

**EXPLANATORY MEMORANDUM TO**  
**THE PENSION PROTECTION FUND (MORATORIUM AND ARRANGEMENTS**  
**AND RECONSTRUCTIONS FOR COMPANIES IN FINANCIAL DIFFICULTY)**  
**(AMENDMENT AND REVOCATION) REGULATIONS 2020**

**2020 No. 990**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions 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 Measures in the Corporate Insolvency and Governance Act 2020<sup>1</sup> introduce corporate restructuring tools to certain corporate entities in financial difficulty. They will be able to obtain a moratorium, to give them respite from their creditors, or be able to propose restructuring plans (compromise or arrangements) to facilitate the rescue of their business.
- 2.2 The Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) Regulations 2020 (S.I. 2020/693)<sup>2</sup> provided for the Pension Protection Fund to step in to the scheme trustees' or managers' role as a creditor, in certain circumstances, where these provisions are invoked. This is to provide specific protections for pension schemes and the interests of the Pension Protection Fund as the potential rescuer of those schemes following a moratorium or restructuring.
- 2.3 The Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) (Amendment and Revocation) Regulations 2020 extend the scope of the Pension Protection Fund's rights as a creditor when moratoriums are in place in relation to relevant Co-operative and Community Benefit Societies and when restructuring plans are in place in relation to relevant societies (as defined in regulation 3), which include credit unions.
- 2.4 The Regulations revoke and in substance replace the Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) (Amendment) Regulations 2020 (S.I. 2020/783)<sup>3</sup>.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2020/12/contents/enacted>

<sup>2</sup> <http://www.legislation.gov.uk/id/uksi/2020/693>.

<sup>3</sup> <https://www.legislation.gov.uk/uksi/2020/783/made>

### 3. Matters of special interest to Parliament

#### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The regulations are subject to the made affirmative procedure.
- 3.2 These regulations were made on 14 September, laid on 15 September and come into force on 16 September. The 21- day rule is breached because of the need for these Regulations to come into force with the least possible delay and to ensure that there is no break in the continuity of the application of the law.
- 3.3 Following the passing of the Corporate Insolvency and Governance Act 2020 (“CIGA”), S.I. 2020/693 conferred creditor rights on the Pension Protection Fund, in certain circumstances, where the moratorium and restructuring provisions in CIGA are being used in relation to companies, Limited Liability Partnerships and Charitable Incorporated Organisations.
- 3.4 The Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) and Consequential Amendments Order 2020 (S.I. 2020/744) extended the scope of the moratorium and restructuring provisions to relevant Co-operative and Community Benefit Societies and relevant societies, as applicable.
- 3.5 Following this, S.I. 2020/783 purported to extend the scope of S.I. 2020/693 to include these Co-operative and Community Benefit Societies and relevant societies.
- 3.6 However, S.I. 2020/744<sup>4</sup>, whilst applying Part 26A of the Companies Act 2006 to relevant societies, omitted section 901I of the 2006 Act in respect of relevant societies. This power was cited in making S.I. 2020/783, with the result that it is ultra vires. A voluntary memorandum explaining this further was provided by the Department to the Joint Committee on Statutory Instruments on 3<sup>rd</sup> September 2020.
- 3.7 To rectify this, S.I. 2020/744 has been revoked and in substance replaced with the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) (No. 2) Order 2020 (S.I. 2020/963), which now includes the relevant regulation making power. Similarly, these Regulations revoke and in substance replace S.I. 2020/783.
- 3.8 These Regulations are integral to the overall legislative regime and need to come in to force as soon as possible after the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) (No. 2) Order 2020 to minimise any disruption to the application of the regime.
- 3.9 There is an ongoing risk that during any break in the application of the provisions, a relevant Co-operative and Community Benefit Society could obtain a moratorium from its creditors, or a relevant society could propose a plan to restructure its business

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<sup>4</sup><https://www.legislation.gov.uk/ukxi/2020/744/made>

without the Pension Protection Fund being able to intervene as a creditor to protect its interests.

*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)*

3.10 The territorial application of this instrument varies between provisions

#### **4. Extent and Territorial Application**

4.1 The territorial extent of regulation 4 is England and Wales and Scotland.

4.2 The territorial application of regulation 4 is Great Britain.

4.3 The territorial extent of regulations 1, 2, 3, 5 and 6 is England and Wales, Scotland and Northern Ireland.

4.4 The territorial application of regulations 1, 2, 3, 5 and 6 is Great Britain and Northern Ireland.

#### **5. European Convention on Human Rights**

5.1 The Minister for Pensions and Financial Inclusion, Guy Opperman has made the following statement regarding Human Rights: “In my view the provisions in the Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) (Amendment and Revocation) Regulations 2020 are compatible with the Convention rights.

#### **6. Legislative Context**

6.1 The Corporate Insolvency and Governance Act (CIGA) 2020 makes changes to the corporate insolvency and restructuring regime and creates new processes (see sections 1 and 7) which include a stand-alone moratorium and restructuring plans. Delegated powers in CIGA allow for the Pension Protection Fund to be granted creditor rights in the use of these new processes, in certain circumstances, in order to protect the interest of pension schemes which might eventually transfer to the Fund. These Regulations expand the circumstances in which those rights are granted, following the expansion of the application of the provisions of CIGA to Co-operative and Community Benefit Societies and relevant societies.

#### **7. Policy background**

7.1 The Pension Protection Fund provides compensation to eligible pension scheme members whose employer has become insolvent and cannot meet the scheme’s liabilities. It is funded mainly by a levy collected from eligible occupational pension schemes.

7.2 When an employer in relation to an eligible pension scheme experiences an ‘insolvency event’<sup>5</sup>, the scheme enters an ‘assessment period’<sup>6</sup>. The Pension Protection Fund entry process starts when the Fund receives notification that the sponsoring employer of a scheme has suffered a qualifying insolvency event under section 127 of the Pensions Act 2004 or that the scheme can no longer continue as a

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<sup>5</sup> See section 121 of the 2004 Act

<sup>6</sup> See section 132 of the 2004 Act

going concern under section 129 of the 2004 Act. An assessment period begins on the date of the insolvency or the application under section 132 of the 2004 Act<sup>7</sup>.

- 7.3 Under section 137 of the 2004 Act, during the assessment period, the rights and powers of the trustees or managers of the scheme in relation to any debt (including any contingent debt) due to them by the employer, whether by virtue of section 75 of the Pensions Act 1995<sup>8</sup> (deficiencies in the scheme assets) or otherwise, are exercisable by the Pension Protection Fund to the exclusion of the scheme trustees or managers.
- 7.4 Neither moratoriums nor restructuring plans are qualifying insolvency events and so the provisions of the 2004 Act would not apply. However, the pension scheme is typically a large, unsecured creditor of the employer and so moratoriums and restructuring plans, which inevitably include negotiations with the creditors, can have a significant impact on the scheme and by extension on the interests of the Pension Protection Fund.
- 7.5 Whilst a moratorium is not in itself a procedure for a business to shed its liabilities, it will become the point at which discussions about a restructuring deal begin. Restructuring will involve trade-offs and so it is intended that the Pension Protection Fund is able to intervene in those discussions, consider the full spectrum of risks and protect the interests of its levy payers. These amending Regulations extend, in relation to Co-operative and Community Benefit Societies and relevant societies, the Pension Protection Fund's ability to exercise its creditor rights in these processes, as applicable, that would otherwise be exercised by the scheme trustees or managers.

## **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/trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 Informal consolidated text of instruments is available to the public free of charge online at [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **10. Consultation outcome**

- 10.1 The Regulations are being introduced in the context of the coronavirus emergency, and so no consultation has been undertaken. There is no legal requirement to consult.

## **11. Guidance**

- 11.1 No guidance is being issued on this instrument, as it makes technical amendments to another instrument.

## **12. Impact**

- 12.1 There is no direct impact on business, charities or voluntary bodies.

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<sup>7</sup> [Pensions Act 2004](#)

<sup>8</sup> [Pensions Act 1995](#)

12.2 There is no direct impact on the public sector. However, this measure is designed to ensure that the Pension Protection Fund and therefore its members are considered as a creditor in relevant events.

12.3 An Impact Assessment has not been prepared for this instrument because this measure does not impose or lift any regulations from business, and so there is no direct regulatory impact. It simply gives a role to a public body (the Pension Protection Fund) to be considered in these events.

### **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 Pension Protection Fund publishes an Annual Report which covers its performance over the previous year.

14.2 Reports are published on the GOV.UK website<sup>9</sup>. In addition, it has regular meetings with Department for Work and Pensions officials to review its performance.

### **15. Contact**

15.1 Ade Awoyinka at the Department for Work and Pensions Telephone: 020 7449 7228 mobile 075 846 10029 or by email: Ade. Awoyinka @dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Joanne Gibson, Deputy Director, Defined Benefit Pensions at the Department for Work and Pensions, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Guy Opperman, Minister for Pensions and Financial Inclusion at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

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<sup>9</sup> <https://www.ppf.co.uk/annual-report>