

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Second Delegated Legislation Committee

CORPORATE INSOLVENCY AND GOVERNANCE  
ACT 2020 (CORONAVIRUS) (EXTENSION OF THE  
RELEVANT PERIOD) ) REGULATIONS 2020

*Monday 19 October 2020*

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**The Committee consisted of the following Members:**

*Chair:* CLIVE EFFORD

- |   |   |
|---|---|
| Begum, Apsana ( <i>Poplar and Limehouse</i> ) (Lab)                     | † Scully, Paul ( <i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i> ) |
| † Fletcher, Mark ( <i>Bolsover</i> ) (Con)                              | † Sunderland, James ( <i>Bracknell</i> ) (Con)  |
| † Furniss, Gill ( <i>Sheffield, Brightside and Hillsborough</i> ) (Lab) | † Tarry, Sam ( <i>Ilford South</i> ) (Lab)  |
| Lewis, Clive ( <i>Norwich South</i> ) (Lab)                             | Thompson, Owen ( <i>Midlothian</i> ) (SNP)  |
| McDonnell, John ( <i>Hayes and Harlington</i> ) (Lab)                   | † Tomlinson, Michael ( <i>Lord Commissioner of Her Majesty's Treasury</i> )                                   |
| † Mangnall, Anthony ( <i>Totnes</i> ) (Con)                             | Wood, Mike ( <i>Dudley South</i> ) (Con)  |
| † Marson, Julie ( <i>Hertford and Stortford</i> ) (Con)                 | Elektra Garvie-Adams, Yohanna Sallberg, <i>Committee Clerks</i>   |
| † Powell, Lucy ( <i>Manchester Central</i> ) (Lab/Co-op)                |   |
| † Randall, Tom ( <i>Gedling</i> ) (Con)                                 |   |
| † Russell, Dean ( <i>Watford</i> ) (Con)                                |   |
| † Sambrook, Gary ( <i>Birmingham, Northfield</i> ) (Con)                | † <b>attended the Committee</b>   |

## Second Delegated Legislation Committee

Monday 19 October 2020

[CLIVE EFFORD *in the Chair*]

### Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2020

4.30 pm

**The Chair:** Before I call the Minister to move the motion, I point out that if Members sitting in the Public Gallery want to speak at any time, they will have to come forward, or the microphones will not pick up what they are saying. If Members have any speaking notes, please send them by email to *Hansard*; do not send the hard copy.

**The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Paul Scully):** I beg to move,

That the Committee has considered the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2020 (S.I. 2020, No. 1031).

It is a pleasure to serve under your chairmanship, Mr Efford. The regulations were laid before the House on 24 September 2020. The coronavirus pandemic is the biggest threat that our country has faced in decades. It is important for our economy that we address the hardship that people are facing up and down the country. Since the pandemic emerged, the Government have taken swift action to save lives; to limit the spread of disease so as to avoid its overwhelming the NHS; and to mitigate the damage to the economy. Businesses have received billions in loans, tax deferrals, business rates relief, and grants, to support them and to help save jobs. The Government's recently launched winter economy plan has a further package of targeted measures to provide ongoing essential support.

The Government recognise that while most businesses have been able to reopen, and many have received significant financial support, some continue to face uncertainty and financial difficulties. This statutory instrument will help companies by extending most of the temporary measures introduced by the Corporate Insolvency and Governance Act 2020, which were due to expire on 30 September. These extensions to various parts of insolvency and company law will protect companies from aggressive creditor action, promote company rescue, and give businesses greater flexibility by allowing them to hold their annual general meetings in a way that is consistent with social distancing measures.

The temporary insolvency measures being extended are the suspension on serving statutory demands and the restrictions on filing petitions to wind up companies, which are being extended until 31 December 2020; certain modifications to the moratorium provisions of the temporary moratorium rules, which are being extended until 30 March 2021; and the small supplier exemption from termination clause provisions, which is also being extended until 30 March 2021.

The temporary suspension on serving statutory demands, and the restrictions on winding-up petitions, have helped many essentially viable companies during these difficult trading times by removing the threat of aggressive creditor action at a time when many businesses are not able to operate at full capacity. We need to continue to keep people safe as businesses continue to adapt. Extending these measures will give confidence and support to companies doing their best to stay open in these unprecedented times. We will continue to monitor the situation closely before making any decisions on further extensions.

Hon. Members will know that the Government have already extended the temporary suspension of the right of commercial landlords to forfeit the tenancy of businesses, and that will give further protection to tenants who have only recently been able to restart trading after the restrictions introduced because of the pandemic. Most landlords and tenants have been working together to reach agreements on debt obligations, but there remains a risk that some landlords may use aggressive debt recovery tactics against companies struggling to meet rent commitments in difficult trading conditions. The extension of the statutory demand and winding-up provisions will be welcomed particularly by commercial tenants, but it applies to all business sectors of the economy.

The new company moratorium introduced by the 2020 Act gives financially distressed companies breathing space from creditor enforcement while they seek a rescue. I am pleased that companies—particularly smaller ones—are beginning to make use of it. In normal economic conditions, the moratorium is intended to work with important criteria, which must be met before the company can enter into it. Those criteria protect the integrity of the moratorium, which should be used only for those companies with a realistic prospect of rescue. Hon. Members will know that it was recognised during debate on the Act that if those criteria were temporarily relaxed, it would help fundamentally viable companies that had been impacted by the pandemic to make use of the moratorium.

These regulations extend some of those temporary relaxations until 30 March 2021. They allow a company subject to a winding-up petition to access a moratorium simply by filing the relevant documents in court, rather than having to make an application to court. The regulations also disapply the rule that prevents a company from entering a moratorium if it had been subject to a company voluntary arrangement, been in administration, or been in a previous moratorium within the past 12 months. The regulations also extend the temporary administrative rules for the moratorium, which are in schedule 4 of the Act and enable the moratorium to operate.

The final measure in the insolvency framework that is to be extended is the small company supplier exemption from the prohibition of termination clauses. This instrument extends it until 30 March 2021. Those termination clauses are often found in supply contracts between businesses. They are triggered when a company commences a formal insolvency or rescue procedure, and allow the supplier to terminate supply immediately. They can also be used by suppliers to demand ransom-type payments to maintain the supply of essential goods or services, many of which may be vital if the company undergoing rescue is to continue trading, and the withdrawal of

which could jeopardise any rescue. The prohibition of those clauses means that contracted suppliers cannot terminate contracts or take other steps, such as demanding additional payments, simply because a company has entered an insolvency procedure or moratorium.

The measures give an important protection to distressed companies while they are attempting a rescue, but in the current circumstances, those provisions could hit smaller suppliers harder, potentially endangering their own solvency, and it continues to be right temporarily to exempt them from the prohibition, and to allow them to terminate supplies, should they need to protect their own business.

Finally, the 2020 Act introduced temporary flexibilities around the manner in which companies and other qualifying bodies could hold annual general meetings, allowing them to balance the requirements of legislation and their constitutional arrangements with the prevailing coronavirus restrictions, and so safeguard the wellbeing of their shareholders and members. That is crucial to the operation of the UK's strong corporate governance regime, which makes sure that company boards are fully held to account by their members. Without this extension, that scrutiny would be made increasingly difficult.

The season for annual general meetings is largely behind us, but more than 100 large companies still have to hold AGMs before the end of the year. To that we must add the multitude of smaller companies, charitable incorporated organisations and mutual societies that have similar obligations. The extension of these provisions will give them comfort that they can continue to convene annual general meetings safely and consistently with their legal obligations.

The package of temporary measures introduced by the 2020 Act in June has been widely welcomed by businesses at this critical time. They tell us that these measures have been essential in supporting businesses. Many companies are now able to trade without the threat of aggressive creditor action being taken against them, and have new tools available to help them restructure and rescue themselves. I commend the regulations to the Committee.

4.37 pm

**Lucy Powell** (Manchester Central) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Mr Efford. I think it is the first time I have done so. It is good to be here. While we are very supportive of the regulations, we could have saved all Members here time—in fact, I was nearly late—because we tabled an amendment to the Corporate Insolvency and Governance Bill that would have made these extensions. We pressed Ministers, both in private and during the passage of the Bill, to extend the time periods, because we foresaw that businesses would need this help for longer.

We welcome the extension to the provisions, and indeed called for it. It is absolutely right that companies should continue to benefit from these provisions while experiencing financial difficulties at this unprecedented time. It is now clear that they will be living alongside those difficulties for a lot longer than was foreseen when the Bill was first drafted. We agreed at the time that emergency legislation was required, and we worked closely with the Government to bring it about, but we made it clear during the passage of the Bill that any

previously viable business that was forced to call on any provision of the legislation would have been fundamentally failed.

The Minister spoke about those viable businesses; many businesses now feel that they have been left on the scrapheap, and have been consigned to being unviable, when in normal times they would have been very viable indeed.

I have a few questions about some of the measures. Does the Minister think that we will be here again in a few weeks' or months' time to extend these provisions further, at the end of December 2020—or March 2021, for some of the provisions? If so, would it not have made sense for us to have done that here and now, and just extended some of these provisions further?

A particular worry to us, and something I know the Institute of Directors has raised with the Government and with us on a number of occasions, is that the one measure that it is particularly concerned about, the suspension of wrongful trading, is not being extended. That was included in the original Act, but it is the only temporary measure from the Act that is not being extended. That will open the door for aggressive creditors, suppliers, the banks, financial institutions and others to threaten struggling businesses whose cash flow has been damaged by the continuing crisis.

Although there are issues with a moratorium on wrongful trading, it is important in this difficult time that businesses that might be seen as not viable, but that are viable in normal times, are given the discretion of a moratorium on wrongful trading. Can the Minister tell us the rationale behind that? Why was that measure right in June, but not now? I do not really understand. Those businesses are severely impacted by the lack of safety net for them at the moment, just at the time that they need that extra support—the extension of the furlough, the extension of sector supports, of cash grants and so on. It is all being pulled away from them at the wrong time, and the new measures coming in from the Chancellor are much reduced from those that were available earlier in the year.

As we see regional and local lockdowns—I have yet to see whether that will come into my own area in the next 24 hours—businesses will need more support than is currently on offer from the Government. The cash grants are worth about one third of what they were back in March and April. Without that support, we will need to reconsider the wrongful trading provisions that are now leaving many businesses hanging in the wind. Hopefully the Minister can reassure us on some of those points.

4.42 pm

**Paul Scully:** I thank the hon. Member for her contribution to the debate and the constructive way in which she and her party have always tackled this particular area of support for businesses.

To answer those two questions in particular, the hon. Lady asked whether we will be here again, and the answer is, quite possibly. Why are we doing that? It is important that we keep these measures under consideration—for example, the statutory demands and winding-up petitions. There is a balance to be struck at some point, and some landlords are starting to say, "Well, hold on a sec. What about us? What do we do

*[Paul Scully]*

when we are unable to take any rent, even if a business has been trading throughout this period?" It is important that we take consideration and get the balance right; it is better to do that as the situation develops and as we listen, and then to spend a few minutes considering that in this place, rather than just making one blanket consideration.

On wrongful trading, at the beginning of the pandemic company directors faced an uncertain future regarding trading conditions, but now that the suspension has been in place for seven months, they have had time to make a better assessment of the impact of the pandemic on their company's viability, notwithstanding what the hon. Lady said about further restrictions in some places, including her constituency. I totally understand her particular consideration as a constituency MP for those businesses in those areas, but the end of the suspension also represents the return of an important protection for creditors.

Given the situation with the other measures that we introduced in the original Act, in terms of the moratorium and the restructuring ability, there are more procedures in place for companies to put a pause on permanent insolvency, rather than having to get to the position where they may be trading in insolvency. Wrongful

trading was used as a deterrent in most examples, rather than actual enforcement. There were not many examples of enforcement of wrongful trading, because companies could have looked to other means before they needed to get there.

The points raised in the debate have highlighted the importance of the measures being extended by these regulations. We know that businesses continue to face challenging times right across the country, and it is important that we extend these measures. The regulations will provide much-needed continued support for businesses to concentrate their best efforts on continuing to trade and build on the foundations for economic recovery in the UK.

We have given careful consideration to extending these temporary measures, and the Government will monitor the situation closely before making any decisions about further extensions, including consulting with businesses and their representatives. I thank hon. Members again for their valuable contributions to this debate, and I hope the Committee approves the statutory instrument.

*Question put and agreed to.*

4.46 pm

*Committee rose.*



