EXPLANATORY MEMORANDUM TO

THE CORPORATE INSOLVENCY AND GOVERNANCE ACT 2020 (CORONAVIRUS) (EXTENSION OF THE RELEVANT PERIOD) (NO. 2) REGULATIONS 2020

2020 No. 1483

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

This instrument makes provision to extend the duration of the temporary measures restricting the use of statutory demands and winding up petitions introduced by the Corporate Insolvency and Governance Act 2020 (CIG Act) beyond their current expiration date of 31 December 2020. This instrument extends these measures to 31 March 2021.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument is made using the powers to extend temporary provision in the CIG Act given by section 41 to amend primary legislation.

3.2 The power to extend the insolvency measures under section 41(1)(b) CIG Act includes a condition which must be met for the relevant measures to be extended. The condition requires the Secretary of State to consider it reasonable to prolong the relevant period of the temporary measures to mitigate an effect of coronavirus.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.3 The territorial application of this instrument includes Scotland.

3.4 The powers under which this instrument is made cover England, Wales and Scotland (see section 48 CIG Act) and the territorial application of this instrument is not limited by the Act or the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England, Wales and Scotland.

4.2 The territorial application of this instrument is England, Wales and Scotland.

5. European Convention on Human Rights

5.1 The Minister for Climate Change and Corporate Responsibility, Lord Callanan, has made the following statement regarding Human Rights:

"In my view the provisions of the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) (No. 2) Regulations 2020 are compatible with the Convention's rights."

6. Legislative Context

6.1 The CIG Act makes provision about corporate insolvency as well as changes to the law relating to the governance and regulation of companies and other entities. The provisions concerning corporate governance, and some of the provisions concerning corporate insolvency, are intended to be temporary. These temporary provisions are designed to help UK companies and other entities during the difficult time caused by coronavirus. The CIG Act, as amended by the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2020/1031, provides that some of the temporary restrictions on the use of statutory demands and issuing of winding up petitions will automatically expire on 31 December 2020 unless regulations are made to prolong the period within which some of the temporary provisions have effect.

6.2 The powers to prolong the duration of the temporary provisions are given by section 41(1)(b) of the CIG Act. The power given by section 41 is exercisable in respect of four provisions specified in section 41(2). Section 41(1) provides that the maximum period of any single extension must not exceed 6 months, and the power can only be exercised if the Secretary of State considers it reasonable to mitigate an effect of coronavirus. Section 41(10) provides that regulations made under that section may make different provision for the purposes of different temporary provisions.

6.3 This instrument is the second exercise of the powers given by sections 41(1)(b) of, and paragraph 2(1)(b) of, the CIG Act. The instrument prolongs the duration of one of the four temporary provisions specified in section 41(2), specifically: paragraph 1(3) and 21(1) of Schedule 10 (winding-up petitions: Great Britain). The instrument provides that the temporary provision to which it applies are to expire on 31st March 2021.

7. Policy background

What is being done and why?

7.1 This instrument extends two temporary insolvency measures relating to the restriction on the use of statutory demands and winding-up petitions.

7.2 The reason for extending the duration of these temporary insolvency measures is to continue to provide protection to companies from aggressive creditor enforcement whilst the adverse effects from the coronavirus pandemic continue and the related social distancing restrictions remain in place, including regional tiered restrictions, which affect normal trading.

7.3 The extension of these measures means creditors cannot rely on statutory demands as evidence of a company's inability to pay its debts and therefore it's solvency, to bring winding-up petitions as they will be void. Where company winding up petitions are made, a petitioner will have to satisfy a court that the company's inability to pay is not due to coronavirus. It is recognised that this temporary measure is a significant intervention into the normal working of insolvency law, in particular the rights of creditors, therefore the Government will keep these temporary measures under constant review whilst they remain in force.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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 Not applicable

10. Consultation outcome

10.1 There has been no public consultation in relation to this instrument, however Government has engaged informally with a range of stakeholders, including business representative organisations and investor groups on these matters.

11. Guidance

11.1 The Insolvency Service issues regular bulletins to interested parties; these will be used to raise awareness of the new provisions and procedural changes at the time of laying this instrument to ensure public awareness.

12. Impact

12.1 There will be a positive impact on all businesses that may be subject to a winding up order due to their inability to pay debts as a result of coronavirus by giving essential briefing space in order to negotiate with their creditors or seek a rescue plan, or both. There will also be an adverse impact on those creditor businesses that have outstanding debts owed by other businesses which they will temporarily be unable to enforce unless they are able to demonstrate that those debts are not coronavirus related. This temporary removal of their rights to enforce their debts may increases their risks when doing business. However, the Government assesses this temporary rebalancing of risks as an appropriate intervention, alongside the Government's wider fiscal support and other regulatory interventions.

12.2 The impact on the public sector falls on public sector creditors such as HMRC and local authorities that use winding up petitions to enforce national and local taxation and other related debts. However, the Government has assessed that any impact is an appropriate temporary intervention alongside with the Government's wider interventions.

12.3 An impact assessment has not been prepared for this instrument as it is out of scope of the better regulation framework, due to the temporary nature of the measures. The legal effects produced by this instrument will automatically expire within a period of less than 12 months. A full impact assessment was carried out for the CIG Act which considered costs & benefits in a steady state economy: https://publications.parliament.uk/pa/bills/cbill/58-01/0128/IA200519.pdf

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 minimise the regulatory burdens on small businesses though it is expected that smaller sized businesses are more likely to benefit from the restrictions this instrument temporarily imposes.

13.3 The basis for the final decision on what action to take to assist small businesses is that the instrument is itself a temporary relaxation, or removal, of requirements that would otherwise apply under legislation. Monitoring and Review.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause; however, the Government will continue to monitor the need for these measures. The legal effect of the various provisions in this instrument will automatically expire on various dates that are specified in the instrument itself. At the time that the various provisions are due to expire it will be necessary to review whether the provision made by this instrument continues to be necessary and whether to re-exercise the power so as to further prolong the duration of the temporary provision.

15. Contact

15.1 Louise Chester at the Insolvency Service (Telephone: 0300 304 8357 or email: louise.chester@insolvency.gov.uk) can answer questions about these regulations.

15.2 Angela Crossley, Director of Strategy and Change at the Insolvency Service can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister for Climate Change and Corporate Responsibility, Lord Callanan at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.