EXPLANATORY MEMORANDUM TO

[Draft Corporate Insolvency and Governance Act 2020 (Coronavirus) (Change of Expiry Date in section32(1)) Regulations (Northern Ireland) 2021]

SR2021 No.

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 32(3) of the Corporate Insolvency and Governance Act 2020 ("the CIG Act] and is subject to the draft affirmative resolution procedure.

2. Purpose

2.1. These Statutory Rule extends by one year, until 29 April 2022, the period , during which the Department or the Secretary of State can exercise their power under section 28 of the Corporate Insolvency and Governance Act 2020 ("the CIG Act") to make regulations. Regulations under section 28 can make temporary amendments or modifications to the effect of corporate insolvency or governance legislation so as to change the conditions which must be met before a corporate insolvency or restructuring procedure applies to entities of any description, or to change the way such a procedure applies, or to change or disapply any duty which a person with corporate responsibilty is under or their liability to any sanction.

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 makes provision about corporate insolvency as well as changes to the law relating to the governance and regulation of companies and other entities. The provisions concerning corporate governance, and some of the provisions concerning corporate insolvency, are intended to be temporary. These temporary provisions are designed to help UK companies and other entities during the difficult time caused by coronavirus.

3.3. Section 28 of the CIG Act gives the Department or the Secretary of State of State power to make certain temporary amendments or modifications to the effect of corporate governance and insolvency legislation by regulations. Sections 29 to 31 place restrictions on the purposes for which regulations can be made under section 28, the circumstances in which they can be made and how long changes made by them can last. Under section 29 the purpose has to include mitigating the impact of coronavirus.

3.4. Section 32(1), as originally enacted, provides that the power to make regulations under section 28 has an expiry date, so that regulations may not be made under that section after 30 April 2021.

3.5. Section 32(3) provides that a relevant authority may by regulations substitute a later date for the one currently specified in subsection (1) of that section. "Relevant authority" is defined by section 28(4) to mean the Department or the Secretary of State.

3.6. The power under section 32(3) to substitute a later date for the one currently specified in subsection (1) is subject to the proviso that the new date must fall within the period of one year from the current date and must be within the two year period following the date on which the CIG Act was passed (The CIG Act was passed on 25 June 2020).

3.7. This Statutory Rule changes the date specified in section 32(1) from 30 April 2021 to 29 April 2022 , thereby extending the period during which the regulation making power under section 28 can be exercised by one year.

3.8. Keeping the power in section 28 of the CIG Act available for a further year will provide a means for specific and temporary changes to be made to corporate insolvency and governance legislation should an urgent need to do so arise, which will allow for quick reactions to any unforeseen challenges arising as a result of the pandemic's impact on business.

3.9. The extension of the power in section 28 made by this Statutory Rule is for the maximum period allowed by section 32(4) of the CIG Act and reflects the fact that although there is now a rapid vacccination programme in place for coronavirus, lockdowns and other restrictions on normal trading continue so the future impact of the pandemic on business and the insolvency regime remains uncertain.

3.10. It is reasonable foreseeable that the pandemic will continue to have an impact even after the vaccination programme has been completed and in any case it will certainly continue beyond the current expiry date for the section 28 power of 30 April 2021.

4. Consultation

4.1. This instrument extends an existing power but does not alter use power itself, and makes no amendments to corporate insolvency or restructuring legislation other than the substitution of one expiry date for another in the CIG Act. As such, consultation with external stakeholders was considered unnecessary on this occasion.

5. Equality Impact

5.1. Due to the urgency to bring the CIG 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. These regulaations are to replicate the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Change of Expiry Date) Regulations 2021 applying in GB.

11. Additional Information

11.1. N/A