

EXPLANATORY MEMORANDUM TO
THE PENSION PROTECTION FUND (MORATORIUM AND ARRANGEMENTS
AND RECONSTRUCTIONS FOR COMPANIES IN FINANCIAL DIFFICULTY)
REGULATIONS 2020

2020 No. 693

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions 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 Measures in the Corporate Insolvency and Governance Act 2020 introduce corporate restructuring tools which include a stand-alone moratorium for companies, Limited Liability Partnerships (LLPs) and Charitable Incorporated Organisations (CIOs) in financial difficulty, to give them respite from their creditors. Companies and LLPs will also be able to make use of a restructuring plan (compromise or arrangement).

[Corporate Insolvency and Governance Act 2020 — UK Parliament](#)

- 2.2 The Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) Regulations 2020 provide specific protections for pension schemes during a moratorium and when a restructuring plan is proposed.
- 2.3 The regulations enable the Pension Protection Fund (“PPF”) to participate in key decisions in the process by enabling it to exercise creditor rights that would otherwise be exercisable by the scheme trustees or managers.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The regulations are subject to the made affirmative procedure.
- 3.2 These regulations are to be made and laid on 6 July 2020 and come into force on 7 July. The 21- day rule is breached because of the need for these Regulations to come into force with the least possible delay.
- 3.3 The moratorium and restructuring provisions introduced in the Corporate Insolvency and Governance Act 2020 (by sections 1 and 7) came into force on the day after it received Royal Assent (section 49(1)), i.e., they came into force on 26th June. Those provisions introduced processes that are now available for use by companies, LLPs and CIOs in distress. The purpose of these Regulations is to secure creditor rights for the PPF in the context of those processes in order to safeguard its interests where a company, LLP or CIO is making use of them is an employer in relation to a defined benefit pension scheme. The Regulations form an integral part of the legislative regime and need to come in to force as soon as possible after Royal Assent to minimise the gap in the application of the regime.

- 3.4 These Regulations have been prepared urgently following Royal Assent and need to come into force, urgently. There is an ongoing risk that during the period between the coming into force of the provisions in the Act and the Regulations, a company, LLP or CIO, could obtain a moratorium from its creditors or in the case of a company or LLP propose a plan to restructure its business without the PPF being able to intervene as a creditor to protect its interests.

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 The territorial application of this instrument varies between provisions.

4. Extent and Territorial Application

- 4.1 The territorial extent of regulation 2 is England and Wales and Scotland.
4.2 The territorial application of regulation 2 is Great Britain.
4.3 The territorial extent of regulations 1 and 3 is England and Wales, Scotland and Northern Ireland.
4.4 The territorial application of regulations 1 and 3 is Great Britain and Northern Ireland.

5. European Convention on Human Rights

- 5.1 The Minister for Pensions and Financial Inclusion, Guy Opperman has made the following statement regarding Human Rights: “In my view the provisions in the Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Corporate Insolvency and Governance Act 2020 makes changes to the corporate insolvency regime and restructuring measures and creates new processes (see sections 1 and 7), including a stand-alone moratorium and restructuring plans.
6.2 Government Amendments to the Corporate Insolvency and Governance Bill introduced a number of specific protections for pension schemes and included a delegated power to enable the PPF to exercise creditor rights in these processes, subject to conditions. These Regulations, made under powers in section A51 of the Insolvency Act 1986 and section 901I of the Companies Act 2006, enable the PPF to exercise the scheme trustees’ or managers’ role as a creditor in specified circumstances and subject to certain conditions.

[Corporate Insolvency and Governance Act 2020 — UK Parliament](#)

7. Policy background

- 7.1 The PPF provides compensation to eligible pension scheme members whose employer has become insolvent and cannot meet the scheme’s liabilities. It is funded mainly by a levy collected from pension schemes.

- 7.2 When an employer in relation to an eligible occupational pension scheme experiences an ‘insolvency event’¹, the scheme enters an ‘assessment period’². The PPF entry process starts when the PPF receives notification that the sponsoring employer of a scheme has suffered a qualifying insolvency event under section 127 of the Pensions Act 2004 or that the scheme can no longer continue as a going concern under section 129 of the 2004 Act. An assessment period begins on the date of the insolvency or the application under section 132 of the 2004 Act.

[Pensions Act 2004](#)

- 7.3 Under section 137 of the 2004 Act, during the assessment period, the rights and powers of the trustees or managers of the scheme in relation to any debt (including any contingent debt) due to them by the employer, whether by virtue of section 75 of the Pensions Act 1995 (deficiencies in the scheme assets) or otherwise, are exercisable by the PPF to the exclusion of the scheme trustees or managers.

[Pensions Act 1995](#)

- 7.4 Neither moratoriums nor restructuring plans are qualifying insolvency events and so the provisions of the 2004 Act would not apply. However, the pension scheme is typically a large, unsecured creditor of the employer and so moratoriums and restructuring plans, which inevitably include negotiations with the creditors of the company, LLP or CIO can have a significant impact on the scheme and by extension on the interests of the PPF.
- 7.5 Whilst a moratorium is not in itself a procedure for a business to shed its liabilities, it will become the point at which discussions about a restructuring deal begin. Restructuring will involve trade-offs and so it is intended that the PPF is able to intervene in those discussions, consider the full spectrum of risks and protect the interests of its levy payers and scheme members. These Regulations give the PPF the ability to exercise creditor rights in these processes that would otherwise be exercised by the scheme trustees or managers.
- 7.6 Regulation 2 provides that during any period in which a moratorium is in force, in specified circumstances, the creditors’ rights of the scheme trustees or managers are to be exercised by the PPF instead. Before exercising those rights, the PPF must consult the scheme trustees or managers.
- 7.7 Regulation 3 makes provision, in specified circumstances, when a compromise or arrangement (restructuring plan) is proposed, for the PPF and scheme trustees or managers to exercise the rights under Part 26A of the Companies Act 2006, which include, the right to:
- (a) make applications to the Court under sections 901C and 901F of the 2006 Act; and
 - (b) participate in meetings ordered by the Court under section 901C of the 2006 Act.
- 7.8 The regulations also make provision for the PPF to exercise voting rights to the exclusion of the scheme trustees or managers. Before exercising those rights, the PPF must consult the scheme trustees or managers.

¹ See section 121 of the 2004 Act

² See section 132 of the 2004 Act

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 No consolidation is being undertaken because this instrument does not amend another instrument.

10. Consultation outcome

10.1 The Regulations are being introduced in the context of the coronavirus emergency, and so no consultation has been undertaken. There is no legal requirement to consult.

11. Guidance

11.1 No guidance is being issued on this instrument. The procedures are contained within the regulations. The PPF will be exercising the schemes trustees' or managers' creditor's rights and has been fully engaged in the policy development. The PPF will consult the scheme trustees or managers before exercising any rights to their exclusion.

12. Impact

12.1 There is no direct impact on business, charities or voluntary bodies.

12.2 There is no direct impact on the public sector. However, this measure is designed to ensure that the PPF and therefore its members are considered as a creditor in relevant events.

12.3 An Impact Assessment has not been prepared for this instrument because this measure does not impose or lift any regulations from business, and so there is no direct regulatory impact. It simply gives a role to a public body (the PPF) to be considered in these events.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The PPF publishes an Annual Report which covers its performance over the previous year.

14.2 Reports are published on the GOV.UK website. In addition, it has regular meetings with Department for Work and Pensions officials to review its work.

<https://www.ppf.co.uk/annual-report>

15. Contact

15.1 Ade Awoyinka at the Department for Work and Pensions Telephone: 020 7449 7228 mobile 075 846 10029 or by email: Ade. Awoyinka @dwp.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Joanne Gibson, Deputy Director, Defined Benefit Pensions at the Department for Work and Pensions, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Guy Opperman, Minister for Pensions and Financial Inclusion at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.