

EXPLANATORY MEMORANDUM TO
THE INSOLVENCY (ENGLAND AND WALES) (NO.2) (AMENDMENT) RULES
2021

2021 No. 1028

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.

2. Purpose of the instrument

- 2.1 This instrument amends The Insolvency (England and Wales) Rules 2016 (“the 2016 Rules”) to provide permanent procedural rules for the company moratorium procedure introduced into the Insolvency Act 1986 (“the Act”) 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. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The CIG Act included essential temporary rules for England and Wales for the moratorium in Part 3 of Schedule 4 so that the moratorium procedure could be operational on commencement of the CIG Act without the need for secondary legislation. Those temporary rules have been extended on two occasions: firstly, by The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2020 SI 2020/1031 to 30 March 2021 and latterly by The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2021 SI 2021/375 to 30 September 2021.
- 6.2 This instrument will replace the temporary moratorium rules for England and Wales by incorporating permanent rules for the moratorium into the 2016 Rules, so ensuring that procedural rules for all corporate insolvency procedures are contained in one instrument. The instrument also removes references in the 2016 Rules to the little used

Schedule A1 moratorium which was repealed by the CIG Act. The power to make this instrument is in s.411(1)(a) of the Act.

7. Policy background

What is being done and why?

- 7.1 The CIG Act introduced a new Part A1 moratorium into the Act, with an authorised insolvency practitioner appointed as monitor to oversee the procedure. 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 companies, directors, creditors and insolvency practitioners.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.2 The CIG Act included essential temporary rules for England and Wales so that the moratorium procedure would be operational on commencement of the CIG Act. Those temporary rules are currently set to expire on 30 September 2021.

Why is it being changed?

- 7.3 Procedural rules for all other insolvency procedures in England and Wales are contained in a single instrument, the 2016 Rules. It is more efficient for users for the rules relating to the new moratorium procedure to be included in the 2016 Rules. In addition, the temporary rules only included those rules essential for the moratorium to be operational on commencement of the CIG Act as that Act included measures which were designed to assist businesses impacted by the Coronavirus pandemic and it was important to get the moratorium operational quickly.

What will it now do?

- 7.4 This instrument incorporates comprehensive procedural rules for the moratorium within the existing framework of the 2016 Rules. This will reduce duplication and provide a single set of rules for all insolvency procedures in England and Wales.
- 7.5 The policy of the permanent rules follows closely that of the temporary rules in Part 3, Schedule 4 to the CIG Act. Following feedback from users of the temporary rules the opportunity has been taken to improve the operation of the moratorium by making some policy changes. For example, many of the notice periods relating to the moratorium are expressed in this instrument as “business days” to align with the convention used in the 2016 Rules for other insolvency procedures. Also, 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.

8. European Union Withdrawal and Future Relationship

- 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 This instrument amends the 2016 Rules to provide that permanent rules for the moratorium are contained within those rules.

10. Consultation outcome

- 10.1 There has been no public consultation in relation to this instrument. However, the Insolvency Rules Committee have been consulted on the rules contained in this instrument in accordance with the statutory requirement in the Act.

11. Guidance

- 11.1 The Insolvency Service issues regular bulletins to interested parties and these will be used to raise awareness of this instrument before commencement.

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 no, or no significant, impact on the private, voluntary or public sector is foreseen as the instrument largely incorporates the policy of the temporary rules in the CIG Act into the existing 2016 Rules.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to mitigate the regulatory burden on small businesses.

14. Monitoring & review

- 14.1 This instrument does not include a statutory review clause however the 2016 Rules, which this instrument amends, do include a provision that the Secretary of State must publish a review of those rules within 5 years of them coming into force (6 April 2017) and afterwards at intervals not exceeding 5 years.

15. Contact

- 15.1 Mike Chapman at the Insolvency Service Telephone: 0300 3048533 or email: mike.chapman@insolvency.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Angela Crossley, Director for Strategy, Policy and Analysis at the Insolvency Service can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for Business, Energy and Corporate Responsibility, Lord Callanan at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.