

**2021 No. 259**

**INSOLVENCY**

**The Corporate Insolvency and Governance Act 2020  
(Coronavirus) (Amendment of Schedule 11) Regulations  
(Northern Ireland) 2021**

*Made - - - - 21st September 2021*

*Affirmed by resolution of the Assembly on 18<sup>th</sup> October 2021*

*Coming into operation in accordance with Article 1*

The Department for the Economy makes the following Regulations in exercise of the powers conferred by sections 28(1)(a) and 33(1) of the Corporate Insolvency and Governance Act 2020(a).

In accordance with section 29(1)(a) of that Act, the Department(b) is satisfied that these Regulations are expedient for the purpose of reducing, or assisting in the reduction of, the number of entities entering into corporate insolvency or restructuring procedures for reasons relating to the effects of coronavirus on businesses or on the economy of the United Kingdom

In accordance with section 30(1) of that Act, the Department has considered the effect of these Regulations on persons likely to be affected by them.

In accordance with section 30(2) of that Act, the Department is satisfied—

- (a) that the need for the provision made by these Regulations is urgent,
- (b) that the provision made by these Regulations is proportionate to the purpose for which it is made,
- (c) that it is not practicable without legislation to bring about the result intended to be brought about by these Regulations, and
- (d) that neither a Northern Ireland Department nor the Secretary of State can make the same provision in exercise of a power under a statutory provision other than section 28 of that Act.

**Citation and commencement**

1. These Regulations may be cited as the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Amendment of Schedule 11) Regulations (Northern Ireland) 2021 and come into operation on 29th September 2021.

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(a) 2020 c.12.

(b) The Department for the Economy is a relevant authority by virtue of section 28(4) of the Corporate Insolvency and Governance Act 2020.

## Amendment of the Corporate Insolvency and Governance Act 2020

2. For Schedule 11 to the Corporate Insolvency and Governance Act 2020(a) substitute—

### “SCHEDULE 11

Section 11

### RESTRICTION ON WINDING-UP PETITIONS: NORTHERN IRELAND

#### *Restriction on winding-up petitions*

1.—(1) During the relevant period a creditor may not present a petition for the winding up of a company under Article 104 of the 1989 Order on a ground specified—

- (a) in the case of a registered company, in Article 102(f) of that Order, or
- (b) in the case of an unregistered company, in Article 185(4)(b) of that Order,

unless conditions A to D are met (subject to sub-paragraphs (9) to (11)).

(2) Condition A is that the creditor is owed a debt by the company—

- (a) whose amount is liquidated,
- (b) which has fallen due for payment, and
- (c) which is not an excluded debt.

(3) Condition B is that the creditor has delivered written notice to the company in accordance with sub-paragraphs (4) to (6).

(4) Notice under sub-paragraph (3) must contain the following—

- (a) identification details for the company,
- (b) the name and address of the creditor,
- (c) the amount of the debt and the way in which it arises,
- (d) the date of the notice,
- (e) a statement that the creditor is seeking the company’s proposals for the payment of the debt, and
- (f) a statement that if no proposal to the creditor’s satisfaction is made within the period of 21 days beginning with the date on which the notice is delivered, the creditor intends to present a petition to the High Court for the winding-up of the company.

(5) Notice under sub-paragraph (3) must be delivered—

- (a) to the company’s registered office, or
- (b) in accordance with sub-paragraph (6) if—
  - (i) for any reason it is not practicable to deliver the notice to the company’s registered office,
  - (ii) the company has no registered office, or
  - (iii) the company is an unregistered company.

(6) Where this sub-paragraph applies the notice may be delivered to—

- (a) the company’s last known principal place of business, or
- (b) the secretary, or a director, manager or (in relation to an unregistered company) principal officer of the company.

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(a) Schedule 11 was amended by S.R. 2020 No. 199, S.R. 2020 No. 321, S.R. 2021 No. 75 and S.R. 2021 No. 165.

(7) Condition C is that at the end of the period of 21 days beginning with the day on which condition B was met the company has not made a proposal for the payment of the debt that is to the creditor's satisfaction.

(8) Condition D is that—

- (a) where the petition is presented by one creditor, the sum of the debts (or the debt, if there is only one) owed by the company to that creditor in respect of which conditions A to C are met is £10,000 or more,
- (b) where the petition is presented by more than one creditor, the sum of the debts owed by the company to the creditors in respect of which conditions A to C are met is £10,000 or more.

(9) A creditor may at any time apply to the High Court for an order that, in respect of a specified debt—

- (a) conditions B and C do not apply, or
- (b) condition C applies as if the reference to the period of 21 days were to such shorter period as the Court may direct.

(10) Where an order is made under sub-paragraph (9)(a), the references in sub-paragraph (8) to conditions A to C are to be read as references to condition A.

(11) If the Court makes an order under sub-paragraph (9)(b) it may—

- (a) give such directions as to delivery of the written notice referred to in condition B as it thinks fit, or
- (b) direct that sub-paragraphs (4) to (6) apply in respect of the delivery of that notice subject to such modifications it thinks fit.

#### *Modification of Insolvency Rules*

2.—(1) This paragraph applies in relation to a petition which is presented by a creditor under Article 104 of the 1989 Order during the relevant period.

(2) Schedule 2 to the Insolvency Rules has effect as if for Form 4.02 (Winding-up Petition) there were substituted the Form at the end of this Schedule.

#### *Interpretation*

3.—(1) In this Schedule “relevant period” means the period which—

- (a) begins with 1 October 2021, and
- (b) ends with 31 March 2022.

(2) For the purposes of this Schedule, references to a petition presented by a creditor—

- (a) do not include a petition presented by one or more creditors together with one or more other persons, but
- (b) subject to that, do include a petition presented by more than one creditor, in which case the conditions specified in paragraph 1(2) to (7) must be met in relation to each creditor presenting the petition.

(3) For the purposes of this Schedule—

“the 1989 Order” means the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));

“coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-Cov-2);

“excluded debt” means a debt in respect of rent, or any sum or other payment that a tenant is liable to pay, under a relevant business tenancy and which is unpaid by reason of a financial effect of coronavirus;

“Insolvency Rules” means the Insolvency Rules (Northern Ireland) 1991 (S.R. (N.I.) 1991/364);

“registered company” means a company registered under the Companies Act 2006 in Northern Ireland;

“relevant business tenancy” means—

- (a) a tenancy to which the Business Tenancies (Northern Ireland) Order 1996 (S.I. 1996/725 (N.I. 5)) applies, or
- (b) a tenancy to which that Order would apply if any relevant occupier were the tenant;

“relevant occupier” in relation to a tenancy, means a person, other than the tenant, who lawfully occupies premises which are, or form part of, the property comprised in the tenancy; and

“unregistered company” has the meaning given in Part 6 of the 1989 Order.

*General*

4.—(1) The provisions of this Schedule, so far as relating to registered companies, have effect as if they were included in Part 5 of the 1989 Order.

(2) Sub-paragraph (1) does not apply in relation to paragraph 2 (modification of insolvency rules).

**Winding Up Petition**

No. \_\_\_\_\_

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
CHANCERY DIVISION (COMPANIES WINDING UP)

\*Insert name of company IN THE MATTER OF\*  
AND IN THE MATTER OF THE INSOLVENCY (NORTHERN IRELAND) ORDER  
1989

**To the High Court of Justice in Northern Ireland**

(a) Insert full name(s) and address(es) of petitioners  
The petition of (a)

(b) Insert full name and registered no. of company subject to petition  
1. (b) \_\_\_\_\_  
(hereinafter called "the company") was incorporated on

(c) Insert date of incorporation  
(c)

(d) Insert title of Companies Act or Order under which company was incorporated  
under (d)

(e) Insert address of registered office  
The registered office of the company is at (e) \_\_\_\_\_

(f) Insert amount of nominal capital and how it is divided.  
3. The nominal capital of the company is (f) £ \_\_\_\_\_ divided into shares of £ \_\_\_\_\_ each. The amount of the capital paid up or credited as paid up is (g) £ \_\_\_\_\_.

(g) Insert amount of capital paid up or credited as paid up.

4. The principal objects for which the company was established are as follows:

and other objects stated in the company's articles

(h) Set out the grounds on which a winding-up order is sought  
5. (h)

(j) Delete as Applicable  
6. The company (j) is/is not an insurance undertaking; a credit institution; an investment undertaking providing services involving the holding of funds or securities for third parties; or a collective investment undertaking as referred to in

Article 1.2 of the EC Regulation.

(k) Insert name of person swearing affidavit  
7. For the reasons stated in the affidavit of (k) filed in support hereof it is considered that the that these proceedings will be (l) proceedings.

(l) Insert whether COMI proceedings, establishment, proceedings, or proceedings to which the EU Regulation as it has effect in the law of the United Kingdom does not apply

(j) Delete as applicable  
8. The petitioner/the petitioners (j) is/ is not/are//are not a creditor/creditors under Article 104 of the Insolvency (Northern Ireland Order 1989

(m) This must be confirmed if the petitioner(s) is/are creditor(s) under Article 104 of the Insolvency (Northern Ireland) Order 1989.  
I/we confirm that the conditions in paragraphs 1 of Schedule 11 to the Corporate Insolvency and Governance Act 2020 are met (m)

(j) Delete as appropriate  
(j) No proposals for the payment of the debt owed to me/us have been made

OR

(j) Proposals for the payment of the debt owed to me/us have been made but are not to my/our satisfaction for the following reasons

(n) Enter summary of reasons  
(n)

9. In the circumstances it is just and equitable that the company should be wound up. The petitioner(s) therefore pray(s) as follows: –

(1) that (b) may be wound up by the court under the provisions of the Insolvency (Northern Ireland) Order 1989

OR

(2) that such other order may be made as the court thinks fit.

(o) If the company is the petitioner, delete "the company". Add the full name and address of any other person on whom it is intended to serve this petition

Note: It is intended so serve this petition on (o)

[the company] [and]

**Endorsement**

This petition having been presented to the court on \_\_\_\_\_ will be heard  
at Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF

on:

Date

Time \_\_\_\_\_ hours  
(or as soon thereafter as the petition can be heard)

The solicitor to the petitioner is: -

Name

Address

Telephone number

Fax Number (if any)

Reference

”

**Consequential provision**

3. In section 42 of the Corporate Insolvency and Governance Act 2020 (power to change duration of temporary provisions: Northern Ireland), in subsection (2), in the definition of “relevant provision”, omit paragraph (d).

Sealed with the Official Seal of the Department for the Economy on 21 September 2021



*COLIN JACK*  
A senior officer of the Department for the Economy

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations substitute a new Schedule 11 to the Corporate Insolvency and Governance Act 2020 (c.12) (“CIGA”).

The Insolvency (Northern Ireland) Order 1989 (S.I.1989/2405 (N.I. 19)) (“the 1989 Order”) specifies the grounds upon which registered and unregistered companies may be wound-up by the High Court. One of those grounds is that the company is unable to pay its debts. Article 103 (or, in the case of an unregistered company, Articles 186 to 188) of the 1989 Order specify those cases where a company is deemed to be unable to pay its debts.

As originally enacted Schedule 11 to CIGA prohibited the winding-up of a company where it would otherwise have been deemed unable to pay its debts as a result of an unpaid statutory demand, and restricted the winding-up of a company by a creditor in any of the other cases specified in the 1989 Order, where the company’s inability to pay its debts was due to the financial effect of coronavirus.

Regulation 2 substitutes a new Schedule 11 to CIGA. Paragraph 1 of that Schedule provides that a winding-up petition may not be presented by a creditor on the grounds that a company is unable to pay its debts unless certain conditions are met. The first condition is that the debt is for a liquidated amount which has fallen due for payment and does not relate to non-payment of rent under a business tenancy. The second condition is that the creditor has made a formal request to the company seeking proposals for the payment of the debt. The third condition is that the company has not made a proposal that is to the creditor’s satisfaction within 21 days beginning with the day the formal request was delivered. The final condition is that the debt is £10,000 or more, or, where the petition relates to two or more debts, the total amount of all of the debts taken together is £10,000 or more. The Court has the power to waive the requirement for creditors to serve a formal request seeking proposals for payment of the debt or to shorten the period within which such proposals are to be submitted.

Paragraphs (4), (5) and (6) of paragraph 1 of the new Schedule 11 set out requirements as to the content and delivery of the formal request to the company seeking proposal for payment of the debt.

Paragraph 2 introduces a substitute for Form 4.02 in Schedule 2 to the Insolvency Rules (Northern Ireland) 1991 (S.R. (N.I.) 1991/364) to be used when presenting a winding-up petition on the grounds of insolvency.

Paragraph 3 provides that the new Schedule 11 only applies in respect of winding-up petitions that are presented by a creditor between 1st October 2021 and 31st March 2022. Paragraph 4 provides that the new Schedule 11 has effect as if it were included in Part 5 of the 1989 Order.

Regulation 3 makes a consequential amendment to section 42 of CIGA. That section enables the Department to extend or curtail the duration of various temporary provisions in CIGA, including Schedule 11 to that Act. As a result of the amendments made by regulation 2 of these Regulations the power given by section 42 may no longer be exercised in relation to Schedule 11. Regulation 3 therefore amends section 42 to remove the reference to Schedule 11.

An impact assessment has not been produced for this instrument. An explanatory memorandum has been published alongside this instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).



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[www.legislation.gov.uk/nisr/2021/259](http://www.legislation.gov.uk/nisr/2021/259)

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