EXPLANATORY MEMORANDUM TO

The Administration (Restrictions on Disposal etc. to Connected Persons) Regulations (Northern Ireland) 2021]

ISBN 9780338016331

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 61A(1),(2) and (7) of the Insolvency (Northern Ireland] Order 1989 and is subject to the draft affirmative resolution procedure.

2. Purpose

2.1. This Statutory Rule prohibits disposal of a company's business or assets, or a substantial part thereof, to anyone connected with the company during the eight weeks following entry into administration, unless one of two conditions are met. These are that either the creditors have approved the disposal or a report on the disposal has been obtained from an independent and suitably qualified person.

3. Background

3.1. Schedule 1 to the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") lists an administrator's powers as including power to sell or otherwise dispose of a company's property. Sale of a company's property can be under a so-called "pre-pack" arrangment where a purchaser is found and a sale is agreed prior to the company entering administration, with the sale being executed at, or shortly after the appointment of the administrator. The speed with which pre-pack sales take place helps to preserve the value in the business and jobs. However there is a need to ensure that due regard is had to the interests of creditors, especially as many pre-pack sales are to the same persons as owned the company in administration or persons connected with them.

3.2. Section 9 of the Corporate Insolvency and Governance Act 2020 ("the CIG Act") inserted new paragraph 61A into Schedule B1 to the 1989 Order, giving the Department power to make regulations prohibiting, or imposing requirements or conditions in relation to, the disposal, hiring out or sale of the property of a company by an administrator to connected persons in circumstances specified in the regulations. Paragraph 61A of Schedule B1 expires at the end of June 2021 unless that this power to make regulations has been utilised by then.

3.3. This instrument is made under the powers in paragraph 61A of Schedule B1 and requires anyone intending to acquire a business or assets from a company during the first eight weeks of its being in adminstration to seek an independent opinion on the purchase, unless that the creditors have approved the sale.

3.4. Mandatory referral to an independent third party will provide creditors with greater assurance that the sale is appropriate in the circumstances of the insolvency.

3.5. The evaluator providing the opinion will be required to prepare a report which includes a statement either that they are satisfied that the consideration to be provided for the property to be sold or disposed of and the grounds for the sale or disposal are reasonable or that they are not, the latter being referred to as a "case not made opinion". Where the "case is not made" an administrator will still be able to proceed with the sale to the connected person but will need to provide an explanation to the creditors of why they have done so.

3.6. The Regulations apply to all sales to connected persons during the first eight weeks of an administration, not just those that are pre-pack sales.

4. Consultation

4.1. It is not intended to carry out any consultation. The proposed Regulations are made in the exercise of power included in the CIG Act 2020 as part of a range of measures to assist businesses deal with the financial difficulty and economic uncertainty caused by the Coronavirus crisis. The regulations must be made and in operation by the end of June 2021 as otherwise the power to make them will expire. Consultations on the corresponding regulations in GB were carried out, including with recognised professional bodies for insolvency practitioners which operate in Northern Ireland as well as in GB.

5. Equality Impact

5.1. Consideration has been given to compliance with section 75 of the Northern Ireland Act 1998 and the Department has identified no equality issues.

6. Regulatory Impact

6.1. The Department does not consider that there is a need for a Regulatory Impact Assessment for this instrument, as it has no impact on business, charities, voluntary bodies or the public sector,

7. Financial Implications

7.1. None.

8. Section 24 of the Northern Ireland Act 1998

8.1. [The Regulations are considered to be compatible with section 24 of the Northern Ireland Act 1998 including that they are compatible with the Convention Rights as defined in the Human Rights Act 1998.

8.2. The Minister for Climate Change and Corporate Responsibility has confirmed that in his view the corresponding regulations for GB are compatible with the Convention rights,.

9. EU Implications

9.1. [None.]

10. Parity or Replicatory Measure

10.1. These regulations replicate the Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021 applying in GB.

11. Additional Information

11.1. N/A.