

EXPLANATORY MEMORANDUM TO
THE LIMITED LIABILITY PARTNERSHIPS (AMENDMENT ETC.)
REGULATIONS 2020

2020 No. 643

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

- 2.1 These Regulations make the necessary amendments and provision to apply to limited liability partnerships (“LLPs”) the new insolvency and restructuring measures introduced by the Corporate Insolvency and Governance Act 2020 (“the 2020 Act”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 These Regulations are being laid in breach of the 21-day rule for the following reasons.
- 3.2 The 2020 Act was fast-tracked through Parliament and provides for several measures, inserted into the Insolvency Act 1986 and the Companies Act 2006 which will give businesses greater flexibility and breathing space within the insolvency regime to continue trading despite the economic uncertainty caused by the Covid-19 pandemic. The measures inserted into the Insolvency Act 1986 will allow companies facing financial difficulties to obtain a moratorium, which will give them some additional breathing space with a view to obtaining rescue. Those measures apply to LLPs by virtue of regulation 5 of the Limited Liability Partnerships Regulations 2001 (“the 2001 Regulations”) (as amended by paragraph 38 of Schedule 3 to the 2020 Act), and regulation 5 of the Limited Liability Partnerships Regulations (Northern Ireland) 2004 (“the 2004 Regulations”).
- 3.3 The 2001 Regulations and 2004 Regulations make detailed provision as to the way in which provisions of the Insolvency Act 1986 are to apply to LLPs. For the new provisions of the Insolvency Act 1986 to work effectively as they apply to LLPs, it is necessary to make further consequential amendments to the 2001 Regulations and the 2004 Regulations. These consequential amendments must come into force at the same time as the relevant provisions of the 2020 Act. Those provisions come into force on the day after that on which the 2020 Act is passed. Any gap will mean that the new provisions of the Insolvency Act 1986 will not properly work insofar as they apply to LLPs.
- 3.4 The new provisions of the Companies Act 2006 inserted by the 2020 Act will allow companies in financial distress to propose a restructuring plan to its creditors and members, which can be approved by the court in certain circumstances (even if a class

of creditors or members dissents). These regulations amend the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (“the 2009 Regulations”) so that the new provisions of the Companies Act 2006 apply to LLPs. If these measures are not immediately applied to LLPs there will be delay before LLPs are able to benefit from these measures which will mean that LLPs will be more likely than equivalent companies to go into liquidation. It will therefore result in LLPs and companies being treated differently when (for these purposes at least) they are intended to be treated in the same way.

- 3.5 It has for the same reasons also been necessary for this instrument to come into force before being laid before Parliament. The earliest that this instrument could be made was on the day on which the 2020 Act was passed and for the reasons set out above it was essential that it came into force on the following day alongside the relevant provisions of the Act. The notification and explanation (required by the proviso to section 4(1) of the Statutory Instruments Act 1946), were sent to the Speakers of the House of Lords and House of Commons on 26 June 2020.

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)

- 3.6 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.
- 4.3 Regulation 2 and Schedule 1 make amendments to Schedule 3 to the 2001 Regulations, which applies only in relation to LLPs registered in Great Britain. Regulation 5 also applies only in relation to LLPs registered in Great Britain.
- 4.4 Regulation 3 and Schedule 2 make amendments to Schedule 3 to the 2004 Regulations, which applies only in relation to LLPs registered in Northern Ireland. Regulation 6 also applies only in relation to LLPs registered in Northern Ireland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The 2020 Act makes provision for a variety of new insolvency and restructuring mechanisms. These Regulations are necessary to apply those mechanisms to LLPs.
- 6.2 The 2020 Act creates a new free-standing moratorium for companies in financial distress through the insertion of a new Part A1 into the Insolvency Act 1986 and a new Part 1A into the Insolvency (Northern Ireland) Order 1989. Temporary provision in relation to both of those new parts is made in relation to the Covid-19 pandemic, which is directly applied to LLPs by these Regulations. It also inserts a new Part 26A into the Companies Act 2006, which provides for restructuring plans for companies in financial difficulty.

- 6.3 The relevant parts of the Insolvency Act 1986 are applied to LLPs registered in Great Britain by the 2001 Regulations, which were amended by the 2020 Act to apply the new Part A1. The relevant parts of the Insolvency (Northern Ireland) Order 1989 are applied to LLPs registered in Northern Ireland by the 2004 Regulations, including the new Part 1A.
- 6.4 Both sets of regulations provide for general modifications to how the relevant parts of the respective enactments apply to LLPs, as well as detailed modifications to specific provisions where the general modifications do not work (contained in Schedule 3 to either set of regulations). These Regulations make amendments to each of those schedules of detailed modifications in respect of the amendments made by the 2020 Act to the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989, so that the new mechanisms work effectively as they apply to LLPs.
- 6.5 The relevant parts of the Companies Act 2006 are applied to LLPs by the 2009 Regulations, which set out in full how the relevant provisions are to be read insofar as they apply to LLPs. These Regulations amend the 2009 Regulations to apply the new Part 26A of the Companies Act 2006 to LLPs and to set out how that Part is to be read as it applies to LLPs.
- 6.6 These Regulations are made in pursuance of the powers contained in sections 14, 15 and 17 of the Limited Liability Partnerships Act 2000. The power in section 14(1) of that Act is used to apply to LLPs the temporary provision contained in Schedules 4 and 8 to the 2020 Act, by virtue of paragraph 91 of Schedule 4 and paragraph 55 of Schedule 8 to the 2020 Act. These Regulations are also made in anticipatory exercise of powers, in reliance on section 13 of the Interpretation Act 1978.

7. Policy background

What is being done and why?

- 7.1 The 2020 Act aims to provide businesses with the flexibility and breathing space they need to continue trading during the Covid-19 pandemic. The measures contained therein are designed to help UK companies and other similar entities by easing the burden on businesses and helping them avoid insolvency during this period of economic uncertainty. These Regulations are necessary to apply several of those measures to LLPs.
- 7.2 There was previously no free-standing moratorium available for UK businesses. The 2020 Act introduces such a moratorium allowing a company in financial distress a breathing space in which to explore its rescue and restructuring options free from creditor action. The aim of the moratorium is to facilitate a rescue of the business. The moratorium will be overseen by an insolvency practitioner (IP) acting as a monitor although the directors will remain in charge of running the business on a day-to-day basis (known as a 'debtor-in-possession' process with the company being the 'debtor'). Temporary modifications are also made by the 2020 Act to the moratorium provisions in light of the Covid-19 pandemic, to relax certain requirements in relation to a moratorium and to make temporary rules pending the necessary amendments being made to the respective Insolvency Rules for each jurisdiction.
- 7.3 These Regulations make modifications to how the moratorium provisions in the 2020 Act apply to LLPs so that they are clear and operate effectively, although the 2020 Act itself already does the act of actually applying those provisions to LLPs. These Regulations specify where the powers and responsibilities lie in an LLP in relation to

applying for a moratorium and the ongoing effect of the moratorium. In most cases, the role of the directors of a company in the moratorium provisions is taken on by the designated members of a limited liability partnership.

- 7.4 The 2020 Act also includes provision for arrangements and reconstructions for companies in financial difficulty. This will allow struggling companies, or their creditors or members, to propose a new restructuring plan proposal between the company and creditors and members. The measures introduce a “cross-class cram down” feature that will allow dissenting classes of creditors or members to be bound to a restructuring plan if they would be no worse off under the plan than they would be in the next most likely outcome if the plan was not sanctioned, which differentiates the new procedure from the existing schemes of arrangement provisions.
- 7.5 These Regulations apply this new provision to LLPs, allowing them to propose restructuring plans and have them approved by the court, and set out how it will apply to LLPs. This avoids a gap emerging between the options available to LLPs and companies in financial difficulty, which could lead to an unintended consideration and advantage being inserted into the choice of one appropriate type of corporate entity over another. This also matches the application of the existing schemes of arrangement measures to LLPs.

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

This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 There are no plans for a consolidation at this time.

10. Consultation outcome

- 10.1 The Government consulted extensively on a range of insolvency and corporate governance reforms between 2016 and 2018, including those introduced by the 2020 Act. There were 71 respondents and the Government published its response on 26 August 2018.¹
- 10.2 In relation to the moratorium, the majority of respondents agreed with the proposal although those who disagreed raised concerns that it could be abused by businesses which have no realistic prospect of rescue and required protection and safeguards for creditors. Similarly, in relation to the restructuring plan proposals, the majority of respondents agreed that provisions of this type were needed, although some felt that the proposals were so similar to existing provisions that they were not needed and would add further complexity.
- 10.3 In its response, the Government considered the responses carefully and concluded, on balance, that it agreed with the majority of respondents in both cases that the proposed measures should be introduced.
- 10.4 No specific consultation regarding the application of these measures to LLPs has been conducted, although the same principles apply to LLPs as to companies in this area, as

¹ Available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/736163/ICG - Government response doc - 24 Aug clean version with Minister s photo and signature AC.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/736163/ICG_-_Government_response_doc_-_24_Aug_clean_version_with_Minister_s_photo_and_signature_AC.pdf).

do the considerations set out in the consultation and Government response referred to above.

- 10.5 The application of the moratorium to LLPs registered in Northern Ireland is within the legislative competence of the Northern Ireland Assembly. However, only the Secretary of State has the power to do this through secondary legislation. As a result, the Northern Ireland Executive has been consulted on these Regulations and has agreed with the application of these provisions to LLPs registered in Northern Ireland.

11. Guidance

- 11.1 There is no intention to publish guidance alongside these Regulations.

12. Impact

- 12.1 The main impact on business, charities or voluntary bodies relates to their capacity as creditors of LLPs that may use the new measures. The possible effects of the measures include a temporary suspension of creditor rights to take enforcement action against an LLP, for example not being able to issue a winding-up petition for non-payment of a debt or the extinguishing of a creditor right or claim as part of a restructuring plan sanctioned by the court. Businesses, charities or voluntary bodies that meet the eligibility conditions for the new measures may also use them in their capacity as a debtor, to address any financial difficulties they may experience.
- 12.2 The effect on the public sector relates to its capacity of a creditor of LLPs, where similar impacts as that for businesses, charities and voluntary bodies would be anticipated.
- 12.3 No specific Impact Assessment has been prepared for this instrument. The Impact Assessment published alongside the Corporate Insolvency and Governance Bill sets out the costs and benefits to affected entities as well as to companies overall. We expect impacts on individual LLPs to be comparable to those experienced by companies. A further iteration of the impact assessment, which will be published in due course will include in its assessment the effect of the measures on LLPs. At this stage, as there are around 50,000 LLPs compared to over 4.35m companies, we expect the additional impact to be limited.

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 regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that the impact of the new measures on LLPs will be considered as part of the post-implementation review undertaken in respect of the same measures contained in the Corporate Insolvency and Governance Bill as they apply to companies.
- 14.2 These Regulations do not include a statutory review clause.

15. Contact

- 15.1 David Leitch at the Department for Business, Energy and Industrial Strategy
Telephone: 0300 068 5713 or email: David.Leitch@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Matthew Ray, Deputy Director for Company Law, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Callanan at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.