



Northern Ireland  
Assembly

Committee for the Economy

# Report on Legislative Consent Memorandum on UK Government Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill

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## Powers and Membership of the Committee

1. The Committee for the Economy ('the Committee') is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of Strand One of the Belfast Agreement and under Assembly Standing Order No 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department for the Economy and has a role in the initiation of legislation.
2. The Committee has power to:
  - consider and advise on Departmental budgets and Annual Plans in the context of the overall budget allocation;
  - approve relevant secondary legislation and take the Committee Stage of relevant primary legislation;
  - call for persons and papers;
  - initiate enquiries and make reports; and
  - consider and advise on matters brought to the Committee by the Minister for the Economy.
3. The Committee has 9 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:
  - Dr Caoimhe Archibald MLA (Chairperson)
  - Sinead McLaughlin MLA (Deputy Chairperson)
  - Stewart Dickson MLA
  - Mervyn Storey MLA\*
  - Gary Middleton MLA\*
  - John O'Dowd MLA
  - John Stewart MLA\*
  - Christopher Stalford MLA
  - Claire Sugden MLA

\*With effect from 10 February 2020 Mr John Stewart replaced Mr Alan Chambers

\*With effect from 8 February 2021 Mr Paul Givan replaced Mr Gary Middleton

\*With effect from 19 March 2021 Mr Gary Middleton replaced Mr Paul Givan

\*With effect from 12 April 2021 Mr Mervyn Storey replaced Mr Gordon Dunne

## Background

### The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill

4. The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill ('the Bill') was introduced, by the Department for Business, Energy and Industrial Strategy ('BEIS'), to the House of Commons, and given its First Reading, on 12<sup>th</sup> May 2021.
5. Investigation and disqualification of company directors in Northern Ireland takes place under the Insolvency (Northern Ireland) Order 1989 (INIO) and the Company Directors Disqualification (Northern Ireland) Order 2002 (the CDDO). This Order corresponds to the Insolvency Act 1986, the Companies Act 1985 and the Company Directors Disqualification Act 1986 (the CDDA) applying in GB.
6. There is a gap in the CDDA as it stands. It enables investigations to be conducted and disqualification action to be taken against directors if companies are in insolvent liquidation or administration or if an administrative receiver has been appointed. It also enables disqualification action to be taken in the case of live companies.
7. However, there is no provision enabling investigations to be carried out, and disqualification action taken, where a company has been dissolved by being struck off the register of companies. BEIS is arranging to have urgent provision to address this omission included in the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill introduced at Westminster on 11 May 2021.

### Purpose and Effect of the Bill

8. The Bill addresses public concerns about the abuse of limited liability, by extending the powers of the Department for the Economy ('the Department') to investigate the conduct of company directors to include former directors of dissolved companies, to commence disqualification proceedings against them where public interest criteria are met, and to seek compensation where their conduct has caused loss to creditors.
9. There are also particular reasons for bringing the Bill at this time. The Bill is in response to the Government's concerns over potential fraud occurring in the loan and grant schemes that were established to assist companies through the Covid-19 pandemic. The legislation will be part of a Government initiative to tackle fraud in these schemes and will enable investigations to be carried out, and disqualification proceedings taken, in the case of company directors who have acted fraudulently or dishonestly in claims made to these schemes.
10. Clause 3 of the Bill amends certain sections of the CDDO, which extends and applies to Northern Ireland. Responsibility for company director disqualification is a matter which is transferred to the Assembly.

## **Investigation and disqualification of former directors of dissolved companies**

11. The Insolvency Service regularly receives complaints about the conduct of former directors of companies which have been dissolved. In most cases those complaints concern one of the following areas:
  - a) Allowing or causing a company to be dissolved, effectively shedding its liabilities, with a new company continuing its business. Some complaints relate to this happening multiple times, and this is sometimes known as “phoenixism”;
  - b) Use of the company dissolution process to avoid the cost and implications of formal liquidation proceedings; or
  - c) Avoidance of investigation of conduct under the Company Directors Disqualification
12. It is not currently possible for the conduct of former directors of dissolved companies to be investigated without first restoring the company to the register of companies, which is time consuming and costly, and involves court proceedings. This measure will allow Department to investigate the conduct of former directors of dissolved companies without there being a requirement to first restore the company to the register.
13. The primary role of disqualification is to protect the business community and members of the public from individuals who have demonstrated that they are unfit to be concerned in the management of a limited company. It also acts as a deterrent to directors abusing the privileges of limited liability. In this respect, extending the disqualification regime to directors of dissolved companies will discourage the use of the dissolution process as a method of fraudulently avoiding repayment of Government backed loans given to businesses to support them during the coronavirus pandemic, such as loans made under the Bounce Back Loans Scheme.
14. The Insolvency Service regularly receives complaints about companies which have been dissolved in Great Britain, and similar complaints have been made to the Insolvency Service in Northern Ireland. Under the law as it currently stands, it is not possible to investigate any further without taking steps to have the company restored to the register of companies, a process which is complex, time consuming, and would be at the cost of the public purse.
15. Other common complaints about dissolved companies are that the dissolution process has been used as a way of avoiding having to put the company into formal insolvency proceedings, with the associated costs and scrutiny that that entails, or that it is used as a way of avoiding investigation of the actions of the directors.
16. The measure will allow the Department to investigate the conduct of former directors of dissolved companies, without it being necessary to first restore the company to the register. It will not be necessary for the dissolved company to have been subject to insolvency proceedings in order for the power to investigate to apply.

17. The new powers will have retrospective effect. This will mean that the conduct of former directors of dissolved companies that took place prior to commencement of the measure may be investigated, and where appropriate disqualification action may be taken with regard to that conduct.
18. In summary, the measures within Clause 3 of the Bill will:
- Give the Department for the Economy power to investigate the conduct of directors of companies which have been dissolved without having been subject to insolvency proceedings.
  - Enable the Department to apply to the High Court for a disqualification order, or to accept an undertaking with equivalent effect, where evidence of misconduct by a director of a dissolved company is found.
  - Enable the Department to apply to the High Court for a disqualification order or to accept a disqualification undertaking, in the case of persons who have exercised influence over persons who have themselves been disqualified as a result of misconduct in relation to a company which has been dissolved.
  - Enable the Department to apply to the High Court for a compensation order, or to accept a compensation undertaking, in cases where misconduct by the director of a dissolved company has caused loss to creditors.

## The Legislative Consent Motion

19. The Legislative Consent Memorandum was laid in the Assembly on 20<sup>th</sup> May 2021. The draft Motion, contained in the Memorandum, which will be tabled by the Minister for the Economy, is as follows:

***“That this Assembly agrees to amendments to Northern Ireland legislation dealing with disqualification of company directors to enable the conduct of directors of companies which have been dissolved to be investigated and, where appropriate, disqualification action taken and compensation for creditors sought, being included in the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill as introduced in the House of Commons on 12 May 2021”***

20. The Legislative Consent Motion, as above, was laid for approval on the same day, 20<sup>th</sup> May 2021, and will be debated on 28<sup>th</sup> June 2021. The Committee carried out a brief consultation to which it received four responses generally indicating support for the rationale behind the legislation. The Department did not undertake consultation regarding the content of the Motion.
21. The UK Government consulted on the proposal to create this new investigative power as part of the Insolvency and Corporate Governance consultation, which ran between March and June 2018. The UK Government’s consultation noted that the majority of respondents

had been supportive of the proposal to widen existing powers to investigate the conduct of former directors of dissolved companies, and where appropriate to take action against them. The response also noted that whilst the dissolution process is an important part of maintaining the integrity of the register of companies, it should not be used as an alternative to formal insolvency proceedings.

## **Reasons for making the Provisions**

22. If the provisions as outlined are agreed by the Assembly, it will mean that the same measures as are available here as in the rest of the UK to deal with individuals who have engaged in this type of fraud. The CDDO, therefore, needs to be amended to enable investigations to be carried out, and disqualification action taken, in the case of dissolved companies in Northern Ireland as a matter of urgency.

## **Reasons for utilising the Bill rather than an Act of the Assembly**

23. It would take considerably longer to pass an Act of the Assembly to introduce these measures into law in Northern Ireland. Given that the Assembly is nearing the end of the current mandate, it is necessary to give effect to these provisions through this Bill as amendments to the CDDO by Assembly Act would take at least one year.
24. The only way to have the necessary amendments to Northern Ireland legislation made immediately, in line with GB, and to deal with individuals who have engaged in this type of fraud is through the Westminster Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill.
25. In addition to the measures for which Legislative Consent is needed, the Bill will also make provision that, under Article 10(5) of the CDDO as it stands, if the Department or the Official Receiver wish to obtain information about a person's conduct as a director or to inspect documents relevant to that person's conduct, they must ask the liquidator, administrator or administrative receiver to obtain the information or documents. This requirement would not work in the case of an investigation into a company which had been dissolved, without ever being subject to insolvency proceedings, as there would be no liquidator, administrator or administrative receiver in place.
26. An amendment is, therefore, required to Article 10(5) of the CDDO to bring it into line with section 7(4) of the CDDA. Section 7(4) of the CDDA has been updated so that the Secretary of State or Official Receiver now has the right to obtain information directly from an individual about their own, or another person's, conduct as a director and to require the production of records and documents, without reference to others, in order to do so.

## **Position in the other devolved Administrations**

27. Company director disqualification is a matter for which responsibility is reserved to the UK Parliament with regard to both Scotland and Wales. Clause 2 of the Bill makes amendments to the Company Directors Disqualification Act 1986 applying in England, Scotland and Wales

corresponding to the amendments made to the Company Directors Disqualification (Northern Ireland) Order 2002 by clause 3.

## Provisions of the Bill Relevant to the LCM

28. Legislation dealing with company director disqualification is a devolved matter. Legislative consent is therefore required for the following provisions of the Bill:

- **Clause 3** makes equivalent amendments to certain Articles of CDDO. The amendments provide a power to the Department and the official receiver to investigate the conduct of former directors of dissolved companies, for the Department to seek their disqualification where appropriate, and to seek compensation where their actions have led to losses to creditors of dissolved companies.
- **Article 9 of CDDO** is amended to increase its scope to include former directors of dissolved companies. In particular, Article 9(1) is amended so that if the court is satisfied on application that the person was a director of an insolvent company, or was a former director of a company which was dissolved without becoming insolvent, and their conduct as a director of that company (either taken alone or considered along with their conduct in other companies) makes them unfit to be concerned in the management of a company, it has a duty to make a disqualification order.
- **Article 10(2) of CDDO** is amended so that where an application for a disqualification order is made by the Department in respect of a former director of a dissolved company, it may not be made after the period which is 3 years beginning on the day that the company was dissolved. Article 10(5A) is inserted, giving a power to the Department or the official receiver to require any person to provide information or documentation which relates to the conduct of a person who was a former director of a dissolved company, as may be reasonably required.
- **Article 11B(2) of CDD(NI)O02** is amended so that where a disqualification application is made by the Department under Article 11A (in the circumstances that the person in respect of whom the disqualification application is made influenced the actions of a disqualified former director of a dissolved company), the period within which such an application may be made is 3 years starting with the date on which the company in question was dissolved.
- **Article 19A of CDD(NI)O02** is amended so that compensation may be sought where a former director of a dissolved company's conduct in that company may be considered when seeking compensation for losses to creditors.
- **Articles 24D to 25C of CDD(NI)O02** apply that Order to:
  - Building societies within the meaning of the Building Societies Act 1986



- Incorporated friendly societies within the meaning of the Friendly Societies Act 1992
- Registered societies within the meaning of the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969
- Credit unions
- Protected cell companies incorporated under Part 4 of the Risk Transformation Regulations 2017

Those Articles of the CDD(NI)002 are amended so that references to dissolved companies do not apply when the Order is being applied to those bodies.

- **Clause 3** also provides that the conduct which may be investigated and considered as a result of the amendments to the CDD(NI)002 made by that clause, includes that which occurred in companies which were dissolved prior to commencement, and that which occurred prior to commencement in companies which were not dissolved at that time.

### **Human Rights and Equality**

29. The UK government considers that the Bill is compatible with the European Convention on Human Rights. There are no equality issues; none of the measures will have any differential impact on any of the section 75 groups.

### **Financial implications**

30. The measures do not necessitate any cost to the public purse.

### **Regulatory impact**

31. Due to the time constraints a regulatory impact assessment has not been prepared for Northern Ireland. However, it is considered that the planned changes will have a positive impact on Northern Ireland by protecting the business community and members of the public from individuals who have demonstrated that they are unfit to be concerned in the management of a limited company

### **Ministerial View**

32. The view of the Minister for the Economy is that, in the interests of establishing a disqualification regime for directors of dissolved companies similar to that currently in place for directors of companies subject to insolvency proceedings or live companies and in tackling potential fraud, that the measures set out in the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill, should be legislated for by the UK Parliament.

## Committee Consideration

33. The Economy Committee maintains regular contact with its stakeholders across the business community and other representative groups and as such is well aware of the need for legislation in relation to the conduct of companies and directors to be responsive and relevant. The Committee also recognises the particular circumstances of the Covid-19 pandemic and the need to have measures in place against potential fraud occurring in the loan and grant schemes that were established to assist companies through the crisis.
34. As a result, the Committee is supportive of the Bill and the Minister for the Economy's actions to allow such measures as are necessary to be put in place via legislation at Westminster on behalf of her Department, through a Legislative Consent Motion (LCM) approved by the Assembly.
35. The Department for the Economy ('the Department') wrote to the Committee on 4<sup>th</sup> May 2021 to inform the Committee of the Bill to be introduced in the House of Commons the BEIS Secretary of State, and that the Minister for the Economy ('the Minister') intended to bring forward an LCM to enable amendments to Northern Ireland's insolvency legislation to be in the Bill.
36. The Committee decided at this stage, in anticipation of the laying of the Legislative Consent Motion, to carry out a consultation exercise. The Committee wrote to stakeholders informing them of the information available to the Committee at the time and asked for submissions by noon on 21<sup>st</sup> May 2021. This consultation was based on the information that the Committee had already received from the Department; however, at that point, it did not include the Bill or the Legislative Consent Memorandum.
37. The Committee noted that, though company director disqualification legislation is a devolved matter, it would not be possible to have an Assembly Bill passed in time to give companies in Northern Ireland the benefit of the measures included in the Bill at the same time as their counterparts in GB.
38. At its meeting on 26 May 2021, the Committee considered further correspondence from the Department, providing a copy of the Draft Legislative Consent Motion updating it further on the expected content of the Bill, and informing the Committee that the Bill was introduced in the House of Commons on 12<sup>th</sup> May.
39. In response to the call for evidence, the Committee received written evidence from the Irish Congress of Trade Unions – Northern Ireland Committee, the Federation of Small Businesses, Newry Chamber of Trade and Commerce and Deloitte. Due to considerable time restrictions, the Committee was unable to take oral evidence on the Bill or LCM.

## Summary of Responses

40. The responses indicated a general support for the rationale of the Bill and the need to facilitate the amendments to Northern Ireland legislation by way of a Legislative Consent Motion.

41. The responses recognised that the amendments should provide a further deterrent against fraud, particularly given the various government schemes to provide loans of public money during the pandemic, and concerns around the prospect of fraud.
42. One respondent called for the provisions to be accompanied by additional resources to support the Insolvency Service in carrying out its investigatory role under the legislation.
43. Another respondent, while supporting the provisions, highlighted the general inefficiencies in the powers to deal with director fraud. The response states that it is likely that any director attempting to commit the types of fraudulent actions that this is aimed at, will have the foresight and ability to do exactly the same and render the legislation meaningless. The response also points to deficiencies around the investigative methods and that the enforcement regime needs to be changed to compel such directors to comply and for there is a need for repercussions that actually impact on activities.

## Conclusion

44. **On the basis of the very limited time available to the Committee to scrutinise this Legislative Consent Motion, and bearing in mind the Minister’s view that it is necessary for the legislation to be undertaken by the Secretary of State for Business, Energy, and Industrial Strategy, the Committee supports the Bill in enabling the Department to investigate the conduct of company directors to include former directors of dissolved companies, to commence disqualification proceedings against them where public interest criteria are met, and to seek compensation where their conduct has caused loss to creditors.**
45. **The Committee would ask that the Minister engages with stakeholders where any particular issues have been raised with regard to the Bill and the Legislative Consent Motion.**