the changes. Section 24(1), as originally enacted, places an expiry date on the power to make regulations, so that regulations may not be made after 30 April 2021. Section 24(3) provides that the Secretary of State may by regulations substitute a later date for the date in subsection (1). This instrument is an exercise of that power, substituting 29 April 2022 for 30 April 2021.
- 6.3 The power in section 20 has so far been used on one occasion. The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Suspension of Liability for Wrongful Trading and Extension of the Relevant Period) Regulations 2020/1349 were laid before Parliament on 25 November 2020. Those Regulations modify the effect of sections 214 and 246ZB of the Insolvency Act so that the personal liability incurred by company directors through wrongful trading is suspended for the period from 26 November to 30 April 2021.

7. Policy background

What is being done and why?

- 7.1 This instrument extends the expiry date of the period during which the power in section 20 can be used, from 30 April 2021 to 29 April 2022. The section 20 power enables the Secretary of State to make regulations temporarily modifying corporate insolvency or governance legislation for various purposes in connection with mitigating the impact of coronavirus. An example of a previous exercise of this power is the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Suspension of Liability for Wrongful Trading and Extension of the Relevant Period) Regulations 2020/1349.
- 7.2 Keeping the power in section 20 of the CIG Act available for a further year will provide a means for specific and temporary changes to be made to corporate insolvency and governance legislation should the urgent need arise to do so, which will allow quick reactions to any unforeseen challenges arising as a result of the pandemic’s impact on business.
- 7.3 The extension of the power in section 20 made by this instrument is the maximum extension period allowed by section 24(4) of the CIG Act, and reflects that although there is a rapid vaccination programme now in place for the coronavirus, national

lockdowns and other restrictions on normal trading continue, so the future impact of the pandemic on business and the insolvency regime remains uncertain.

- 7.4 The timetables for roll-out of coronavirus vaccinations vary slightly across England, Scotland, and Wales, but are broadly similar in that they aim to offer vaccinations to all adults by the autumn. It is possible that some restrictions and social distancing measures could be in place for as long as it takes for vaccinations to be offered to every adult, or beyond, which will in turn have an impact on the extent to which businesses are able to trade.
- 7.5 It is reasonably foreseeable that some economic impact of the pandemic will continue to be felt even after the vaccination programme has concluded and in any case it will certainly continue beyond the current expiry date of the section 20 power on 30 April 2021.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 Not applicable.

10. Consultation outcome

- 10.1 This instrument extends an existing power but does not use the power itself, and makes no amendments to corporate insolvency or restructuring legislation other than the substitution of one expiry date for another in the CIG Act. As such, consultation with external stakeholders was considered unnecessary on this occasion. The Government continually seeks the views of external stakeholders, including insolvency practitioners, creditor organisations, and other Government departments, to ensure that the insolvency and enforcement regime remains robust and fit for purpose.

11. Guidance

- 11.1 It is not intended that guidance for this instrument will be published, given the limited and specific change made by this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because it does not impose or amend any requirements, restrictions, or conditions to any business activity, nor does it relate to the securing of compliance with or enforcement of any requirements, restrictions, conditions, standards, or guidance which relate to business activity.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The effect of this instrument is to replace an expiry date for the power in section 20 of the CIG Act with a later date. As such the power is still time limited, and will expire on 29 April 2022. No further steps to monitor and review the power are proposed.
- 14.2 Any temporary changes made through use of the section 20 power itself are, however, subject to a statutory review provision contained in section 23(3) of the CIG Act, which means that the Secretary of State must keep any such changes under review, and remove them if they are no longer needed to meet their purpose.

15. Contact

- 15.1 Simon Whiting at the Insolvency Service, telephone: 0303 003 1515, or email: simon.whiting@insolvency.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Angela Crossley, Deputy Director for Strategy & Change at the Insolvency Service can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for Climate Change and Corporate Responsibility, Lord Callanan, at the Department of Business, Enterprise, and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.