

Corporate Insolvency and Governance Act 2020

Lead department	Insolvency Service (Executive Agency of Department for Business and Trade)
Summary of measure	A package of three permanent measures: Company Moratorium; Suspension of Termination (ipso facto) Clauses (SoTC); and a Restructuring Plan (RP), designed to help save companies that are in financial difficulty but fundamentally viable
Submission type	Post-implementation review – 4 May 2023
Implementation date	26 June 2020
Department recommendation	Amend
RPC reference	RPC-DBT-IS-5274(1)
Opinion type	Formal
Date of issue	22 June 2023

RPC opinion

Rating¹	RPC opinion
Fit for purpose	The Department's recommendation to amend the legislation is supported by proportionate evidence and analysis. The PIR re-visits assumptions in the original impact assessment (IA) and usefully re-estimates costs and benefits, accordingly. The PIR could be improved in some areas, including expanding its evidence base and discussion of monitoring of future unintended effects.

¹ The RPC opinion rating is based on whether the evidence in the PIR is sufficiently robust, as set out in the better regulation framework, to support the departmental recommendation. RPC ratings are fit for purpose or not fit for purpose.

RPC summary

Category	Quality²	RPC comments
Recommendation	Green	The Department's recommendation to amend the legislation is supported by proportionate evidence and analysis. However, this green rating indicates that only the minimum requirements were met by the PIR. Enhancements are needed to the evidence base, particularly supplementary evidence to improve the meaningfulness of the survey data.
Monitoring and implementation	Satisfactory	The PIR uses data from a range of sources, including Companies House. As the PIR relies heavily on survey data, the level of detail could be improved, e.g., to consider correlations within the data set or possible selection bias.
Evaluation	Satisfactory	The PIR complies with the RPC's proportionality guidance ³ for high impact measures. The PIR undertakes rigorous scrutiny of key assumptions underpinning the original assessment, aimed at identifying improvements to the methodology and accuracy of the original impact estimates. However, further discussions are needed around the significant compositional changes between the IA and PIR, e.g., why the RP provides much greater benefits than those anticipated in the IA (please see 'Original assumptions' section below for further detail).

² The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. The definitions of the RPC quality ratings can be accessed [here](#).

³ <https://www.gov.uk/government/publications/proportionality-in-regulatory-submissions-guidance>

Summary of proposal

The Corporate Insolvency and Governance Act 2020 (CIGA) was implemented by the Government on 26 June 2020, with the overarching objectives of providing companies with the flexibility needed to continue trading during COVID-19, and saving viable companies after the pandemic. The Act sought to do this with a mixture of temporary easements to insolvency law (which are out of scope of this PIR), coupled with a package of three permanent measures: Company Moratorium; Suspension of Termination (ipso facto) Clauses; and a Restructuring Plan. Each measure has its own objectives to help save companies that are in financial difficulty but fundamentally viable. The 2020 final stage IA estimated an equivalent annual net direct cost to business (EANDCB) of -£178.4 million over a 10-year appraisal period.

Recommendation

The Department's recommendation to amend the legislation is supported by proportionate evidence and analysis. This is explained further below.

Monitoring and implementation

Proportionate

The PIR's evidence and analysis is consistent with the RPC's proportionality guidance for a high impact (> £50 million EANDCB) measure. The PIR provides clear discussion of the performance of the implemented measures against policy objectives, and an adequate assessment of actual impacts on business, however, there remain areas of weakness. The PIR's reliance on survey data, coupled with a lack of a solid counterfactual, means there is not much evidence to establish the robustness of the analysis. Nevertheless, the PIR does provide useful proxies in the form of explicit assumptions and scenarios.

Moreover, it is not clear that the PIR has considered trade impacts, including recognition of the measures by EU courts. The PIR does mention the EU Restructuring Directive, but only as an external comparator. Differences, or a lack of mutual recognition of the measures, could have significant impacts, which the Department should consider.

With regards to the moratorium, it would be beneficial for the PIR to discuss how well companies benefitting from this moratorium did in terms of survival, especially in relation to the burdens imposed on creditors. The survey evidence itself should be improved, as it consists of opinions without further detail. The supplementary quantitative data on company voluntary arrangements does not fully address the question of whether those businesses that survived were those that should have survived. The allusion to pre-pandemic data is not persuasive - the measures were intended to address a unique set of (temporary, in many cases) threats to business viability, and are not representative of those threatening businesses pre-pandemic. Whilst the PIR discussion acknowledges that this has not been fully evaluated, it

does not mention possible burdens and harms due to the moratorium; only possible benefits.

With regards to the SoTC, the PIR's paragraph 3.14 states that it is too early to tell if the SoTC has met its objectives. This provision could impose substantial harm on suppliers, and the 'ransom payments' part would have proven particularly challenging with costs and other fragilities in the supply chain. From an economic point of view, this could potentially have stopped supply networks from rewiring efficiently in response to changing circumstances. The PIR would benefit from exploring such indirect burdens and harms.

Range of evidence

The Department makes central use of the findings of a process evaluation, undertaken by the University of Wolverhampton, to underpin its evidence base. This evaluation combined semi-structured interviews with stakeholders, a survey of insolvency practitioners (IPs) and two case studies. The PIR sets out the use of interviews and surveys (paragraphs 2.8-2.12); it would be beneficial for the PIR to include an annex that lists the questions that were asked in these instances. Paragraph 2.11 outlines a sample population of 1,517 IPs who agreed for their details to be available publicly on gov.uk; of this sample, only 91 useable responses were received to a distributed survey. It would be beneficial for the PIR to communicate why the response rate was so low. The PIR could, additionally, be improved by exploring correlations within the survey data and possible selection bias.

Other evidence underpinning the PIR includes an in-house value-for-money evaluation, data collection from Companies House filings, international comparisons, official statistics and monitoring data from Companies House and HM Courts & Tribunals Service.

Whilst the RPC's proportionality guidance states that impact evaluations should be conducted for high impact measures, the PIR justifies the Department's decision not to conduct one, citing issues around feasible designs. However, the PIR does not discuss the specific issues encountered; this would be beneficial to include, to understand better why impact evaluation was ruled out.

Paragraph 2.4 also sets out the Department's difficulties in establishing a suitable counterfactual. This explanation could be improved by providing examples of the methods that were discussed or tested, followed by an explanation around why they were ruled out.

Paragraph 3.5 mentions the utilisation of the RP by small and medium-sized companies. The PIR should also explicitly consider utilisation by micro businesses.

Paragraph 3.9 provides examples of instances where the moratorium had been used successfully by companies. The PIR could be improved by outlining the proportion of companies that utilised the moratorium successfully, and a breakdown by company size e.g., micro, small, or medium. Furthermore, the PIR should elaborate on why 57 per cent (paragraph 3.10) of survey respondents thought that the moratorium had no effect on company survival. Paragraph 3.12 suggests a lack of understanding and knowledge of the eligibility criteria for the moratorium; the PIR should explain how this could be remedied going forward, referring to specific impacts, e.g., which businesses were most likely to face the consequences of this lack of understanding.

With regards to impacts on employees (paragraphs 3.23-3.26), the PIR does a good job of explaining how the CIGA measures, specifically the moratorium, contribute to job retention and prevention of job losses. It would be helpful to understand whether these are concentrated in specific professional grade(s) e.g., middle management, senior leadership or admin staff. A prevalent theme in this section ('impacts on employees') across all the CIGA measures is that companies have insufficient knowledge on how these measures can be deployed to improve job retention; it would be good to understand the cause(s) of this information asymmetry, and practical measures to address this.

The PIR provides some explanations for why the benefits associated with moratoria and SoTC are expected now to have been lower than anticipated by the IA and goes onto explain how uptake of the CIGA measures could be encouraged through addressing issues with the measures that came to light after implementation. The PIR could be improved by discussing whether any measures could be put in place to mitigate reputational risks to IPs, which was noted as a deterrent to the use of the moratorium (paragraph 6.4). Whilst more guidance has been mentioned as a potential way to address some of the issues around usage of the CIGA measures, it would be good to understand how this guidance would differ from any guidance or information that is already available to companies. The PIR should also clarify whether this is an issue of availability of guidance or utilisation of guidance.

Evaluation

Policy objectives

The PIR assesses the achievement of each measure against the policy objectives, as previously mentioned. The PIR is transparent about the utilisation of measures being lower than anticipated by the final stage IA (paragraph 3.2), and subsequently proceeds to explain possible reasons for this. However, the PIR could be clearer about macro-economic drivers, the extent of 'suppressed uptake' alluded to and the strong implication that policy impacts are inter-dependent.

On the third policy objective, it is not obvious how "breathing space" was assessed, given the evolving uncertainties affecting companies and uncertainty of government

policy towards pandemic-affected businesses. The PIR should, at the very least, acknowledge this uncertainty.

For the fourth policy objective, it would also improve the utility of the survey to know which (if any) of those responding had used, or sought to use, the moratorium and to have explored correlation between this and their survey responses.

Unintended effects

The PIR considers unintended consequences, although this could be strengthened. Paragraph 4.9 sets out theoretical unintended consequences of the moratorium; it would be beneficial for the PIR to discuss ways to reduce their likelihood, along with other unintended consequences outlined in the subsequent paragraphs. It would be beneficial to know the proportion of businesses that have been affected by the negative unintended consequences identified in the PIR.

The PIR usefully discusses the significance of unintended effects on meeting the policy objectives. The Department should consider the extent to which such effects were reasonably foreseeable at the time the policy was implemented, as well as how future unintended effects will be detected.

Original assumptions

Table 2 in the PIR provides a helpful comparison between the estimated familiarisation costs post-implementation and the cost assumptions detailed in the IA. The PIR provides a comprehensive breakdown of cost and benefits (monetised and non-monetised) for each CIGA measure and critically assesses assumptions that were made in the final stage IA, further examining whether these assumptions still hold (e.g., paragraph 5.36 describes the rationale behind an anticipated annual cost to suppliers of £337.9 million no longer holding). The breakdowns also categorise costs and benefits as one-off or ongoing. The PIR has attempted to address remaining areas of uncertainty e.g., by applying high and low estimate cost saving percentages to the upper end of restructuring costs to produce a wide range (paragraph 5.27). However, in this instance, the range used appears too wide to reduce uncertainty.

Moreover, there are major differences in costs and benefits; whilst some of these balance in overall terms, further discussion of transfers within the overall impacts would be beneficial e.g., for the material in Table 7 and paragraph 5.80. In particular, estimates in the final stage IA were dominated by the SoTC measure. The main reason the RPC did not validate the EANDCB originally was the committee felt that the estimated cost of this was too low. The PIR now suggests a zero cost and a much lower benefit, explained mainly by a ten-fold reduction in the number of liquidations avoided. It is unclear why the cost to businesses of having to continue supply is treated as zero - the PIR should make this clear. If the cost of continuing

supply is really zero, it remains unclear why suppliers “pull the plug” on these companies; this could call into question the rationale for the measure. At a minimum, the PIR should discuss issues relating to pricing of supplies and the continued viability of suppliers. Conversely, the impact of the RP is much higher than expected in the IA, providing a very large benefit for relatively little cost; the PIR could be improved by providing more detail explaining this. In addition, it would be beneficial for the PIR to clarify why it is appropriate that all estimated benefits from RPs appear in the EANDCB (making up nearly all of the final figure). The compositional changes between the IA and PIR are so significant that the Department should, for future PIRs, make efforts to provide more intuitive detail on and discussion of such stark differences or clarify whether a follow-up PIR will be undertaken to check the robustness of these new estimates.

Business size

The PIR appears to use the terms ‘small and medium enterprises’ (SMEs) and ‘small and micro businesses’ (SMBs) interchangeably, defining small companies as having fewer than 250 employees (paragraph 5.65), which is not entirely in line with Better Regulation Framework practice as reflected in RPC guidance⁴. Nonetheless, the PIR includes clear discussion of the suitability of each CIGA measure for businesses of different sizes and briefly mentions a mitigation that was implemented for the SoTC. However, due to the mitigation being untested to date, the PIR is unable to evaluate the effectiveness of the statutory hardship provision. Section 6 of the PIR also clearly sets out opportunities for reducing burdens on business.

Intervention required

The PIR demonstrates satisfactorily the case for continued intervention with some refinements to existing measures. Section 8 of the PIR explains that the policy objectives of the measures remain relevant, and section 9 discusses the possible consequences of removing the measures.

Improvements or alternatives considered

Paragraph 9.5 explains that non-legislative alternative options would not achieve the policy objectives to the same extent as legislative measures. The PIR summarises possible refinements to existing measures in Table 11; these include refinements to non-legislative complementary measures (i.e., guidance). The Department should seek views on these possible refinements from a wide range of stakeholders across sectors and business sizes.

Future impacts considered

The PIR would benefit from briefly discussing future monitoring and evaluation.

⁴ <https://www.gov.uk/government/publications/small-and-micro-business-assessment-samba-guidance>

Other comments

Paragraph 1.6 states that temporary amendments introduced by CIGA remain out of scope of this PIR. The PIR should explain why these easements are out of scope, or if a separate PIR has been conducted to capture the monitoring and governance of these measures, particularly because they may have had lasting impacts despite their temporary nature.

Regulatory Policy Committee

For further information, please contact regulatoryenquiries@rpc.gov.uk. Follow us on Twitter [@RPC_Gov_UK](https://twitter.com/RPC_Gov_UK), [LinkedIn](#) or consult our website www.gov.uk/rpc. To keep informed and hear our views on live regulatory issues, subscribe to our [blog](#).