

This Statutory Instrument has been made in consequence of a defect in S.I. 2021/1029 and is being issued free of charge to all known recipients of that Statutory Instrument. It has also been printed in substitution of the S.I. of the same number due to an incorrect headnote at the top of page 1 and is additionally being issued free of charge to all known recipients of that earlier version.

Regulations made by the Secretary of State under section 20(1)(a) and 25(1) of the Corporate Insolvency and Governance Act 2020 (c. 12), laid before Parliament under section 26(2) of that Act for approval by resolution of each House of Parliament within forty days beginning with the day on which the instrument is made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2021 No. 1091

INSOLVENCY

**The Corporate Insolvency and Governance Act 2020
(Coronavirus) (Amendment of Schedule 10) (No. 2) Regulations
2021**

<i>Made</i>	- - - -	<i>27th September 2021</i>
<i>Laid before Parliament</i>		<i>28th September 2021</i>
<i>Coming into force</i>		
	<i>for the purpose of regulations 1 and 2</i>	<i>28th September 2021</i>
	<i>for the purpose of remainder</i>	<i>1st October 2021</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 20(1)(a) and 25(1) of the Corporate Insolvency and Governance Act 2020(a).

Further to section 21(1)(a) of that Act, the Secretary of State is satisfied that these Regulations are expedient for the purpose of reducing, or assisting in the reduction of, the number of entities entering into corporate insolvency or restructuring procedures for reasons relating to the effects of coronavirus on businesses or on the economy of the United Kingdom.

Further to section 22(1) of that Act, the Secretary of State has considered the effect of these Regulations on persons likely to be affected by them.

Further to section 22(2) of that Act, the Secretary of State is satisfied that—

- (a) the need for the provision made by these Regulations is urgent,

- (b) the provision made by these Regulations is proportionate to the purpose for which it is made,
- (c) it is not practicable without legislation to bring about the result intended to be brought about by these Regulations, and
- (d) the Secretary of State cannot make the same provision that is made in these Regulations in other subordinate legislation.

Citation and commencement

1.—(1) These Regulations may be cited as the Corporate Insolvency and Governance Act 2020 (Coronavirus)(Amendment of Schedule 10)(No. 2) Regulations 2021.

(2) This regulation and regulation 2 come into force on 28th September 2021.

(3) The remainder of these Regulations come into force on 1st October 2021.

Revocation the Corporate Insolvency and Governance Act 2020 (Coronavirus)(Amendment of Schedule 10) Regulations 2021

2. The Corporate Insolvency and Governance Act 2020 (Coronavirus)(Amendment of Schedule 10) Regulations 2021 (a) are revoked.

Amendment of the Corporate Insolvency and Governance Act 2020

3. For Schedule 10 to the Corporate Insolvency and Governance Act 2020 (b) substitute—

“SCHEDULE 10

Section 10

RESTRICTION ON WINDING-UP PETITIONS: GREAT
BRITAIN

Restriction on winding-up petitions

1.—(1) During the relevant period a creditor may not present a petition for the winding up of a company under section 124 of the 1986 Act on the ground specified—

- (a) in the case of a registered company, in section 122(1)(f) of that Act, or
- (b) in the case of an unregistered company, in section 221(5)(b) of that Act,

unless conditions A to D are met (subject to sub-paragraphs (9) to (11)).

(2) Condition A is that the creditor is owed a debt by the company—

- (a) whose amount is liquidated,
- (b) which has fallen due for payment, and
- (c) which is not an excluded debt.

(3) Condition B is that the creditor has delivered written notice to the company in accordance with sub-paragraphs (4) to (6).

(4) Notice under sub-paragraph (3) must contain the following—

- (a) identification details for the company,
- (b) the name and address of the creditor,
- (c) the amount of the debt and the way in which it arises,

(a) S.I. 2021/1029.

(b) Schedule 10 was amended by S.I. 2020/1031, S.I. 2020/1483, and S.I. 2021/375.

- (d) the date of the notice,
 - (e) a statement that the creditor is seeking the company's proposals for the payment of the debt, and
 - (f) a statement that if no proposal to the creditor's satisfaction is made within the period of 21 days beginning with the date on which the notice is delivered, the creditor intends to present a petition to the court for the winding-up of the company.
- (5) Notice under sub-paragraph (3) must be delivered—
- (a) to the company's registered office, or
 - (b) in accordance with sub-paragraph (6) if—
 - (i) for any reason it is not practicable to deliver the notice to the company's registered office,
 - (ii) the company has no registered office, or
 - (iii) the company is an unregistered company.
- (6) Where this sub-paragraph applies the notice may be delivered to—
- (a) the company's last known principal place of business, or
 - (b) the secretary, or a director, manager or (in relation to an unregistered company) principal officer of the company.
- (7) Condition C is that at end of the period of 21 days beginning with the day on which condition B was met the company has not made a proposal for the payment of the debt that is to the creditor's satisfaction.
- (8) Condition D is that—
- (a) where the petition is presented by one creditor, the sum of the debts (or the debt, if there is only one) owed by the company to that creditor in respect of which conditions A to C are met is £10,000 or more;
 - (b) where the petition is presented by more than one creditor, the sum of the debts owed by the company to the creditors in respect of which conditions A to C are met is £10,000 or more.
- (9) A creditor may at any time apply to the court for an order that, in respect of a specified debt—
- (a) conditions B and C shall not apply, or
 - (b) condition C shall apply as if the reference to the period of 21 days were to such shorter period as the court may direct.
- (10) Where an order is made under sub-paragraph (9)(a), the references in sub-paragraph (8) to conditions A to C are to be read as references to condition A.
- (11) If the court makes an order under sub-paragraph (9)(b) it may—
- (a) give such directions as to delivery of the written notice referred to in condition B as it thinks fit, or
 - (b) direct that sub-paragraphs (4) to (6) shall apply in respect of the delivery of that notice subject to such modifications it thinks fit.

Modification of Insolvency Rules and Rules of Court

2.—(1) This paragraph applies in relation to a petition which is presented in England and Wales by a creditor under section 124 of the 1986 Act during the relevant period.

(2) Rule 7.5(1) of the Insolvency Rules has effect as if it also required the petition to contain a statement—

- (a) that the requirements in paragraph 1 of this Schedule are met, and

- (b) that no proposals for the payment of the debt have been made, or a summary of the reasons why the proposals are not to the creditor's satisfaction (as the case may be).

3.—(1) This paragraph applies in relation to a petition which is presented in Scotland by a creditor under section 124 of the 1986 Act during the relevant period.

(2) Rules of Court in Scotland have effect as if they required the petition to contain an averment—

- (a) that the requirements in paragraph 1 of this Schedule are met, and
- (b) that no proposals for the payment of the debt have been made, or a summary of the reasons why the proposals are not to the creditor's satisfaction (as the case may be).

Interpretation

4.—(1) In this Schedule “relevant period” means the period which—

- (a) begins with 1 October 2021, and
- (b) ends with 31 March 2022.

(2) For the purposes of this Schedule, references to a petition presented by a creditor—

- (a) do not include a petition presented by one or more creditors together with one or more other persons, but
- (b) subject to that, do include a petition presented by more than one creditor, in which case the conditions specified in paragraph 1(2) to (7) must be met in relation to each creditor presenting the petition.

(3) For the purposes of this Schedule—

“the 1986 Act” means the Insolvency Act 1986;

“corona virus” means severe acute respiratory syndrome coronavirus 2 (SARS-Cov-2);

“excluded debt” means a debt in respect of rent, or any sum or other payment that a tenant is liable to pay, under—

- (a) in England and Wales, a relevant business tenancy; or
- (b) in Scotland, a lease as defined in section 7(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985(a),

and which is unpaid by reason of a financial effect of coronavirus;

“Insolvency Rules” means the Insolvency (England and Wales) Rules 2016 (S.I. 2016/1024);

“registered company” means a company registered under the Companies Act 2006(b) in England and Wales or Scotland;

“relevant business tenancy” means—

- (a) a tenancy to which Part 2 of the Landlord and Tenant Act 1954(c) applies, or
- (b) a tenancy to which that Part of that Act would apply if any relevant occupier were the tenant;

“relevant occupier” in relation to a tenancy, means a person, other than the tenant, who lawfully occupies premises which are, or form part of, the property comprised in the tenancy; and

“unregistered company” has the meaning given in Part 5 of the 1986 Act.

(a) 1985 c. 35 (as amended by the Agricultural Holdings (Scotland) Act 2003 asp 11.

(b) 2006 c. 46.

(c) 1954 c. 56 as amended by Regulatory Reform (Business Tenancies) (England and Wales) Order 2003/3096 and Small Business, Enterprise and Employment Act 2015 c. 26.

General

5.—(1) The provisions of this Schedule, so far as relating to registered companies, have effect as if they were included in Part 4 of the 1986 Act.

(2) Sub-paragraph (1) does not apply in relation to paragraphs 2 and 3 (modification of insolvency rules).”.

Consequential provision

4. In section 41 of the Corporate Insolvency and Governance Act 2020 (power to change duration of temporary provisions: Great Britain), in subsection (2), in the definition of “relevant provision”, omit paragraph (d).

Callanan

Parliamentary Under Secretary of State

Department for Business, Energy and Industrial Strategy

27th September 2021

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations substitute a new Schedule 10 to the Corporate Insolvency and Governance Act 2020 (c. 12) (“CIGA”). These Regulations replace the Corporate Insolvency and Governance Act 2020 (Coronavirus)(Amendment of Schedule 10) Regulations 2021 (S.I. 2021/1029), which contained an error and are revoked by regulation 2 of these Regulations.

The Insolvency Act 1986 (c. 45) (“the 1986 Act”) specifies the grounds upon which registered and unregistered companies may be wound-up by the court. One of those grounds is that the company is unable to pay its debts. Section 123 (or, in the case of an unregistered company, sections 222 to 224) of the 1986 Act specifies those cases where a company is deemed to be unable to pay its debts.

As originally enacted, Schedule 10 to CIGA prohibited the winding up of a company where it would otherwise have been deemed unable to pay its debts as a result of an unpaid statutory demand, and restricted the winding up of a company by a creditor in any of the other cases specified in the 1986 Act, where the company’s inability to pay its debts was due to the financial effect of coronavirus.

Regulation 3 substitutes a new Schedule 10 to CIGA. Paragraph 1 of that Schedule provides that a winding-up petition may not be presented by a creditor on the grounds that a company is unable to pay its debts unless certain conditions are met. The first condition is that the debt is for a liquidated amount which has fallen due for payment and does not relate to non-payment of rent under a business tenancy. The second condition is that the creditor has made a formal request to the company seeking proposals for the payment of the debt. The third condition is that the company has not made a proposal that is to the creditor’s satisfaction within 21 days beginning with the day the formal request was delivered. The final condition is that the debt is £10,000 or more, or, where the petition relates to two or more debts, the total amount of all of the debts taken together is £10,000 or more. The court has the power to waive the requirement for creditors to serve a formal request seeking proposals for payment of the debt or to shorten the period within which such proposals are to be submitted.

Sub-paragraphs (4) and (5) of paragraph 1 of the new Schedule 10 set out requirements as to the content and delivery of the formal request to the company seeking proposal for payment of the debt.

Paragraphs 2 and 3 make consequential modifications to the Insolvency (England and Wales) Rules 2016 (S.I. 2016/1024) and Rules of Court in Scotland in order to give effect to the Schedule.

Paragraph 4 provides that the new Schedule 10 only applies in respect of winding-up petitions that are presented by a creditor between 1st October 2021 and 31st March 2022. Paragraph 5 provides that the new Schedule 10 has effect as if it were included in Part 4 of the 1986 Act.

Regulation 4 makes a consequential amendment to section 41 of CIGA. That section enables the Secretary of State to extend or curtail the duration of various temporary provisions in CIGA, including Schedule 10 to that Act. As a result of the amendments made by regulation 3 of these Regulations, the power given by section 41 may no longer be exercised in relation to Schedule 10. Regulation 4 therefore amends section 41 to remove the reference to Schedule 10.

An impact assessment has not been produced for this instrument. An explanatory memorandum has been published alongside this instrument at www.legislation.gov.uk.

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