# EXPLANATORY MEMORANDUM TO

# The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Amendment of Schedule 11) Regulations (Northern Ireland) 2021

## SR 2021 No. 259

## 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 sections 28(1)(a) and 33(1) 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 replaces Schedule 11 to the CIG Act with a substitute which provides for new, tapered restrictions on creditors' rights to petition to have companies wound up on grounds of inability to pay debt, to apply for a six month period from 1 October 2021 to 31 March 2022.

## 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. The CIG Act includes temporary modifications to corporate insolvency legislation applying in Northern Ireland corresponding to modifications made to that applying in GB, to help companies and other entities during the difficult situation resulting from the Covid-19 pandemic.

3.3. Schedule 11 to the CIG Act as originally enacted put in place an outright ban on the presentation of petitions to have registered and unregistered companies wound up on foot of statutory demands served by creditors during the "relevant period" which was to last from 1 March to 30 September 2020. The Schedule also forbade the presentation of petitions by creditors to have companies wound up by the High Court and the making of winding up orders by the Court on grounds of insolvency, unless coronavirus had not had a financial effect on the company, or the company would have become insolvent even if coronavirus had not had an effect on its finances.

3.4. The CIG Act provided for all of the prohibitions imposed on creditors and the High Court by Schedule 11 to automatically expire on 30 September 2020. However the period during which they are to apply has been extended a total of four times by Regulations made by the Department under powers in section 42(1)(b) of the CIG Act. The period will finally end on 30 September 2021.

3.5. Regulation 2 of the Statutory Rule to which this Explanatory Memorandum relates replaces Schedule 11 to the CIG Act with an entirely new Schedule which is to apply during a relevant period which begins on 1 October 2021 and ends on 31 March 2022. The new Schedule provides for a tapered easing of restictions on winding-up of companies, which will help business get back to normal without facing a "cliff-edge" following withdrawal of the current provisions.

3.6. Sub-paragraph (1) of paragraph 1 of the new Schedule provides that during the relevant period creditors will not be permitted to present petitions under Article 104 of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") to have companies wound up on the grounds of the company being deemed to be insolvent, under, in the case of registered companies, Article 102(f) of that Order, and in the case of unregistered companies Article 185(4)(b), unless conditions A to D set out in paragraph 1 are met.

3.7. Conditions A, B, C and D are respectively set out in sub-paragraphs (2), (3), (7) and (8) of paragraph 1 of the new Schedule. Condition A is that the debt owed to the creditor must be for a liquidated amount, which has fallen due for payment, and is not a debt in respect of rent or any sum or other payment that a tenant is liable to pay under a relevant business tenancy which is unpaid by reason of a financial effect of coronavirus. Condition B is that the creditor has delivered written notice to the company in accordance with sub-paragraphs (4) to (6) of paragraph 1. This notice must, among other things, inform the company that the creditor is seeking its proposals for payment of the debt and intends to petition to have the company wound up unless a satisfactory proposal is received within 21 days (or such shorter period as the court may allow) of the notice being delivered. Condition C is that the company did not make a proposal for payment of the debt which is to the creditor's satisfaction within 21 days (or such shorter period as the Court may allow) of the notice seeking its proposals for payment of the debt being delivered. Condition D is that where the petition is presented by a single creditor, the debt or the debts owed to that creditor in respect of which conditions A to C are met must be at least £10,000 and where the petition is presented jointly by more than one creditor, the sum of the debts owed to those creditors, in respect of which conditions A to C are met, must be at least £10,000.

3.8. Sub-paragraph (4) of paragraph 1 of the new Schedule sets out the information which the written notice which has to be delivered to the company under Condition B must contain.

3.9. Sub-paragraph (5) of paragraph 1 of the new Schedule provides that the written notice which has to be delivered to the company under Condition B must be delivered to the company's registered office, or if this is not possible or the company does not have a registered office or is unregistered, in accordance with sub-paragraph (6).

3.10. Sub-paragraph (6) of paragraph 1 of the new Schedule provides that in cases where this sub-paragraph applies delivery of the written notice may be made to the company's last known principal place of business or to the secretary or a director or manager, or, in relation to an unregistered company, a principal officer.

3.11. Sub-paragraph (9) of paragraph 1 of the new Schedule gives creditors the right to apply to the High Court for an order exempting them from having to comply with Condition B and C or reducing the time time allowed under Condition C for the company to make a satisfactory proposal for payment of the debt.

3.12. Sub-paragraph (11) of paragraph 1 of the new Schedule gives the Court the right, when making an order reducing the period allowed under Condition C for the company to make a satisfactory proposal to also give directions as to delivery of the written notice required by Condition B or to modify the requirements under sub-paragraphs (4) to (6) for delivery of the notice.

3.13. Paragraph 2 of the new Schedule introduces a modified Form for use when petitioning to have a company wound up on grounds of insolvency during the relevant period.

3.14. Paragraph 3 of the new Schedule is the interpretation provision.

3.15. Paragraph 4 of the new Schedule provides that its provisions, so far as they relate to registered companies, are to have effect as if they were included in Part 5 of the 1989 Order.

3.16. Regulation 3 of the Statutory Rule makes a minor consequential amendment to section 42 of the Corporate Insolvency and Governance Act 2020.

## 4. Consultation

4.1. No consultation has been undertaken. There is no scope to vary the proposed Regulations as the policy is that companies in Northern Ireland are to benefit from the same protection against being wound up as companies elsewhere in the United Kingdom.

## 5. Equality Impact

5.1. Equality screening has determined that the changes to be made by the proposed Regulations will not have any differential impact on any of the section 75 groups.

## 6. Regulatory Impact

6.1. The proposed Regulations correspond to Regulations being made in GB and are to protect companies affected by the measures taken by the Northern Ireland Executive to curb the spread of Coronanvirus. The restrictions which the Regulations impose will end after six months and will therefore not have any long term impact on business, charities, social enterprise or voluntary bodies.

## 7. Financial Implications

7.1. None.

## 8. Section 24 of the Northern Ireland Act 1998

8.1. The Department for the Economy considers that these Regulations are compliant with section 24 of the Northern Ireland Act 1998. The Regulations are not incompatible with any of the Convention rights or with Article 2(1) of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement, they do not discriminate against a person or class

of person on the grounds of religious belief or political opinion, and they do not modify any enactment in breach of section 7 of the Northern Ireland Act 1998.

## 9. EU Implications

9.1. None.

## 10. Parity or Replicatory Measure

10.1. These regulations replicate the Corporate Insolvency annd Governance Act 2020 (Coronavirus) (Amendment of Schedule 10) Regulations 2021 applying in GB.

## 11. Additional Information

11.1. None.