



Northern Ireland
Assembly

Committee for the Economy

Report on Legislative Consent Memorandum on UK Government Corporate Insolvency and Governance 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
 - Gordon Dunne 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

Background

The Corporate Insolvency and Governance Bill

4. The Corporate Insolvency and Governance Bill 2019-21 ('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 20 May 2020. MPs will next consider all stages of the Bill on 3rd June 2020.
5. Due to enforced restrictions on movement and gatherings, introduced with the aim of curbing the spread of COVID-19, many otherwise economically viable businesses are experiencing significant trading difficulties. The Bill is aimed at ensuring businesses can maximise their chances of survival.

Purpose and Effect of the Bill

6. The Bill is part of the Government's concerted effort across the UK to help business deal with the serious economic consequences of the Covid-19 pandemic. The Government has already introduced a package of financial support to help business through the crisis. This includes for example, the job retention scheme, deferment of VAT, business rate relief and loan schemes for businesses of all sizes.
7. The Bill contains reforms to the corporate insolvency regimes across the UK introduced on an urgent basis to assist business in dealing with the effects of the lock-down resulting from the Covid-19 pandemic. The measures in the Bill fall into two categories. It contains temporary measures proposed as a direct result of the pandemic, which relieve companies from complying with aspects of insolvency and company law. Then there is a package of permanent reforms to the corporate insolvency and governance framework. The permanent measures were consulted on in 2016 and the Government published its response in August 2018 announcing its intention to bring forward proposals when parliamentary time allowed.
8. The current crisis means that these permanent reforms need to be introduced urgently to assist businesses that are struggling as a result and help them to survive as the economy emerges. There are also a number of temporary modifications to these permanent measures to assist with the impact of Covid-19.

Insolvency and Company Law

9. The aim of the permanent measures is to make it easier for companies to restructure in the current climate and going forwards and therefore improve the chances of successful rescue.
10. There is a short-term policy objective to give the UK economy more permanent restructuring tools that are flexible to help UK companies get through the Covid-19 emergency and be able to continue trading when the economy emerges. One example is a new moratorium which will provide vital breathing space from creditor enforcement actions whilst a financially distressed company explores options for rescue. These measures will also

have a longer-term benefit of saving viable companies, maintaining productivity and preserving jobs.

11. The permanent amendments to insolvency and company law will:

- provide for a 20-day business moratorium (extendable by the company to up to 40 business days, or longer by the court or with agreement of creditors) during which no-one will be able to take (or continue) legal action against the debtor company (other than employee tribunal claims), except, in certain cases, with permission of the court. As with existing insolvency procedures this includes provision for procedural rules to enable the operation of the moratorium. These rules will be provided for by amending secondary legislation- the Insolvency (England and Wales) Rules 2016, the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 and The Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364). Part 3 of Schedule 4 contains temporary rules for England and Wales, and is indicative of the content that will be included in rules.
- create a new procedure, to be known as a ‘restructuring plan’, which a court will be able to approve even where some creditors are opposed to the plan, providing that it is fair and equitable to do so, and dissenting creditors are no worse off than they would have been in the next best alternative scenario, and;
- prohibit termination clauses in supplier contracts that engage upon an insolvency event, which will ensure continuity of supplies so that a company can continue to trade.

These measures will improve the tools with which a financially distressed, but ultimately viable, company can be rescued, thereby preserving economic value and saving jobs in the current climate and going forward.

12. In specific response to the economic impact of the pandemic the temporary insolvency law measures will:

- suspend, initially for a four month period from 1 March 2020 to 30 June 2020, director liability in respect of wrongful trading (so that when the court is considering whether to declare a director liable to contribute to a company’s assets under wrongful trading provisions and are considering the amount to be contributed, it will not take into account losses incurred during the period); suspend the use of statutory demands made between 1 March 2020 and 30 June 2020 and restrict winding up petitions presented from 27 April to 30 June, where a company cannot pay its bills due to the Covid-19 emergency;
- modify the new permanent measure prohibiting termination clauses in supplier contracts that engage upon an insolvency event so that small suppliers are excluded, initially until 30 June 2020;
- modify the new moratorium to relax the eligibility criteria and conditions for entry to make the procedure accessible to a wider range of companies impacted by Covid-19, initially until 30 June 2020;
- provide a general power to modify certain aspects of insolvency law, such as the conditions for an insolvency procedure to apply, aspects of that procedure and duties of directors and others with corporate responsibility. This power is restricted to modifications that may be expedient to reduce or assist in reducing the impact of the

Covid-19 pandemic on corporate insolvencies and insolvency procedures, must be exercised proportionately and only where this cannot be achieved by any non-legislative means. **This power will expire on 30 April 2021 (although there will be scope to extend this deadline).**

Meetings and filing requirements: Companies and other bodies

13. Companies and other bodies may be required to hold an Annual General Meeting (“AGM”) or other meeting by virtue of legislation, their constitution or rules. For example, a public company is required to hold an AGM within six months of its accounting reference date and building societies must hold an AGM in the first four months of each financial year. Companies and other bodies may be required to hold AGMs and other meetings in a particular manner, for example, their constitution or rules may require that their AGM be held at a particular venue.
14. Companies and certain other entities must comply with duties to provide information and notices within periods prescribed by the Companies Act 2006 and other legislation. Those statutory filing requirements include filing the company’s accounts and reports, giving notice of the place where the register of directors and register of secretaries are kept, and giving notice of a change in directors or secretaries.
15. These bodies may have found themselves, and may continue to find themselves, unable to comply with these requirements as a consequence of the Covid-19 pandemic. They may have been, and may continue to be, unable to hold an AGM or other meeting because of the need to limit the spread of the pandemic and to comply with social distancing requirements which are currently in place. They may be unable to hold those meetings electronically because of requirements in their constitution or rules. Companies and other entities may have difficulty providing information and notices within the periods prescribed by legislation because of the pressures they are facing as a consequence of the pandemic.
16. These measures make temporary provision to:
 - allow companies and other bodies to hold AGMs and other meetings in a more flexible way;
 - extend the period during which companies and other bodies must hold an AGM; and
 - extend the period during which companies and certain other entities must comply with various statutory filing requirements.
17. Generally, the Bill will introduce flexibility into the insolvency regime for those companies and other entities, such as mutual societies, in financial difficulty due to COVID-19 related restrictions; to temporarily suspend parts of insolvency law in order to support directors to continue trading without the threat of personal liability and to protect companies from aggressive creditor action; and provide companies and other bodies with temporary easements on company filing requirements and requirements relating to meetings including annual general meetings (AGMs).

18. There are UK-wide provisions within the Bill which require legislative consent from the Northern Ireland Assembly, as they relate to devolved matters.
19. Further, it is practice to maintain insolvency legislation in Northern Ireland in parity with that applying in Great Britain (GB), however, amendments have been made in recent years to GB legislation that have not yet been replicated for Northern Ireland due to the time lag resulting from having to take the necessary legislation through the Assembly. Some of these amendments are linked to provisions which are now going to be brought in by the Bill.
20. In summary:
 1. The measures within the Bill consist of amendments to insolvency and company legislation applying to GB and Northern Ireland.
 2. The measures relating to insolvency are, in summary:
 - I. It will not be possible to petition to have companies wound up where the statutory demand was served during a specifies period beginning 1 March 2020.
 - II. The court's right to make winding up orders will be suspended for a time in cases where a company's inability to pay its debts is a consequence of the coronavirus.
 - III. Directors will have immunity from being held personally liable for wrongful trading where deterioration in a company's finances during a specifies period is attributable to the virus.
 - IV. Companies will be given the opportunity of a moratorium, free from creditor pressure, in which to assess what would be their best rescue or restructuring option.
 - V. There will be provision to ensure that companies continue to have access to the services and supplies they need, if they are being kept open during a moratorium or insolvency procedure.
 - VI. There will be a new power to amend corporate insolvency or governance legislation to address problems caused by increases in the numbers of companies entering insolvency proceedings.
 3. The proposed amendments to company law will include:
 - I. Provision of a new rescue and restructuring procedure.
 - II. Measures to ensure those companies required by law to hold AGMs will be able to do so safely, consistent with the restrictions on movement and gatherings.
 4. Legislation dealing with insolvency and mutuals is a devolved matter in NI.
 5. Legislative consent is therefore required for the following for in regards to NI:
 - I. Moratoriums.
 - II. Arrangements and reconstructions for companies in financial difficulty.
 - III. Winding-up petitions.
 - IV. Suspension of liability for wrongful trading.
 - V. Protection of supplies of electricity, gas, water, etc.
 - VI. Further protection of essential supplies.
 - VII. Protection of supplies of goods and services.
 - VIII. Temporary exclusion for small suppliers.
 - IX. Meetings of companies and other bodies.

The Legislative Consent Motion

21. The Legislative Consent Memorandum was laid in the Assembly on 21 May 2020. 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’s insolvency and company legislation to assist companies and mutual in financial difficulties, as a result of the coronavirus pandemic, being included in the Corporate Insolvency and Governance Bill as introduced in the House of Commons.”

22. The Legislative Consent Motion, as above, was laid for approval on the same day, 21 May 2020, and will be debated on 2nd June 2020. As a result, the Committee for the Economy has not time to consider the Motion and take relevant evidence as per normal procedur. The Committee has done what it can in the time available to undertake some small degree of consultation. The Department did not undertake consultation regarding the content of the Motion.
23. The Department for Business, Energy and Industrial Strategy (BEIS) carried out consultation on two of the issues, the moratorium and suspension of contract clauses, in a previous consultation. Local practitioners and other stakeholders would have been aware of the issues during that consultation.

Reasons for making the Provisions

24. If the provisions as outlined are agreed by the Assembly, it will mean that Northern Ireland companies will have access to the same support and protection measures to assist with rescue and restructuring at the same time as their GB counterparts.
25. The social restrictions that have been placed on individuals to reduce the spread of the Coronavirus is having a devastating effect on businesses across the world. Local businesses, with their heavy dependence on the travel, tourism and hospitality sectors, are likely to encounter significant difficulties as a consequence of the measures being taken to curb the spread of the Coronavirus.
26. By giving companies an opportunity to restructure, reorganise and recover, the amendments to insolvency legislation will assist in reducing the number of companies forced into liquidation in Northern Ireland as a result of the lockdown and social distancing measures. This will help safeguard employment and maintain the social fabric and avoid the adverse effects which the closure of those companies would have on the local economy.

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

27. It would take considerably longer to pass an Act of the Assembly to introduce these measures into law in Northern Ireland. During that time, local businesses would not be able to avail of the same support and relief as is proposed for struggling companies in Great Britain.
28. The only way to have the necessary amendments to Northern Ireland insolvency legislation made immediately, when they are most needed by companies in Northern Ireland, is to allow them to be included in the Westminster Corporate Insolvency and Governance Bill.
29. In addition to the measures for which Legislative Consent is needed, the Bill will include a new restructuring plan. This will take the form of amendments to the Companies Act 2006, not insolvency legislation. There will also be measures relating to easements in the requirements for the filing of annual returns and holding of annual general meetings. The Legislative Consent Motion does not need to cover these amendments as the Companies Act 2006 applies on a UK wide basis.
30. **However, it is considered that mutuals (credit unions, co-operatives and community benefit societies) should benefit from the same easements that are being proposed for companies as regards meetings.**

Position in the other devolved Administrations

31. Corporate insolvency is not a devolved matter in Wales. A Legislative Consent Motion will be sought from the Scottish Parliament for some of the corporate insolvency measures. Company legislation is made on a UK wide basis but a Legislative Consent Motion will be needed from the Scottish Parliament to enable some of the amendments to it made by the Bill to apply to Charitable Incorporated Organisations (CIOs).

Provisions of the Bill Relevant to the LCM

32. Legislation dealing with insolvency and mutuals is a devolved matter in Northern Ireland. Legislative consent is therefore required for the following provisions of the Bill:

Clause 4 - Moratoriums in NI

33. This clause inserts new Part 1A containing Articles 13A to 13HE into the Insolvency (Northern Ireland) Order 1989. A moratorium, which had been available to companies considering entry into a voluntary arrangement with their creditors, is now replaced by a new free-standing moratorium.
34. The new moratorium will give companies a breathing space during which, free from the threat of creditor action, they will be able to explore the full range of rescue and restructuring options available to them. It will last for an initial period of 20 business days and it will be possible for this period to be extended.
35. The moratorium will be overseen by an insolvency practitioner acting as a monitor, although the directors will remain in charge of running the company. Anyone doing business with the

company will have to be informed that it is subject to a moratorium and there will be restrictions on the company taking credit or disposing of property. Creditors, directors, company members and anyone else affected by the moratorium will have the right to apply to the High Court if they are aggrieved by any aspect of the monitor's performance.

36. Clause 4 also introduces Schedules 5 and 6 which respectively insert,

- a new Schedule ZA1 into the Insolvency (Northern Ireland) Order 1989 which establishes conditions for eligibility for the new moratorium;
- a new schedule ZA2 making provision about contracts involving financial service

Clause 5 and Schedule 7 - Moratoriums in NI: further amendments and transition

37. Clause 5 and schedule 7 make amendments to legislation which are consequential on the new moratorium.

Clause 6 and Schedule 8 - Moratoriums in NI temporary modifications

38. Clause 6 and Schedule 8 make temporary amendments to Part 1A to apply for a period during the Coronavirus crisis.

Clause 7 and Schedule 9 - Arrangements and reconstructions for companies in financial difficulty

39. Clause 7 and Schedule 9 insert a new Part 26A into the Companies Act 2006 which will allow the High Court to sanction a plan that binds creditors to a restructuring plan if it is fair and equitable and in the interests of creditors. Creditors vote on the plan, but the Court can impose it on dissenting creditors ('cram down').

Clause 9 and Schedule 11 - Winding-up petitions: NI

40. Clause 9 and Schedule 11 provide a temporary measure linked to the Coronavirus pandemic and prevent the presentation of petitions to have companies wound up on foot of statutory demands made during the period 1 March to 30 June 2020. The Court is also forbidden from making winding-up orders on foot of petitions presented during what is known as the restricted period unless that insolvency is for reasons not connected with the coronavirus.

Clause 11 - Suspension of liability for wrongful trading: NI

41. Clause 11 is a temporary measure which provides that any deterioration in a company's financial position between 1 March and 30 June 2020 is not to be taken into account by the High Court in determining to what extent a company director is to be held personally liable under Article 178 of the Insolvency (Northern Ireland) Order 1989 for wrongful trading. It will be possible for the Department to alter the end date of this period by regulations.

Clause 14 - Protection of supplies of electricity, gas, water, etc.: NI

42. Clause 14 amends Article 197 of the Insolvency (Northern Ireland) Order 1989. The existing Article prevents utility suppliers demanding payment of outstanding charges as a condition of continuing supply to companies subject to insolvency proceedings where the insolvency office-holder requests this. The supplier can insist that the office-holder personally guarantees payment of charges for supplies made while the insolvency procedure is underway. The amendments are to apply Article 197 to new categories of electricity provider and to suppliers of IT goods and services, and to cover cases where utility supplies are made by a landlord.

Clause 15 - Further protection of essential supplies: NI

43. Clause 15 inserts a new Article 197A into the Insolvency (Northern Ireland) Order 1989. Article 197A will apply to the same range of utility supplies as Article 197 and will prevent the supplier relying on any clause in a contract which would entitle the supplier to terminate the contract or the supply, or do anything else (such as raising the price) where the customer enters administration or a company voluntary arrangement.

Clause 16 and Schedule 13 - Protection of supplies of goods and services: NI

44. Clause 16 inserts new Article 197B into the Insolvency (Northern Ireland) Order 1989. Article 197B applies in the case of contracts for goods and services other than utility supplies. It will prevent the supplier relying on any clause in a contract which would entitle the supplier to terminate the contract or the supply, or do anything else (such as raising the price) where the customer avails of a moratorium under new Part 1A of the Insolvency (Northern Ireland) Order 1989 or becomes subject to a corporate insolvency procedure.
45. The supplier will also be forbidden from insisting on being paid for supplies made prior to the company's entry into insolvency proceedings as a condition of continuing the supply at the request of the insolvency officeholder.
46. Clause 16 also introduces Schedule 13 which inserts Schedule 2ZZA into the Insolvency (Northern Ireland) Order 1989. Schedule 2ZZ provides for exclusions from the operation of Article 197B.
47. Clause 16 also inserts new Article 197C into the Insolvency (Northern Ireland) Order 1989 to give the Department power to amend Article 197B and Schedule 2ZZA by regulations.

Clause 17 - Temporary exclusion for small suppliers: NI

48. Clause 17 is a temporary provision. It provides that during "the relevant period" Article 197B is not to apply in the case of suppliers which are small entities. Small entities are defined as businesses which meet two out of three of the following requirements; their annual turnover does not exceed £10.2 million, their balance sheet total does not exceed £5.1 million or they do not have more than 50 employees.

Clause 26 - Regulations to amend legislation: NI

49. Clause 26 gives the Department, or the Secretary of State for Business, Energy and Industrial Strategy, the power to make regulations which amend corporate insolvency or governance legislation so as to change:

- the conditions that have to be met before businesses can enter a corporate insolvency or restructuring procedure;
- the way in which corporate or restructuring procedures apply to entities; or
- duties of persons with corporate responsibility or the liability of those persons to any sanction.

Clause 27 - Purposes

50. Regulations under clause 26 can only be made for reasons connected to the coronavirus.

Clause 28 - Restrictions

51. Clause 28 places limits on the Secretary of State's or the Department's power to make regulations under clause 26.

Clause 29 - Time-limited effect

52. Clause 29 provides for regulations made under clause 26 to apply for a maximum of six months at a time.

Clause 30 - Expiry

53. Clause 30 provides for the Secretary of State and the Department's power to make regulations under clause 26 to expire on 30 April 2021, although the Secretary of State and the Department will have power to renew that power for periods of up to one year.

Clause 31 - Consequential provision

54. Clause 31 enables the Department or the Secretary of State to make regulations needed as a consequence of regulations made under clause 26.

Clause 32 - Procedure for regulations made by the Department

55. Clause 32 establishes what Assembly control is in place where the Department makes regulations under clauses 26, 30 and 31.

Clause 33 - Procedure for regulations made by the Secretary of State

56. Clause 33 sets out requirements for laying regulations made under clauses 26, 30 and 31 before Parliament where the regulations are made by the Secretary of State.

Clause 34 - Interpretation

57. Clause 34 is the interpretation provision for clauses 26 to 33.

Clause 35 and Schedule 14 - Meetings of companies and other bodies

58. Clause 35 introduces temporary relaxations to enable mutuals to hold meetings in a manner that is consistent with not only their constitutional arrangements but their legal obligations. During the temporary period in which these measures are in force, mutuals will be given greater flexibility as to the manner in which such meetings are held. For example, they will be able hold meetings, and allow votes to be cast, by electronic or other means and they will be free from restrictions to hold a meeting at a particular location. The measures also make temporary provision to extend the period within which mutuals must hold an AGM in order to offer further flexibility if required.
59. These measures will only apply in respect of meetings due to take place between a temporary period, which begins on 26 March 2020, and runs until the end of September. Although the clause grants the Department the power to extend that period by up to three months at a time, but not beyond April 2021.
60. Clause 35 also gives the Department power to make further provisions in relation to meetings if necessary.

Clause 40 and Schedules 8 and 11 - Power to change duration of temporary provisions: NI

61. Clause 40 enables the Department to make regulations altering the time period for which temporary provisions included in the Bill are to apply.

Offences created by the Bill

62. Where appropriate the Bill will create new offences in Northern Ireland, in line with elsewhere in the UK, which are primarily to ensure that the measures being introduced to assist companies are not abused. Officials will notify the Department of Justice of the new offences when time permits.

Human Rights and Equality

63. 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

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

Regulatory impact

65. Due to the time constraints a regulatory impact assessment has not been prepared for Northern Ireland. However, it is considered that the planned changes to insolvency legislation will have a positive impact on Northern Ireland business as they are to help companies stave off liquidation.

Ministerial View

66. The view of the Minister for the Economy is that, in the interests of providing support to businesses in financial difficulty in Northern Ireland and ensuring that they have access to the same range of measures as are being taken to assist companies affected by the coronavirus in the rest of the UK, that the measures set out in the Corporate Insolvency and Governance Bill, should be legislated for by the UK Parliament.

Committee Consideration

67. Throughout the period of enforced restrictions on movement and gatherings, introduced with the aim of curbing the spread of COVID-19, the Committee has gathered evidence from business owners and business representative bodies in the impact of the crisis. The Committee has heard overwhelming evidence of businesses, that would otherwise be economically viable, experiencing significant trading difficulties.
68. As a result, the Committee understands the need for measures to support businesses at a time of unprecedented difficulty and is, therefore, broadly 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.
69. The Department for the Economy ('the Department') wrote to the Committee on 21 April 2020 to inform the Committee of the Bill to be introduced in the House of Commons by Alok Sharma MP, 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.
70. The Committee noted that, though insolvency 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.
71. At its meeting on 6 May 2020, the Committee received an oral briefing from officials from the Department's Insolvency Service who outlined the detail of the Bill as it related to Northern Ireland.
72. At its meeting on 13 May 2020, the Committee considered further correspondence from the Department, updating it further on the expected date of the Bill, its content, and informing the Committee that as a result of the accelerated passage of the Bill through the House of Commons, it would not be possible for the Committee to have the normal 15 working day period to produce its report.
73. The Committee agreed, at its meeting on 13 May 2020, that, despite the extremely narrow window of opportunity to carry out a consultation exercise with stakeholders, it would do so and wrote to stakeholders on 15 May 2020.
74. The Committee wrote to stakeholders informing them of the information available to the Committee at the time and asked for submissions by noon on 22 May 2020. 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.

75. In response to the call for evidence, the Committee received written evidence from the Irish League of Credit Unions (ILCU) and Enterprise Northern Ireland. Again, due to the considerable time restrictions, the Committee was unable to take oral evidence on the Bill or LCM.

Irish League of Credit Unions

76. In its response, the ILCU also noted the limited timescale within which consideration of the LCM was undertaken. The organisation has had some high-level discussions with the Department around the proposals; however, the body did not have prior sight or knowledge of the detail of the Bill.

77. The ILCU largely limits its comments to Clause 35 and Schedule 14 of the Bill, which detail the intentions in relation to Annual General Meetings (AGMs).

78. They are supportive of measures seeking to provide flexibility, proportionality and protection for credit unions in how they undertake their activities during the current circumstances; and welcome that temporary flexibility will be provided in respect of AGMs to allow such meetings to be held by other means even if a credit union's rules do not allow it.

79. The response highlights that Schedule 14 of the Bill applies to meetings held between 26 March 2020 and 30 September 2020; however, the yearend for credit union accounting purposes in NI is 30 September. ILCU affiliated credit unions, under the ILCU Standard Rules for Credit Unions, must hold their general meetings within four months of 30 September (i.e. by the end of January the following year). Traditionally, most local credit union AGMs are held in November and December. The response notes that under paragraph 2 of Schedule 14 an earlier or later date may be substituted by "the appropriate national authority". The ILCU suggests that, as social distancing may well be in place beyond September 2020, the Department considers making regulations which extend the relevant period to incorporate the normal calendar of credit union AGMs which take place in the 3 months after 30 September.

80. The ILCU expressed concern that holding virtual AGMs will, most likely, mean increased cost and cyber security implications. This will impose additional cost and administrative burdens on credit unions (many of which are completely volunteer run). Facilitating a large number of members online through any software solution (along with potential voting) would require the running of additional costly and technical software solutions.

81. Additionally, the ILCU highlights that important issues, like declarations of dividends and interest rebates, can only be approved via AGM (Section 36 of the Credit Unions (NI) Order 1985 (as amended)), so voting via electronic means is likely to be an area that credit unions will need to look at as a consequence of the Bill.

82. The ILCU responses suggest that it is unlikely that the "other means", such as postal votes set out under paragraph 3 of Schedule of the Bill, would have any practical benefits for credit unions as it would require additional administrative burdens to develop a robust

secure system, as well as it being very difficult to see whether the credit union would be able to obtain sufficient completed responses to ensure that such resolutions were passed.

83. The ILCU believes that some smaller credit unions may not be able to facilitate such virtual meetings at all, due to their technical capabilities or those of their wider membership. Nevertheless, the response highlights the ILCU's appreciation that, within paragraph 6 of Schedule 14 of the Bill, there is provision and mechanism for regulations to be made which extend the period within which a credit union must hold an AGM. The ILCU seeks clarity regarding whether it is the Department's intention that regulations will be made should credit unions require additional time to complete their AGMs.

Enterprise NI

84. Enterprise NI (ENI) responded to the Committee without having prior sight of the Bill or LCM. In its response to the Committee, ENI suggested that the period proposed by the Bill to prevent the presentation of winding-up petitions should be extended to cover cases where the statutory demand was served between 1 March and 31st October 2020. The body believes the protection is required for a longer period to protect businesses who will inevitably experience Covid-19-related difficulties as government support ends and the costs of reboot and recovery kick-in.
85. ENI welcomes the Bill forbidding the courts from making a winding-up order where the company's insolvency is due to debts incurred as a result of Covid-19. However, the response points out that insolvency can occur as a result of lost income, as well as accrued debt. ENI believes that evidenced lost income, as a result of Covid-19, should also be considered when forbidding the court making a winding-up order.
86. ENI recognises that the business must provide reasonable evidence to demonstrate the link to Covid-19 impact, and that this needs embedded in the Bill to decrease the number of incidents of potential fraud.
87. ENI accepts that it is necessary for Secretary of State for BEIS to have the power to make regulations amending or modifying corporate insolvency or governance legislation, to enable modification or disapplication is understood as being a potentially necessary amendment to expedite matters during the urgency of the crisis. They acknowledge the Minister's preference that the Secretary of State's power to make regulations should extend to Northern Ireland only with the consent of her Department, and that there should be an option for the regulations to be made by her Department; however, ENI suggests there should be a sunset clause added, covering a suggested period of time when 'urgency' prevails, perhaps 31 December 2020. ENI believes that not time-limiting the Secretary of State for BEIS having this power could generate unintended consequences in the future, at a time beyond the present crisis.

Conclusion

88. **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 to ensure that local businesses are protected to the same degree as those in GB and, to do this through the Assembly would require a much longer process, the Committee for the Economy agrees to support this Legislative Consent Motion.**
89. **The Committee would ask that the Minister urgently engages with stakeholders, particularly the Irish League of Credit Unions, to hear and address the concerns they have with regard to the Bill and the Legislative Consent Motion.**