

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Second Delegated Legislation Committee

## CORPORATE INSOLVENCY AND GOVERNANCE ACT 2020 (CORONAVIRUS) (SUSPENSION OF LIABILITY FOR WRONGFUL TRADING AND EXTENSION OF THE RELEVANT PERIOD) REGULATIONS 2020

*Monday 14 December 2020*

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

**not later than**

**Friday 18 December 2020**

© Parliamentary Copyright House of Commons 2020

*This publication may be reproduced under the terms of the Open Parliament licence, which is published at [www.parliament.uk/site-information/copyright/](http://www.parliament.uk/site-information/copyright/).*

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

*Chair:* DR RUPA HUQ

- |   |   |
|---|---|
| † Atherton, Sarah ( <i>Wrexham</i> ) (Con)                              | † Scully, Paul ( <i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i> ) |
| † Evans, Dr Luke ( <i>Bosworth</i> ) (Con)                              | † Smith, Greg ( <i>Buckingham</i> ) (Con)   |
| † Furniss, Gill ( <i>Sheffield, Brightside and Hillsborough</i> ) (Lab) | Tarry, Sam ( <i>Ilford South</i> ) (Lab)  |
| † Gideon, Jo ( <i>Stoke-on-Trent Central</i> ) (Con)                    | † Tomlinson, Michael ( <i>Lord Commissioner of Her Majesty's Treasury</i> )                                   |
| Grady, Patrick ( <i>Glasgow North</i> ) (SNP)                           | Twigg, Derek ( <i>Halton</i> ) (Lab)  |
| † Kruger, Danny ( <i>Devizes</i> ) (Con)                                | Whitley, Mick ( <i>Birkenhead</i> ) (Lab)   |
| † Longhi, Marco ( <i>Dudley North</i> ) (Con)                           |   |
| McDonagh, Siobhain ( <i>Mitcham and Morden</i> ) (Lab)                  | Kevin Maddison, Abi Samuels, <i>Committee Clerks</i>  |
| † Millar, Robin ( <i>Aberconwy</i> ) (Con)                              |   |
| † Nici, Lia ( <i>Great Grimsby</i> ) (Con)                              |   |
| † Powell, Lucy ( <i>Manchester Central</i> ) (Lab/Co-op)                | † <b>attended the Committee</b>   |

## Second Delegated Legislation Committee

Monday 14 December 2020

[DR RUPA HUQ *in the Chair*]

### Corporate Insolvency and Governance Act 2020 (Coronavirus) (Suspension of Liability for Wrongful Trading and Extension of the Relevant Period) Regulations 2020

4.30 pm

**The Chair:** Before we begin, I remind Members to sit in the seats with the ticks for social distancing reasons—I think everybody is anyway. Colleagues at *Hansard* would be very grateful if any speaking notes could go to them at [hansardnotes@parliament.uk](mailto:hansardnotes@parliament.uk).

**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) (Suspension of Liability for Wrongful Trading and Extension of the Relevant Period) Regulations 2020 (S.I., 2020, No. 1349).

The regulations were laid before the House on 25 November, but as they are a made affirmative statutory instrument they need to be approved by the House before the deadline. We take the Joint Committee on Statutory Instruments very seriously as an important part of the scrutiny process, but at this stage we need to press ahead with important debates to ensure that the regulations' passage is not delayed, as the Committee has not been able to report back so far.

There is at last light at the end of the tunnel, but it is a sad fact that the coronavirus pandemic continues to impact on our daily lives. We need to continue to keep our citizens safe and enable our NHS to carry on, but we also need to make sure that we can work with our businesses so that they can survive and build back. Our response to coronavirus has had a well-documented impact on the trading of shops, pubs, restaurants, leisure facilities and many other businesses up and down the country. We have provided businesses with an unprecedented level of support to get through this, but clearly we need to work with them until they are in a more stable situation.

Although the promise of a vaccine gives us good reason for cautious optimism about life returning to some degree of normality, we must in the meantime recognise the impact on business of the necessary but unfortunate restrictions on our daily life that are still in place. This statutory instrument revives one of the measures in the Corporate Insolvency and Governance Act 2020 and extends another. It revives the suspension of wrongful trading liability to 30 April and extends the flexibilities around the manner in which companies and other qualifying bodies can hold general meetings until 30 March 2021. These measures, like others in the Act, are designed to support companies and their directors in dealing with the impact of the pandemic.

I turn first to the suspension of the wrongful trading provisions of the Insolvency Act 1986, a measure that is being revived by these regulations. Wrongful trading is an action that may be taken by a liquidator or administrator that can lead to the courts making a declaration that director is personally liable for losses to creditors if a company carries on trading while insolvent. The provision may be used to recover losses to creditors, but its strength lies in acting as a powerful deterrent to insolvent trading in the first place, and as such it is a very important protection for creditors. In fact, the deterrent is so strong that in the spring there were genuine concerns that many directors would feel obliged to cause their companies to cease trading. The uncertainty about what might happen and how long restrictions might last meant that they did not know if the companies could survive and, if they tried to keep going, they could have been held personally liable for wrongful trading.

The 2020 Act suspended the wrongful trading provisions between 1 March and 30 September, which allowed directors to use their best endeavours to save companies that, but for the impact of the pandemic, would have been viable, allowing them to access Government support to continue trading and to save jobs and livelihoods. It gave them reassurance that if the worst happened and the companies subsequently entered insolvency proceedings, they would not be held personally liable for the wrongful trading. That suspension ended on 30 September, as at the time restrictions were starting to be lifted. Many companies were able to return to more normal trading, having taken advantage of the package of Government support available to them, and it was right for the important protection given to creditors by the wrongful trading provisions to return.

We have experienced a new wave of the virus, so it has been necessary for further restrictions to be imposed across most of Great Britain. Once again, directors face uncertainty about future trading conditions and, once again, they need the reassurance that they can continue to trade and save companies that would be profitable but for the restrictions without the fear of personal liability. The regulations use the power to make temporary changes to the effect of corporate insolvency legislation given by the 2020 Act to suspend the wrongful trading provisions again from 26 November to 30 April next year. That means that directors need not close viable companies because of uncertainty about their own position, helping to save jobs and contributing to the economic recovery. The 30 April expiry date will be kept under review. If in due course it becomes clear that the suspension is no longer needed to prevent companies from entering insolvency proceedings unnecessarily, it will be removed, even if that is before the end of April 2021.

In considering the suspension, it is important for us to recall that it does not remove the other vital protections for creditors that exist when a company is in an insolvent position. It is not a licence for directors to act recklessly. Indeed, directors who act irresponsibly can still find themselves subject to repercussions such as fraudulent trading actions under the Insolvency Act or disqualification from acting as a company director.

To turn briefly to the annual general meeting measure, the Corporate Insolvency and Governance Act also introduced temporary flexibilities around the manner in which companies and other qualifying bodies could hold general meetings. That allowed bodies to balance

their constitutional agreement arrangements with the prevailing coronavirus restrictions and in doing so, safeguard the wellbeing of their shareholders and members. That is crucial for the operation of the UK's strong corporate governance regime, which makes sure that the boards of companies and other bodies are fully held to account by their members. Without an extension, that scrutiny would be made increasingly difficult.

Despite the fact that in large part the season for AGMs is behind us, we know that there remain about 80 large companies still to hold them between now and the end of March. That excludes the multitude of smaller companies, charitable incorporated organisations and mutual societies that have simply similar obligations. The extension in the regulations will give them comfort that they can continue to convene these and other general meetings safely and in a way that is consistent with their legal obligations.

I hope that the Committee will agree that these two measures will provide much-needed reassurance to business in the critical trading period leading up to and beyond the Christmas period, and 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 for the first time, Dr Huq. I am going to race to see whether I can beat the Minister; I shall endeavour to do that so that colleagues can get elsewhere. We support the statutory instrument. In fact, I hate to say that I told him so, but on previous occasions we asked the Minister to introduce these measures. As much as I enjoy our exchanges on all the statutory instruments and Bills that we have been considering lately, I am sure that we could all have done without this today.

We welcome the measure to suspend wrongful trading and we also support the extension of measures introduced in the Corporate Insolvency and Governance Act on AGMs and so on. I briefly remind colleagues that we called on Ministers to extend the provisions during the passage of the original Bill back in the summer, and we have continued to do so when we have considered other statutory instruments.

Back in July, when we were debating the Bill, the sunset clauses were then for September and we asked the Minister to extend them to the end of the year, because we knew that September would not be long enough. We then had statutory instruments to extend all the other measures in the Bill, but not wrongful trading. Again, we warned the Minister that it would be necessary to do that. So here we are again.

I want to put on record my thanks to the Institute of Directors, which I know has been lobbying incredibly hard on these important issues. I met the IOD again this morning. Better late than never, however, so we will obviously support the regulations. But let us remind ourselves that many businesses face a huge cash crisis as a result of the pandemic, with their trading levels terrifyingly low or non-existent. It is therefore important that they are given this flexibility to wrongfully trade—because that is what they are doing when they have overheads but no income coming in. Whether they are hospitality businesses, those in their supply chains or those in the events and wedding industry, which the Minister and I have recently debated, we still need more support for

these sectors. Measures such as the furlough scheme are welcome, but, as we have discussed before, if businesses go bust the furlough scheme will be of no use to the workers who will not have any job to return to.

Although today's measures will provide some temporary relief for businesses worried about insolvencies, there is still a great deal of concern about the many cliff edges that businesses face all coming to a head at the end of March—the VAT referral, the business rate holiday, the measures in these regulations, measures on loan repayments and the furlough scheme will all come to an end. Can the Minister tell us what he is doing to ensure that we will not see wave after wave of insolvency as these cliff edges all come at once? As we hear today, London and other areas are going into tier 3 and that will concern many businesses.

I am sure that the Minister agrees with us that the best way for our economy to recover is to save businesses and jobs today. Rather than just talking the talk, we need to walk the walk and have a proper plan in place for businesses to recover. Instead of constantly returning to these Committee rooms to extend the cliff edges, will the Government pledge today to do something to deal with them rather than just extending the deadline further and further?

**The Chair:** Would anyone else like to make a speech? No, I call the Minister to respond.

**Lucy Powell:** I did beat him.

4.41 pm

**Paul Scully:** Fantastic. There we go.

I thank the hon. Member for Manchester Central for her considered response. We agree on the need for certainty for business and, as she rightly says, on the need to save businesses and jobs today while also having a medium and long-term plan. I am acutely aware of the various measures coming to various ends. I speak to the retail sector and hospitality sector on a regular basis and, indeed, to small businesses. They continue to talk about rates, VAT and the moratorium on statutory demands and winding-up petitions. These measures are of great benefit to them, but we need to see what we can do. The best way of doing it, as well as reviewing it, as we clearly will, is to ensure that we can get the companies up and running as soon as possible. I hope that the vaccine and mass testing, as well as improved testing, will mean that in the new year, as the incidences come down, we will be able to trade safely and retailers, those in hospitality and all those kind of businesses will be able to give a warm welcome as well as a safe one and get customers back. They largely welcome the Government's financial support, but what they really welcome is customers coming back. We will all need to talk up our economy when it is safe and appropriate to do so.

On the question of why we are doing this now and why we will come back to the measures, the wrongful trading measures are clearly a deterrent but they are also an important protection for creditors. It seems right that when things were looking up, we allowed creditors that extra protection by bringing the wrongful trading provisions back into operation. On AGMs, again, they are there for a reason: to report back to shareholders and hold companies, large and small, accountable to them. The more shareholders can fully

*[Paul Scully]*

participate the better, but given the situation we are in at the moment it is important that we extend the ability to have virtual AGMs.

The regulations will, I hope, provide some comfort and reassurance for company directors and allow them to use their best efforts to get their companies through this pandemic and out the other side, ready to continue

to contribute to the economic recovery of this country. I thank hon. Members for their contributions to the debate and I hope that the Committee will approve the regulations.

*Question put and agreed to.*

4.45 pm

*Committee rose.*



