

## **EXPLANATORY MEMORANDUM TO**

### **[Corporate Insolvency and Governance Act 2020 (Coronavirus) (Schedule 8) (Early Termination of Certain Temporary Provisions) Regulations (Northern Ireland) 2020]**

**S.R. 2020 No. 214**

#### **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 paragraph 2(1) of Schedule 8 to the Corporate Insolvency and Governance Act 2020 ("the Act)] and is subject to the [negative resolution procedure.

#### **2. Purpose**

- 2.1. [This Statutory Rule will provide for certain temporary modifications made by the Act to the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") and extended by the Corporate Insolvency and Governance Act 2020 (Amendment of Certain Relevant Periods) Regulations (Northern Ireland) 2020 to terminate before the current expiration date of 30 March 2021.
- 2.2. Specifically, paragraphs 5, 6(1)(b), 7(a), and 8 to 11 of Part 2 of Schedule 8 to the Act cease to have effect on 14 October 2020.

#### **3. Background**

- 3.1. [The 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 Act inserts provision into the 1989 Order to enable companies in financial difficulty to enter a moratorium protecting them from creditor action while they explore rescue options.
- 3.3. A company can only enter a moratorium and a moratorium can only be extended if it is likely that the moratorium will result in the rescue of the company as a going concern, The insolvency practitioner appointed to act as monitor while the moratorium is in progress must bring the moratorium to an end if it becomes apparent that it is not going to result in rescue of the company as a going concern,
- 3.4. Part 2 of Schedule 8 of the Act includes temporary modifications to Articles 13BC, 13CA, 13CB, 13CD, 13EA and 13ED of the 1989 Order to provide that any worsening of a company's financial position as a result of coronavirus can be disregarded when assessing if a moratorium is likely to result in the rescue of the company as a going concern.
- 3.5. The Act provided for all temporary modifications made by it to insolvency legislation to expire on 30 September.

- 3.6. The period during which Schedule 8 to the Act will apply was extended until 30 March 2021 by provision included in the Corporate Insolvency and Governance Act 2020 (Amendment of Certain Relevant Periods) Regulations (Northern Ireland) 2020.
- 3.7. These Regulations provide for this extension of time not to apply in the case of the temporary modifications made by Schedule 8 to the Act to Articles 13BC, 13CA, 13CB, 13CD, 13EA and 13ED of the 1989 Order. They will instead cease to have effect on 14 October 2020, as will a definition of coronavirus in that Schedule.
- 3.8. The Regulations also provide for a provision in Schedule 8 to the Act which makes companies with permission under Part 4 of the Financial Services and Markets Act 2000 to carry on regulated activities ineligible to enter a moratorium unless they are subject to a requirement not to hold money for clients to cease to have effect on 14 October 2020. The provision was included in Schedule 8 at the request of HM Treasury and they do not want it to apply once the modifications to Articles in the 1989 Order providing for any worsening of a company's financial position not to be taken into account when assessing the likelihood of its being rescued no longer apply.

#### **4. Consultation**

- 4.1. It is not intended to carry out any consultation. The measures introduced by the Act were intended to apply uniformly across the UK. It is in keeping with that principle that the modifications to the rescue criterion should be terminated and that termination should happen as soon as possible after Regulations providing for termination of similar modifications applying in GB have been brought into force. Regulations for this purpose in GB came into force on 1 October 2020.

#### **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 negate the extension by other Regulations of certain provisions in the Act, which, under the Act had been due to expire on 30 September 2000.

#### **6. Regulatory Impact**

- 6.1. [There is no significant impact on business, charities or voluntary bodies.
- 6.2. There is no impact on the public sector.
- 6.3. 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 are considered to be compliant with section 24 of the Northern Ireland Act 1998.]

## **9. EU Implications**

- 9.1. [None.]

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

- 10.1. [These regulations will replicate the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Early Termination of Certain Temporary Provisions) Regulations 2020 to be made in GB.]

## **11. Additional Information**

- 11.1. The Regulations were laid in breach of the 21 day rule. These Regulations had to be brought into operation without delay to keep in line with what has been done in G.B.