

EXPLANATORY MEMORANDUM TO
THE COMPANIES ETC. (FILING REQUIREMENTS) (TEMPORARY
MODIFICATIONS) REGULATIONS 2020

2020 No. 645

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 This instrument temporarily extends various filing deadlines which must be met by companies, eligible Scottish partnerships, limited partnerships, limited liability partnerships, unregistered companies, overseas companies, Societas Europaeas and European Economic Interest Groupings (“relevant entities”). The temporary modifications are intended to provide relevant entities with breathing space to enable them to focus on the health of their workforce and their business during the period affected by the COVID-19 pandemic.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument has been laid as soon as practicable after Royal Assent of the Corporate Insolvency and Governance Act 2020 (“the 2020 Act”), a piece of emergency legislation which was fast-tracked through Parliament. This instrument is subject to the negative resolution procedure and it is being laid in breach of the 21-day rule. The reasons for the department’s breach of the 21-day rule are as follows.
- 3.2 This instrument provides relevant entities with additional time to comply with filing obligations in response to the very challenging circumstances they are facing because of the COVID-19 pandemic. It has been necessary for this instrument to come into force as soon as possible after being laid so that relevant entities are given immediate help to comply with their filing deadlines at a time when they may be struggling to meet them because of the significant pressure they are being put under because of the pandemic.
- 3.3 If a company is late in filing accounts then its directors commit an offence, and are liable to pay a fine, if convicted. The company may also be liable to pay a civil penalty. Failure to submit a confirmation statement is also a criminal offence. Missing the deadline to register a company charge means that the charge is void against a liquidator, administrator or creditor. If the company that created the charge goes into liquidation or administration the holder of the unregistered charge will rank as an unsecured creditor. Delaying the commencement of this instrument would mean that companies and other bodies would have to wait longer before being able to benefit

from the filing extensions when it is critical that support is provided to businesses as soon as possible.

- 3.4 The modifications provided for by this instrument are temporary. The instrument extends a relevant filing deadline that falls between the date the instrument comes into force and the end of the day on 5 April 2021. The power to make this instrument expires on 5 April 2021, however a deadline that falls between commencement of this instrument and 5 April 2021 can be extended beyond 5 April 2021 by virtue of the savings provision contained in section 39(9) of the 2020 Act. The bodies that are primarily affected by this instrument are those that will stand to benefit from the extended filing deadlines provided by it.

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)

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

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Minister for Corporate Responsibility and Climate Change at the Department for Business, Energy and Industrial Strategy, Lord Callanan has made the following statement regarding Human Rights:

“In my view the provisions of the Companies etc. (Filing Requirements) (Temporary Modifications) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 39 of the 2020 Act enables the Secretary of State to make regulations to extend the period within which a company or relevant entity must comply with various filing requirements. Those filing requirements are listed in section 40 and apply to companies, European Economic Interest Groupings, limited liability partnerships, limited partnerships, overseas companies, Societas Europaeas, unregistered companies and eligible Scottish partnerships. Section 39(2) makes provision as to the maximum period which those bodies may be given to comply with the relevant filing requirements.
- 6.2 Section 39 expires at the end of the day on 5 April 2021, though the expiry of that section does not affect the continued operation of any regulations made under that section for the purpose of determining the length of any period that begins before the expiry (see section 39(8) and (9) of the 2020 Act).

7. Policy background

What is being done and why?

- 7.1 This instrument extends a range of deadlines for certain filings by companies and other entities registered at Companies House. They will apply to filing deadlines

which fall after the instrument has come into force. The instrument expires at the end of the day on 5 April 2021, however, a deadline that falls between commencement of the instrument and 5 April 2021 can be extended beyond 5 April 2021 by virtue of the savings provision contained in section 39(9) of the 2020 Act.

7.2 Examples of the deadlines which will be extended for companies are:

- The accounts filing deadline will be extended by 3 months, to 12 months for private companies and 9 months for public companies.
- The 14 day deadline for the annual confirmation statement after the end of the company's year-long confirmation period will be extended to 42 days.
- The 14 day deadlines for submitting notices of relevant events after they occur are extended to 42 days. Examples of relevant events are a change of director or person of significant control.
- The 21 day deadline for registering a charge against a company's assets is extended by 10 days to 31 days.

7.3 Various provisions of the Companies Act 2006 ("the 2006 Act") are applied to limited liability partnerships, unregistered companies and European Economic Interest Groupings. The temporary modifications made to the 2006 Act by this instrument will also apply to those three types of entity by virtue of section 20(2) of the Interpretation Act 1978 ("the IA"). The effect of section 20(2) of the IA is such that the temporary modifications made for companies apply, in most cases to these other entities, without the need for express provision in the instrument.

7.4 In the case of regulations 5 and 12, express provision is needed to apply the modifications to the 2006 Act to unregistered companies and limited liability partnerships. Regulation 41(2) provides an overseas company, that is required to prepare accounts under its parent law, with an additional 3 months to deliver a copy of those accounts to the registrar of companies. Regulation 41(3) provides an overseas credit or financial institution with an additional three months to deliver the accounting documents prepared in accordance under its parent law to the registrar. These modifications are made under the powers in section 1049(4) and 1050(5) of the 2006 Act. As these modifications are made under powers in the 2006 Act regulation 41 includes an expiry provision so that the modifications to the Overseas Companies Regulations 2009 also expire at the end of the day on 5 April 2021.

7.5 Modifications to filing deadlines for public companies under this instrument apply to Societas Europaeas without the need for express provision in the instrument, by virtue of Article 9.1(c)(ii) of Council Regulation (EC) No 2157/2001. Therefore, an extension to a filing deadline for a public company under this instrument will apply equally to Societas Europaeas.

7.6 Many businesses will seek to file their accounts and other information in a prompt and timely manner ahead of the original applicable deadline notwithstanding the extensions provided by this instrument. This may be necessary having regard to the needs of shareholders, lenders and prospective investors and is encouraged where it is possible. However, the extended filing periods provided by this instrument will give other businesses greater freedom to focus their efforts on responding to the significant pressures which they face as a consequence of the COVID-19 pandemic. The modifications are temporary in nature and will expire at the end of the day on 5 April 2021.

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

- 8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 This is not a consolidation.

10. Consultation outcome

- 10.1 These measures were prepared at speed as part of the Government's response to the emergency created by the COVID-19 pandemic. As such, we have not been able to consult on the measures. The instrument was however developed with input from other Government departments and Companies House.

11. Guidance

- 11.1 Guidance is not required.

12. Impact

- 12.1 The impact on business is to reduce the regulatory burden experienced by businesses that are subject to the filing obligations for which deadlines are extended by this instrument. According to the most recent data, there are currently around 4.35 million companies registered at Companies House. In addition, around 51,200 Limited Liability Partnerships, just under 51,800 Limited Partnerships (as of March 2019) and approximately 11,800 overseas companies registered at Companies House. This instrument will reduce the burden of meeting certain filing requirements for these entities by extending the period within which those requirements must be met. Charitable companies registered at Companies House will also benefit from the deadline extensions under this instrument. There is no impact on other charitable or voluntary bodies.
- 12.2 The impact on the public sector will be to reduce the burden on Companies House which will not need to process a large volume of applications for extensions for the filing of company accounts.
- 12.3 A full Impact Assessment has not been prepared for this instrument due to the restricted time-frame available, the need to act with urgency, and the temporary nature of the measures. The Department published an assessment of likely scope and impacts of the temporary measures contained in the 2020 Act in Annex B of the Explanatory Notes to the Act.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 These measures will help small business by providing additional time to meet statutory deadlines for filing at Companies House where those deadlines are extended by this instrument.

14. Monitoring & review

- 14.1 There are no plans to formally monitor or review this instrument which will only apply until 5 April 2021 and does not impose burdens on business.

15. Contact

- 15.1 Paul Smith at the Department for Business, Energy and Industrial Strategy Telephone: 0207 215 4164 or email: pauld.smith@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Matthew Ray, Deputy Director, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Callanan, Minister for Climate Change and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.