EXPLANATORY MEMORANDUM TO

Corporate Insolvency and Governance Act 2020 (Coronavirus) (Early Termination of Part 2 of Schedule 8) Regulations (Northern Ireland) 2022

[S.R. 2022 No. 4]

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 paragraph 2(1) of Schedule 8 to the Corporate Insolvency and Governance Act 2020 ("the Act") and is subject to the negative resolution procedure.

2. Purpose

2.1. This Statutory Rule provides that Part 2 Schedule 8 to the Act ceases to have effect on 14 February 2022. Part 2 of Schedule 8 to the Act made certain temporary modifications to the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order").

3. Background

3.1. The 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 Act inserts provision into the 1989 Order enabling companies in financial difficulty to enter a moratorium protecting them from creditor action while they explore rescue options.

3.3. A company can only enter a moratorium and a moratorium can only be extended if it is likely that the moratorium will result in the rescue of the company as a going concern. The insolvency practitioner appointed as monitor is required to monitor the company's affairs while the moratorium is in progress and to bring the moratorium to an end if it becomes apparent that it is not going to result in rescue of the company as a going concern.

3.4. Paragraph 5 in Part 2 of Schedule 8 to the Act made companies with permission, under Part 4A of the Financial Services and Markets Act 2000, to carry on a regulated activity, ineligible to enter a moratorium unless they were also subject to a requirement under that Act to refrain from holding money for clients.

3.5. Paragraphs 6 to 10 in Part 2 of Schedule 8 to the Act temporarily suspended some of the eligibility conditions for entry to a moratorium and made it temporarily possible for any worsening of the company's financial position for reasons relating to coronavirus to be disregarded when assessing the likelihood of a moratorium resulting in rescue as a going concern.

3.6. Paragrapah 11 in Part 2 of Schedule 8 to the Act provided a definition of "coronavirus" for the purposes of that Part.

3.7. All of the provisions in Part 2 of Schedule 8 to the Act were stated to apply during the "relevant period". Paragraph 1 of Schedule 8 provided that the relevant period in that Schedule was to end on 30 September 2020.

3.8. The relevant period during which Schedule 8 to the Act is to apply was extended to 30 March 2021 by provision included in the Corporate Insolvency and Governance Act 2020 (Amendment of Certain Relevant Periods) Regulations (Northern Ireland) 2020, to 30 September 2021 by the Corporate Insolvency and Governance Act (Coronavirus) (Amendment of Relevant Period in Schedule 8) Regulations (Northern Ireland) 2021 and to 30 March 2022 by the Corporate Insolvency and Governance Act (Coronavirus) (Amendment of Relevant Period in Schedule 8) (No. 2) Regulations (Northern Ireland) 2021.

3.9. The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Schedule 8) (Early Termination of Certain Temporary Provisions) Regulations (Northern Ireland) 2020 provided for paragraphs 5, 6(1)(b), 7(a) and 8 to 11 in Part 2 of Schedule 8 to the Act to cease to have effect on 14 October 2020.

3.10. These Regulations carve out Part 2 of Schedule 8 from the extension to the period during which that Schedule is to apply made by the Corporate Insolvency and Governance Act (Coronavirus) (Amendment of Relevant Period in Schedule 8) (No. 2) Regulations (Northern Ireland) 2021. These Regulations provide for Part 2 of Schedule 8 to instead cease to have effect on 14 February 2022.

3.11. Regulation 3 is a saving provision which provides for paragraphs 8 to 11 in Part 2 of Schedule 8 to continue to apply in the case of moratoriums which either began before 14 October 2020 or, where the moratorium was obtained as a result of an application to Court, the application was made before that date.

3.12. Regulation 4 revokes a similar saving provision in the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Schedule 8) (Early Termination of Certain Temporary Provisions) Regulations (Northern Ireland) 2020

4. Consultation

4.1. It is not intended to carry out any consultation. The measures introduced by the Act were intended to apply uniformly across the UK. Schedule 8 to the Act corresponds to Schedule 4 applying in GB and the relevant period during which Schedule 4 was to apply expired on 30 September 2021 without being extended. The only reason to keep any of Schedule 8 in operation is the presence of a set of temporary rules in Part 3 which need to be available until permanent rules can be made.

5. Equality Impact

5.1. Due to the urgency of the need to bring the Act into force, screening for the Legislative Consent Motion was carried out retrospectively. It was

determined that there was no undue impact on any of the section 75 groups and therefore no mitigation or change to policy was required.

5.2. The proposed Regulations do not alter what is in the Act. They simply negate the extension, by other Regulations, of certain provisions in the Act, until 30 March 2022.

6. Regulatory Impact

6.1. A regulatory impact assessment has not been prepared for these Regulations as they do not have any significant impact on business, charities, social enterprise, or voluntary bodies.

6.2. Impact assessment was fully addressed when the Act was being made and the Act provided that the modifications which are being terminated were to be of a temporary nature.

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. Schedule 8 to the Act corresponds to Schedule 4 which applied in GB. The relevant period during which Schedule 4 applied was allowed to expire on 30 September 2021 without being extended.

11. Additional Information

11.1. None.