EXPLANATORY MEMORANDUM TO

[The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Amendment of Relevant Period in Schedule 8) (No.2) Regulations (Northern Ireland) 2021]

[S.R. 2021 No. 258

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for the Economy to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under the powers conferred by section 42(1)(b) of the Corporate Insolvency and Governance Act 2020 ("the CIG Act] and is subject to the Confirmatory resolution procedure.

2. Purpose

2.1. This Statutory Rule provides for Schedule 8 to the CIG Act to remain in effect until 30 March 2022. Schedule 8 makes temporary provision with respect to company moratoriums.

3. Background

3.1. The CIG Act was made at Westminster as a piece of emergency legislation and extends to the whole of the UK. Provision for Northern Ireland was included under a Legislative Consent Motion passed by the Northern Ireland Assembly.

3.2. Section 4 of the CIG Act establishes a moratorium to be available to financially distressed companies giving them protection from action by creditors. A moratorium lasts for an initial period of 20 business days and can be extended either by the directors filing notice with the High Court or by an order of the Court made on the application of the directors.

3.3. Schedules 5 to 7 of the CIG Act makes further provision relating to company moratoriums.

3.4. Schedule 8 to the CIG Act contains temporary provisions to apply alongside section 4 and schedules 5 to 7.

3.5. Part 2 of Schedule 8 to the CIG Act includes provisions aimed at making it easier for a company to enter a moratorium during the Coronavirus pandemic. Part 3 comprises a set of temporary rules to work along with the moratorium provisions in the CIG Act, until such time as amendments can be made to the Insolvency Rules (Northern Ireland) 1991 to enable the latter to apply with respect to company moratoriums. Part 4 gives the Department power to apply provisions made by or under Schedule 8 to limited liability partnerships, Co-operative and Community Benefit Societies and credit unions.

3.6. Parts 2 and 3 of Schedule 8 are stated to apply during the "relevant period" and this is defined by paragraph 1 of Schedule 8 as lasting from the day on which Schedule 8 comes into force until 30 September 2020.

3.7. Section 42(1)(b) of the CIG Act gives the Department power to extend by regulations certain provisions in the CIG Act for up to six months, if the Department considers it reasonable to do so to mitigate the effect of coronavirus. The provisions which may be extended include paragraph 1 of Schedule 8.

3.8. The Corporate Insolvency and Governance Act 2020 (Amendment of Certain Relevant Periods) Regulations (Northern Ireland) 2020 (S.R. 2020 No. 199) made on 15 September 2020, provided for the relevant period in paragraph 1 of Schedule 8 to end on 30 March 2021 instead of 30 September 2020.

3.9. The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Early Termination of Certain Temporary Provisions) Regulations (Northern Ireland) 2020 (S.R. 2020 No. 214) made on 9 October 2020, provided for paragraphs 5, 6(1)(b), 7(a) and 8 to 11 in Part 2 of Schedule 8 to cease to have effect on 14 October 2020.

3.10. The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Amendment of Relevant Period in Schedule 8) Regulations (Northern Ireland) 2021, made on 9 March 2021, gave effect to the remainder of Schedule 8 for a further six months, ending on 30 September 2021 instead of 30 March 2021.

3.11. These Regulations give effect to the remainder of Schedule 8 for a further six months by providing for the relevant period in paragraph 1 of Schedule 8 to end on 30 March 2022 instead of 30 September 2021.

4. Consultation

4.1. It is not intended to carry out any consultation. The proposed Regulations are to keep in operation temporary measures in primary legislation, including a set of temporary rules, without which the provisions in the CIG Act, enabling financially distressed companies to enter a moratorium giving them protection from their creditors, would not work. It is essential that companies and mutual societies in Northern Ireland can continue to be able to access a moratorium, in the same way as their counterparts in the rest of the United Kingdom. It is especially important that they should be able to do so during the Coronavirus crisis.

5. Equality Impact

5.1. Due to the urgency to bring the Act into force, screening was carried out retrospectively. It was determined that there is no undue impact on section 75 groups and therefore no mitigation is required, and no change to policy is required.

5.2. The proposed Regulations do not alter what is in the CIG Act, they simply extend the time period during which some of the provisions in the Act will apply.

6. Regulatory Impact

6.1. Impact assessment was fully addressed at the making of the primary legislation.

7. Financial Implications

7.1. None.

8. Section 24 of the Northern Ireland Act 1998

8.1. [The Regulations extend the period during which certain provisions in the Act are to have effect. It is the view of the Secretary of State for Business, Energy and Industrial Strategy, that the provisions of the Act are compatible with the Convention rights, under section 19 of the Human Rights Act 1998.]

9. EU Implications

9.1. None.

10. Parity or Replicatory Measure

10.1. Schedule 8 to the CIG Act replicates Schedule 4 to the same Act applying in GB. The decision has been taken to extend Schedule 8 independently of what will be done in GB because it is essential to keep Schedule 8 in operation, as it contains temporary rules applying in Northern Ireland which must remain in place until permanent rules to replicate ones being made in GB can be made.

11. Additional Information

11.1. None.