

2020 No. 1349

INSOLVENCY

**The Corporate Insolvency and Governance Act 2020
(Coronavirus) (Suspension of Liability for Wrongful Trading
and Extension of the Relevant Period) Regulations 2020**

Approved by both Houses of Parliament

Made - - - - 24th November 2020

Laid before Parliament 25th November 2020

Coming into force - - 26th November 2020

The Secretary of State makes the following Regulations in exercise of the power conferred by section 20(1)(c) of, and paragraph 2(2)(b) of Schedule 14 to, the Corporate Insolvency and Governance Act 2020^(a).

Further to section 21(2) of that Act, the Secretary of State is satisfied that these Regulations are expedient for the purpose of securing that the duties of persons with corporate responsibility, or the liability of those persons to any sanction, take due account of the effects of coronavirus on business or on the economy of the United Kingdom.

Further to section 22(1) of that Act, the Secretary of State has considered the effect of these Regulations on persons likely to be affected by them.

Further to section 22(2) of that Act, the Secretary of State considers that—

- (a) the need for the provision made by these Regulations is urgent;
- (b) the provision made by these Regulations is proportionate to the purpose for which it is made;
- (c) is it not practicable without legislation to bring about the result intended to be brought about by these Regulations; and,
- (d) the Secretary of State cannot make the same provision in other subordinate legislation that is made in these Regulations.

Citation and commencement

1. These Regulations may be cited as the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Suspension of Liability for Wrongful Trading and Extension of the Relevant Period) Regulations 2020 and come into force on 26th November 2020.

Suspension of liability for wrongful trading: Great Britain

2.—(1) In determining for the purposes of section 214 or 246ZB of the Insolvency Act 1986 **(a)** (liability of director for wrongful trading) the contribution (if any) to a company’s assets that it is proper for a person to make, the court is to assume that the person is not responsible for any worsening of the financial position of the company or its creditors that occurs during the relevant period.

(2) In this regulation the “relevant period” is the period which—

- (a) begins with 26th November 2020, and
- (b) ends with 30th April 2021.

(3) Paragraph (1) does not apply if at any time during the relevant period the company concerned is excluded from being eligible by any of the paragraphs of Schedule ZA1 to the Insolvency Act 1986 listed in paragraph (4), as they apply for the purposes of this paragraph (see paragraph (5)).

(4) The paragraphs of Schedule ZA1 to the Insolvency Act 1986 are—

- (a) paragraph 3 (insurance companies),
- (b) paragraph 4 (banks),
- (c) paragraph 5 (electronic money institutions),
- (d) paragraph 6 (investment banks and investment firms),
- (e) paragraph 9 (payment institutions),
- (f) paragraph 10 (operators of payment systems etc),
- (g) paragraph 11 (recognised investment exchanges, clearing houses, etc),
- (h) paragraph 12 (securitisation companies),
- (i) paragraph 13 (parties to capital market arrangements),
- (j) paragraph 15 (public-private partnership project companies), and
- (k) paragraph 18 (certain overseas companies).

(5) In their application for the purposes of paragraph (3)—

- (a) each of paragraphs 13 and 15 of Schedule ZA1 to the Insolvency Act 1986 has effect as if in sub-paragraph (1)—
 - (i) the words “, on the filing date” were omitted, and
 - (ii) paragraph (b) were omitted, and
- (b) paragraph 18 of that Schedule has effect as if for “paragraph 2” in both places, there were substituted “paragraphs 2, 7 and 8”.

(6) Paragraph (1) also does not apply if at any time during the relevant period the company concerned—

- (a) has permission under Part 4A of the Financial Services and Markets Act 2000 **(b)** to carry on a regulated activity, and
- (b) is not subject to a requirement imposed under that Act to refrain from holding money for clients.

(7) This regulation has effect—

- (a) in so far as it relates to section 214 of the Insolvency Act 1986, as if it were contained in Part 4 of that Act, and
- (b) in so far as it relates to section 246ZB of the Insolvency Act 1986, as if it were contained in Part 6 of that Act.

(a) 1986 c.45.
(b) 2000 c.8.

(8) But this regulation does not have effect in relation to the following bodies (which are bodies to which provisions contained in Parts 4 and 6 of the Insolvency Act 1986 apply)—

- (a) a society that is registered within the meaning of the Friendly Societies Act 1974^(a) and that at any time during the relevant period carries on the regulated activity of effecting or carrying out contracts of insurance;
- (b) a building society within the meaning of the Building Societies Act 1986^(b);
- (c) a society that is incorporated under the Friendly Societies Act 1992^(c);
- (d) a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014^(d) that is registered under that Act as a credit union;
- (e) a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 that at any time during the relevant period carries on the regulated activity of effecting or carrying out contracts of insurance.

(9) In this regulation “regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section.

Amendment of the Corporate Insolvency and Governance Act 2020

3.—(1) In Schedule 14 to the Corporate Insolvency and Governance Act 2020^(e) (meetings of companies and other bodies), in paragraph 2(1) (meaning of “relevant period”), for “30 December 2020” substitute “30 March 2021”.

(2) Paragraph (1) applies only in relation to—

- (a) a building society within the meaning of the Building Societies Act 1986,
- (b) a society that is registered within the meaning of the Friendly Societies Act 1974 or incorporated under the Friendly Societies Act 1992,
- (c) a registered branch within the meaning of the Friendly Societies Act 1992,
- (d) a company within the meaning of section 1(1) of the Companies Act 2006^(f),
- (e) a charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011^(g), and
- (f) a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014.

Callanan

Parliamentary Under Secretary of State

Department for Business, Energy and Industrial Strategy

24th November 2020

(a) 1974 c.46.
(b) 1986 c.53.
(c) 1992 c.40.
(d) 2014 c.14.
(e) Schedule 14 was amended by S.I. 2020/1031.
(f) 2006 c.46.
(g) 2011 c.25.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations temporarily suspend liability under wrongful trading provisions in the Insolvency Act 1986 (c. 45): specifically, section 214 (wrongful trading); and section 246ZB (wrongful trading: administration). In addition, these Regulations extend the period within which temporary modifications to laws relating to the holding of meetings made by the Corporate Insolvency and Governance Act 2020 (“CIGA”) are to have effect for certain qualifying bodies.

Regulation 2 provides for the suspension of wrongful trading. Paragraph (1) provides that, for the purposes of section 214 or 246ZB of the Insolvency Act 1986, a court is not to hold a person liable for any worsening of a company’s financial position during the “relevant period”. Paragraph (2) defines the “relevant period” as the period beginning on 26th November 2020 and ending on 30th April 2021. Paragraphs (3) to (5) and (8) specify cases where, (or types of corporate entity in respect of which), the suspension of wrongful trading is not to apply. Accordingly, section 214 and section 246ZB continue to apply in those cases, (or, in respect of those entities), during the relevant period. Paragraph (7) provides that regulation 3 has effect as if it were part of the Insolvency Act 1986.

Regulation 3 amends paragraph 2(1) of Schedule 14 to CIGA to extend the period within which certain temporary modifications to the law relating to the holding of meetings by companies and certain other bodies made by that Schedule have effect. The expiry of that period is extended from 30th December 2020 to 30th March 2021.

No impact assessment has been prepared for these Regulations. An Explanatory Memorandum has been published alongside this instrument at www.legislation.gov.uk.

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