CORPORATE INSOLVENCY AND GOVERNANCE BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Corporate Insolvency and Governance Bill as introduced in the House of Commons on 20 May 2020 (Bill 128).

- These Explanatory Notes have been produced by the Department for Business, Energy and Industrial Strategy in order to assist the reader. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1 The overarching objective of this Bill is to provide businesses with the flexibility and breathing space they need to continue trading during this difficult time. The measures are designed to help UK companies and other similar entities by easing the burden on businesses and helping them avoid insolvency during this period of economic uncertainty.

2 This Bill has three main sets of measures to achieve its purpose:

- to introduce greater flexibility into the insolvency regime, allowing companies breathing space to explore options for rescue whilst supplies are protected, so they can have the maximum chance of survival;
- to temporarily suspend parts of insolvency law to support directors to continue trading through the emergency without the threat of personal liability and to protect companies from aggressive creditor action; and
- to provide companies and other bodies with temporary easements on company filing requirements and requirements relating to meetings including annual general meetings (AGMs).

Policy background

3 Due to the COVID-19 pandemic, many otherwise economically viable businesses are experiencing significant trading difficulties. In addition, the Government-enforced social distancing measures and reduced resources are making it hard for many businesses to continue to trade and meet their legal duties. This Bill is aimed at ensuring businesses can maximise their chances of survival.

Moratorium

4 There is currently no free-standing moratorium available for UK companies. The policy is to introduce such a moratorium allowing a company in financial distress a breathing space in which to explore its rescue and restructuring options free from creditor action. The moratorium will be overseen by an insolvency practitioner (IP) acting as a monitor although the directors will remain in charge of running the business on a day-to-day basis (known as a 'debtor-in-possession' process with the company being the 'debtor').

5 The aim of the moratorium is to facilitate a rescue of the company, which could be via a company voluntary arrangement (CVA) (a procedure under Part 1 of the Insolvency Act 1986 that enables a company that is in financial difficulty, but not necessarily insolvent, to make a binding compromise and arrangement with its creditors), a restructuring plan (as also introduced by this Bill – see paragraphs 9-16) or simply an injection of new funds. The intention is that the moratorium will result in better, more efficient rescue plans that benefit all of a company's stakeholders. There will no requirement to have a particular outcome in mind at the time of entry into a moratorium.

6 The objective is to provide a streamlined moratorium procedure that keeps administrative burdens to a minimum, makes the process as quick as possible and does not add disproportionate costs onto struggling businesses.

7 The moratorium will be free-standing. It will not be a gateway to a particular insolvency

procedure (or any process at all, if the company can be rescued during the moratorium without needing entry into an insolvency procedure). Possible rescue outcomes include:

- recovery of the company without further action/process;
- sale and/or refinancing outside insolvency;
- CVA under Part 1 of the Insolvency Act 1986;
- scheme of arrangement under Part 26 of the Companies Act 2006;
- implementing a restructuring plan under the new Part 26A of the Companies Act 2006.

8 To ensure the moratorium is only used appropriately, there will be a number of exclusions that mean that a company is not eligible. For example, it cannot have been in a moratorium in the previous 12 months unless the court has ordered otherwise. The company and its proposed monitor must also make a number of statements, regarding the company's financial state and prospects for rescue, before it can enter a moratorium. The moratorium must be brought to an end if it becomes apparent to the monitor that the company is unlikely to be rescued. The requirements on prospect for rescue, bringing the moratorium to an end, and certain of the exclusions for entry will be temporarily amended to account for the COVID-19 pandemic.

Arrangements and reconstructions for companies in financial difficulty

9 These provisions will allow struggling companies, or their creditors or members, to propose a new restructuring plan proposal between the company and creditors and members. The measures will introduce a "cross-class cram down" feature that will allow dissenting classes of creditors or members to be bound to a restructuring plan. This means that creditors or members who vote against a proposal, but who would be no worse off under the restructuring plan than they would be in the most likely outcome were the restructuring plan not to be agreed (and are thus not financially disadvantaged) cannot prevent it from proceeding.

10 These provisions introduce a new Part 26A into the Companies Act 2006: Arrangements and Reconstructions for Companies in Financial Difficulty (a 'restructuring plan'). The new Part represents the culmination of the policy work undertaken since a restructuring plan procedure for companies was consulted on as part of "A Review of the Corporate Insolvency Framework", published in May 2016.[1]

11 There are currently two statutory mechanisms for a company to reach a compromise or arrangement with its creditors; an arrangement or reconstruction under Part 26 of the Companies Act 2006 (known as a 'scheme of arrangement') and a CVA under Part 1 of the Insolvency Act 1986.

[1] 'A review of the Corporate Insolvency Framework'

12 At present CVAs are used by companies looking to restructure, but they cannot affect the rights of secured creditors or preferential creditors without their consent.

13 The scheme of arrangement framework is highly regarded and has proved a flexible tool in recent years. In addition to use by domestic companies, a number of overseas companies have also used a scheme of arrangement in the UK to effect restructurings, where they have been able to show a "sufficient connection" to the jurisdiction.

14 In schemes of arrangement creditors (and sometimes members) are divided into classes (based on the similarity of their rights, which may vary significantly across a company's creditor base) and each class must vote on the proposed scheme. If all classes vote in favour of the scheme (requiring 75% by value and a majority by number of each class), the court must then decide whether to sanction it. Not all creditors or members of a company need to be included within a scheme. A company may organise a scheme in such a way as to exclude some creditors or members from it. Those creditors or members who are not bound by the scheme retain their existing rights.

15 The new restructuring plan procedure is intended to broadly follow the process for approving a scheme of arrangement (approval by creditors and sanction by the court), but it will additionally include the ability for a company to bind classes of creditors (and, if appropriate, members) to a restructuring plan, even where not all classes have voted in favour of it (known as cross-class cram down). Cross-class cram down must be sanctioned by the court and will be subject to meeting certain conditions. As is the case with Part 26 schemes, the court will always have absolute discretion over whether to sanction a restructuring plan. For example, even if the conditions of cross-class cram down are met, the court may refuse to sanction a restructuring plan on the basis it is not just and equitable. As long as the eligibility criteria for the new moratorium are met, it will also be available (but not mandatory) to use whilst the company develops a restructuring plan providing a streamlined restructuring process and allowing a restructuring plan to be developed free from enforcement action.

16 While there are some differences between the new Part 26A and existing Part 26 (for example the ability to bind dissenting classes of creditors and members), the overall commonality between the two Parts is expected to enable the courts to draw on the existing body of Part 26 case law where appropriate.

Winding-up petitions

17 The Government has introduced measures in the Coronavirus Act 2020 that are intended to support businesses and protect them from the effects of the Coronavirus pandemic, so that those effects do not become permanent. In order to protect businesses from eviction by landlords, the Act created a moratorium on commercial landlords enforcing the forfeiture of leases for unpaid rent. This lasts until 30 June and can be extended if necessary.

18 Following the enactment of these measures the Government has become aware that some landlords have been using other measures, including statutory demands followed by winding-up petitions, to put pressure on their tenants to pay outstanding rent immediately.

19 Although enforcement action of this nature is currently known to be occurring amongst commercial landlords and tenants, any creditor might attempt to use these processes for debt collection purposes.

20 A statutory demand is a possible first step of the insolvency legal process in which a

creditor presents a company with a written demand requiring payment of an unpaid debt. Where a statutory demand is unpaid that can be used by the creditor to demonstrate to a court that a company is unable to pay its debts and used as grounds to present a winding-up petition to force the company into liquidation. Insolvency proceedings of this nature are not intended to be used as a tool for debt collection but are to deal with financial failure and tackle companies that are no longer viable. Once a statutory demand has been made, if the outstanding debt is not resolved within three weeks, the company is considered to be unable to pay its debts and winding-up proceedings can ensue. A statutory demand therefore poses a significant threat to the existence of the targeted company.

21 The Government is legislating to temporarily prevent winding-up proceedings being taken on the basis of statutory demands and to temporarily stop winding-up proceedings where COVID-19 has had a financial effect on the company which has caused the grounds for the proceedings.

22 The Bill will prevent any statutory demands made against companies in the period between 1 March 2020 and 30 June 2020 from being used as the basis of a winding-up petition at any point on or after 27 April 2020.

23 The Bill also creates an additional condition that must be satisfied before a creditor can obtain a winding-up order against a company on the grounds that it is unable to pay its debts. During the restriction period, any creditor asking the court to make a winding-up order on those grounds must first demonstrate to the court that the company's inability to pay its debts was not caused by the coronavirus pandemic.

24 The measure will apply to any winding-up petition presented in the period from 27 April 2020 to 30 June 2020 or one month after the coming into force of this Bill, whichever is the later, and it includes provision to rectify situations where, following the announcement of the measure but in advance of its enactment, a petition has been brought under the pre-existing law.

Wrongful trading

25 Wrongful trading provisions in the Insolvency Act 1986 allow liquidators and administrators, who are office-holders in insolvency procedures, to apply to the court for a declaration that directors of the company in liquidation or administration are liable to personally contribute to the assets of the company. The declaration can be made where the directors allowed the company to continue trading beyond the point at which the insolvency procedure was inevitable, and did not take every step to minimise potential losses to creditors.

26 The threat of a possible future liquidator or administrator making a wrongful trading application is a strong deterrent to directors causing a company to continue to trade where there is a threat of insolvency, even if they intend to take steps to minimise losses to creditors.

27 The current crisis caused by the COVID-19 pandemic means that there is a great deal of uncertainty around trading conditions, both in the immediate and longer term future. Directors are having to make decisions about the future viability of their companies and whether it is appropriate for trading to continue.

28 This measure would mean 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 in which businesses were suffering from the impact of the pandemic. The deterrent to continuing to trade during that period will therefore be removed. Certain financial services firms and public-private partnership project companies are excluded from the suspension.

29 The period in question commences from 1 March 2020 and ends on 30 June 2020 or one month after the provision comes into force, whichever is the later, so the measure is retrospective. However, in the event that the impact of the pandemic on businesses continues beyond the end of that period, it may be extended for up to six months using secondary legislation, and that process may be repeated, extending the suspension period further. If it is clear that the pandemic is no longer having an impact on businesses, the period of suspension may also be ended. Such extension and ending of the period will be through regulations contained in a statutory instrument (SI).

30 The objective of this measure is to remove the deterrent of a possible future wrongful trading application so that directors of companies which are impacted by the pandemic may make decisions about the future of the company without the threat of becoming liable to personally contribute to the company's assets if it later goes into liquidation or administration. This will in turn help to prevent businesses, which would be viable but for the impact of the pandemic, from closing.

Termination clauses in supply contracts

31 When a company enters a rescue, restructuring or insolvency procedure, suppliers often stop supplying it under a contractual termination clause triggered by insolvency. This measure will prohibit termination clauses that engage on insolvency or are based on past breaches of contract. This will mean that (subject to certain exclusions) contracted suppliers will have to continue to supply, even where there are pre-insolvency arrears.

32 The Bill will introduce new additional provisions to existing provisions in the Insolvency Act 1986 to widen the scope of the restrictions on termination clauses in contracts. This will prevent a much wider range of suppliers from terminating a contract due to a company entering a formal restructuring or insolvency procedure. The policy intention is to help companies trade through a restructuring or insolvency procedure, maximising the opportunities for rescue of the company or the sale of its business as a going concern. The measures will complement the policy for a new moratorium and restructuring plan procedure, which are aimed at enhancing the rescue opportunities for financially distressed companies.

33 The current law under sections 233 and 233A of the Insolvency Act 1986 makes limited provision to invalidate termination clauses, in certain company insolvency and rescue procedures and in relation to specific supplies.

34 The new provisions will prevent suppliers of a much wider range of supplies relying on termination clauses or doing 'any other thing', due to a company entering a qualifying restructuring or insolvency procedure. A new Schedule provides for the companies and services which are excluded from the provisions. They are predominantly financial services and essential services covered by pre-existing provisions of the Insolvency Act 1986. Where a contract for the supply of goods or services contains a termination clause or allows for any other thing (such as changing payment terms) to happen, this will cease to have effect under the new provisions. Where an event permitting the exercise of the right occurred before the restructuring or insolvency procedure commenced but the supplier had not exercised the right to terminate before the restructuring or insolvency event, the supplier will be unable to exercise it for the duration of the insolvency

process. Suppliers will be prohibited from making payment of outstanding charges a condition of continued supply. Procedures to which this provision applies include the new moratorium and restructuring plan.

35 Where the new provision applies, it will not be a requirement for the office-holder, or directors to provide a personal guarantee.

36 Small entities as defined, will be exempted from the provisions, as a time limited COVID-19 related measure. This exemption will be in place from the Bill being enacted and coming in to force and a month thereafter or 30 June 2020 whichever is later, with a power to reduce or extend this period. Where a company enters into an insolvency process after the exemption expires, entities of all sizes which supply the company will be bound by the provisions unless otherwise exempted.

37 There are safeguards for suppliers in that they can apply to the court for permission to terminate the contract on the grounds of hardship. A contract can also be terminated with agreement from the company (where the company has entered a moratorium, voluntary arrangement or restructuring plan) or the office-holder (in any other relevant procedure).

38 The intention behind the provisions is to maintain supplies of all goods and services to companies in restructuring and insolvency procedures by limiting the circumstances in which the supplier can terminate or alter the contract. This will help companies trade through a restructuring or insolvency process, thereby maximising the opportunities for the rescue of the company or the sale of its business as a going concern.

Power to amend corporate insolvency or governance legislation

39 This measure will create a time limited provision allowing the Secretary of State to temporarily amend corporate insolvency and related legislation through regulations made by statutory instrument (SI). Amendments made under the power contained within this provision may be made to both primary and secondary legislation (falling within the definition of "corporate insolvency or governance legislation"). Providing for temporary legislative change in this way will mean that the insolvency and business rescue regime may quickly react and adapt to deal with significant and potentially unexpected future challenges presented by the impact of the COVID-19 pandemic on business.

40 Temporary amendments to legislation may be framed to give protection to companies which would be viable but for the effect of the pandemic, and to provide the regulatory support needed for their survival rather than being forced to enter insolvency proceedings. Changes may also allow for a temporary increase in flexibility in provisions within corporate insolvency and restructuring processes. This could be to mitigate the increased difficulty in adhering to those processes, such as meeting time limits, which may be caused by the impact of the pandemic. The provision could also be used to make temporary amendments to the insolvency related enforcement regime, to ensure that it remains fair and workable in the face of the impact of the pandemic on business.

41 There are currently no specific plans to use the power contained within this provision, but as the full extent of the impact of the pandemic on business becomes clear, it could be exercised to make urgent preventative or mitigative amendments. Any changes made by the use of the power in this provision must be kept under review by the Secretary of

State and revoked if no longer needed or revised to take account of changing circumstances.

42 The power contained in this provision is wide-ranging, but has some significant restrictions.

- The impact of any proposed amendments on any person (such as a creditor or employee) likely to be affected by them must first be considered.
- The temporary amendments made must be proportionate to the challenges presented.
- The effect of the amendment could not practicably be achieved without legislative change.
- The provision may not be used where the proposed amendment could be made using existing provisions whilst still achieving the objective of legislating sufficiently quickly.

43 In addition, amendments made under this provision may not create a criminal offence or a civil penalty, though they may modify the circumstances under which a person is guilty of an existing offence or civil sanction. The provision may not be used to create or increase a fee.

44 An SI containing regulations to temporarily amend legislation under this provision would be subject to a "made affirmative" process, which means that the changes will be effective immediately upon the SI being made. This is necessary because the need for temporary amendments is in most cases likely to be pressing, and the time delay in seeking approval by both Houses of Parliament in the normal way could have a detrimental effect. The SI is however required to be laid as soon as possible after being made, and will require approval by both Houses within 40 sitting days, or the change will cease.

45 Temporary changes made in this way may last for a maximum of 6 months, but can be extended using a similar "made affirmative" process. The temporary changes may also be curtailed through an SI subject to a negative resolution process and they must be revoked or amended, if it is clear that the impact of the pandemic has eased sufficiently.

46 This provision to make temporary changes will itself expire on 30 April 2021, but may be extended after that date if the impact of the pandemic is still being felt by business. Such an extension would be through an SI subject to the normal affirmative procedure.

Meetings and filing requirements

Meetings of companies and other bodies

47 A company may be required by legislation or its constitution to take certain key decisions by passing a resolution of the members of the company (for example, a change to the company's articles of association). Public companies can only pass a resolution of the members by holding a general meeting (section 281 of the Companies Act 2006 ("the CA 2006")), and other companies may be required to do so as a consequence of their articles.

48 Members also have the right to require directors to call a general meeting (section 303, CA 2006). Public companies and certain private companies have a statutory duty to hold an annual general meeting ("AGM") within a specified period and failure to comply is a criminal offence (section 336, CA 2006). Mutual societies (including registered branches of friendly societies) and charitable incorporated organisations may also be required to

hold an AGM or other meetings by legislation or their own constitution or rules.

49 The constitution or rules of companies and other bodies may also require that AGMs and other meetings are held in a particular way. For example, it may be required that meetings be held in person or at a particular place. The Government has introduced temporary emergency measures across the UK which require certain businesses to close, which prevent anyone leaving the place where they live without reasonable excuse and which ban public gatherings of more than two people. These emergency restrictions have been put in place to limit the spread of COVID-19 but may have prevented, and may continue to prevent, companies and other bodies from being able to hold AGMs at the time required by, and in a manner consistent with, legislation or their constitutional arrangements.

50 These measures are intended to introduce temporary relaxations to enable companies and other bodies to hold AGMs and other meetings in a manner that is consistent with their constitutional arrangements and the need to limit the spread of COVID-19. During the temporary period in which these measures are in force, companies and other bodies 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 means.

51 The measures also make provision to extend the period within which companies and other bodies must hold an AGM, in order to offer further flexibility if required. Those bodies with a deadline for holding an AGM expiring between 26 March 2020 and 30 September 2020 will be given until 30 September to hold their AGM, taking advantage of the more flexible arrangements for holding such meetings which are introduced by this Bill. There is also a power to provide for further temporary extensions of any deadlines for holding an AGM.

52 These measures will only apply in respect of a temporary period which begins on 26 March 2020 and runs until the end of September. There is a power to extend that period by up to three months at a time, but the temporary period cannot be extended beyond the end of the current financial year.

Extension of filing deadlines

53 This Bill provides the Secretary of State with a power to make regulations to extend deadlines for certain filings which include: accounts, under Part 15 of the Companies Act 2006; annual confirmation statements under Part 24 of that Act; notices of related relevant events under that Act; and registration of charges under Part 25 of that Act.

54 The Secretary of State has a discretion to extend the period for filing accounts under section 442(5) of the Companies Act 2006 if there is a "special reason" and upon an application being made. During the period affected by COVID-19, demand for this type of extension has substantially increased.

55 The power in clause 37 is broader than the discretion to extend the deadline for the filing of accounts upon application because it gives the Secretary of State a power to extend the deadlines for the various filing requirements listed in clause 38.

56 If a deadline is extended using the power in clause 37, it will apply to all relevant companies (which may include other entities, for example, Limited Liability Partnerships) without them needing to apply for the extension. There are maximum periods that may be provided in respect of each extended deadline.

Legal background

Insolvency framework measures: moratorium, termination clauses, arrangements and reconstructions for companies in financial difficulty (restructuring plan)

57 The current legislation relating to corporate insolvency is set out in the First Group of Parts of the Insolvency Act 1986, in particular –

- Company voluntary arrangements (Part 1)
- Administration (Part 2)
- Winding up of registered companies (Part 4)

58 A company in financial difficulties can agree a voluntary arrangement with its creditors if the requisite proportion of creditors (75% calculated by value of debts) approve its proposals. The arrangement cannot affect the rights of a secured creditor or the rights of a preferential creditor to be paid in priority to other debts, in either case without their express consent.

59 In addition, Part 26 of the Companies Act 2006, which provides for schemes of arrangement, can be used to effect a company rescue. The new Part 26A restructuring plan regime has been largely modelled on Part 26 schemes. As the Companies Act 2006 provisions implicitly bind the Crown, any arrangement or reconstruction agreed and implemented under new Part 26A will also necessarily be binding on the Crown.

60 Section 233 Insolvency Act 1986 assists the insolvency office-holder in maintaining "essential" supplies– utilities, communications and IT supplies, by preventing the supplier of them demanding payment of outstanding charges as a condition of supply. The supplier may seek a personal guarantee from the office-holder.

61 Section 233A of the Insolvency Act 1986 prohibits termination of a contract by utility, communications and IT suppliers on the basis of an insolvency related term in their contract. The main objective is to help companies continue to trade through an insolvency process that aids the rescue of companies – company voluntary arrangements and administrations. Safeguards are provided in that suppliers can terminate the contract on certain conditions: where the office-holder consents, where the court grants permission on the grounds of hardship, where the office-holder has failed to provide a personal guarantee within 14 days of a request by the supplier or if post procedure supplies are not paid for within 28 days.

62 The existing restrictions on termination of contracts for essential supplies will be retained. The new section 233B of the Insolvency Act 1986 applies to contracts for the supply of all other types of goods and services (unless exempted).

63 The current company law and insolvency law frameworks offer a number of options for achieving a rescue of a financially distressed company as a going concern or the sale of the company's business. While administration, found in Part II of the Insolvency Act 1986, can be used to effect a restructuring (where the affairs of the company are taken over by an administrator), debtor-in-possession models (where the directors remain in control of the company) such as the company voluntary arrangement under Part I of the Insolvency Act 1986 and the scheme of arrangement under Part 26 of the Companies Act 2006, are more likely to be used to effect a company rescue.

64 The current legislation relating to corporate insolvency in Northern Ireland is to be found in the Insolvency (Northern Ireland) Order 1989, which makes equivalent provision to the Insolvency Act 1986 (except for section 233A, which is discussed below).

Winding-up petitions

65 The moratorium on enforcement of forfeiture of leases for non-payment of commercial rent is provided in the Coronavirus Act 2020, section 82 (England and Wales) and section 83 (Northern Ireland). Provision for Scotland is made by paragraph 7 of Schedule 7 to the Coronavirus (Scotland) Act 2020.

66 Sections 122, 123, 124, 127 and 129 of the Insolvency Act 1986 ("IA 86"), and rules 7.3, 7.10 and 12.39 of the Insolvency (England and Wales) Rules 2016, and, in Scotland, the Insolvency (Scotland)(Receivership and Winding-up) Rules 2018 and Rules of Court, relate to the opening of winding-up proceedings against a company.

67 Sections 122 and 123 concern the grounds upon which a company may be wound-up, section 124 provides that winding-up is begun by a creditor presenting a petition to a court, and sections 127 and 129 are concerned with the making, (and consequences), of a winding-up order.

68 In particular, one of the grounds in section 122 IA 86 (section 122(1)(f)) is that the company is unable to pay its debts. One of the circumstances where a company is considered to be unable to pay its debts in section 123 (section 123(1)(a)) is if a company owes more than £750, a demand has been made in the correct form, and the sum remains unpaid after 3 weeks. Section 127 IA 86 provides that where a winding-up order is made then any disposal of property by the company after the winding-up petition was presented is void. Rule 7.10 requires that where a petition is presented then notice of that petition must be advertised in the London Gazette. Separate rules apply in Scotland, but advertisement of the petition is nevertheless still a requirement.

69 Sections 221 and 229 IA 86 make equivalent provisions for the purpose of unregistered companies.

70 Sections 74, 206, 207, 214A, 240, and 242-245 of the IA 86 provide for the reversal of certain transactions in the period leading up to the commencement of winding-up proceedings.

71 In Northern Ireland, the Insolvency (Northern Ireland) Order 1989 and the Insolvency Rules (Northern Ireland) 1991 make provision that is equivalent to the IA 1986 and the Insolvency Rules 2016.

Wrongful trading

72 The wrongful trading provisions are contained in sections 214 and 246ZB of the Insolvency Act 1986 for liquidation and administration respectively in Great Britain and Article 178 of the Insolvency (Northern Ireland) Order 1989 for liquidation in Northern Ireland. This measure applies when the court is considering whether a director should make a contribution to the assets of a company in liquidation or administration. It provides that the court will not take into account any worsening of the company or its creditors' financial position during the period of suspension of liability.

Power to amend corporate insolvency or governance legislation

73 The power to extend the period of temporary changes made under this provision is exercised by regulations subject to the made affirmative procedure, and is similar to the power in section 90(2) of the Coronavirus Act 2020 which allows the extension of the temporary measures contained in that Act.

74 The legislation to which amendments may be made includes the corporate provisions of the Insolvency Act 1986, and the Insolvency (Northern Ireland) Order 1989, Part 26A of the Companies Act 2006 (which relates to company restructuring and is inserted by this Act), the Company Directors Disqualification Act 1986 and the Company Directors Disqualification (Northern Ireland) Order 2002, the Cross-Border Insolvency Regulations 2006, Regulation (EU) 2015/848 on insolvency proceedings (after the implementation period completion day), this Bill (once it becomes an Act), and any subordinate legislation made under any of those Acts.

Meetings and filings

75 The legal background for these measures is addressed in the policy background section.

Territorial extent and application

76 Clause 45 in the Bill sets out the territorial extent of the Bill, which describes the jurisdictions in which the Bill forms part of the law. The provisions in this Bill either extend to the whole United Kingdom; to England and Wales and Scotland; to England and Wales only; to Scotland only; or to Northern Ireland.

77 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Fast-track legislation

78 The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards,[2] the House of Lords Select Committee on the Constitution recommended that the Government should provide more information as to why a piece of legislation should be fast-tracked.[3]

Why is fast-tracking necessary?

79 The Government has carefully considered the implications of using the fast-track process for the passage of this Bill. Due to the COVID-19 pandemic, many UK companies face the threat of insolvency owing to significant trading difficulties brought on by this crisis. Consequently, the measures in this Bill need to be brought in as soon as possible to provide businesses with the flexibility and breathing space they need to continue trading during this difficult time.

. What is the justification for fast-tracking each element of the bill?

80 All of the provisions in this Bill are aimed at supporting UK companies by creating an environment where companies are supported to survive the COVID-19 emergency and able to continue as going concern. It is therefore important the entire Bill is fast-tracked.

Insolvency framework measures: moratorium, arrangements and reconstructions for companies in financial difficulty (restructuring plan), termination clauses in supply contracts

81 The financial shock caused by COVID-19 is expected to result in more companies facing insolvency. This rescue reform package requires accelerated introduction to give companies the best chance of surviving during the COVID-19 pandemic and beyond.

Suspension of Wrongful Trading Liability

82 This temporary suspension of wrongful trading liability will give company directors assurance that they will not be held personally liable for using their best efforts to continue to trade the company during this emergency, should the company ultimately fail. By doing this, directors of companies that would be viable but for the uncertainty caused by COVID-19 will be more likely to continue a company's trading. If legislation is not brought forward as soon as possible, it may trigger a wave of unnecessary insolvencies.

Statutory Demands and Winding-up petitions

83 There is evidence that the winding-up process is already being used by some landlords as a debt collection mechanism against companies affected by the pandemic. It is important to extend protection to tenant companies in particular as soon as possible in

[2] House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I

[3] House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I, para. 186

order to prevent such actions from negating the intent of the measures contained within the Coronavirus Act 2020 to protect tenants at a time when they cannot trade.

Meetings and filing requirements

84 To support companies and other bodies in a timely manner at a time when businesses are under significant pressure as a consequence of COVID-19 so that companies can focus their resources on keeping their businesses going in this uncertain time. To ensure companies and other bodies can hold AGMs and other meetings in a manner consistent with the need to limit the spread of coronavirus and in compliance with statutory requirements and their constitutional arrangements.

What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?

85 In order for the measures included in this Bill to be as effective as possible in supporting UK companies, Royal Assent needs to be secured as soon as possible. Consequently, the Government will ask Parliament to expedite the parliamentary progress of this Bill. Discussions have been held with Opposition parties to inform them of the content of the Bill and a draft of the Bill was sent to, amongst others, the Shadow Secretary of State for Business, Energy and Industrial Strategy, and the Convenor of the Crossbench Peers in the Lords.

To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?

86 The Government has discussed the policy proposals of the Bill with Opposition parties.

Insolvency framework measures: moratorium, arrangements and reconstructions for companies in financial difficulty (restructuring plan), termination clauses in supply contracts

87 The Government previously consulted on changes to the corporate insolvency regime. 93 responses were received. The Government announced plans to introduce new insolvency rescue and restructuring procedures in August 2018.[4] This Bill will implement these reforms but with the addition of time limited provisions to cater for the immediate economic impact of the COVID-19 pandemic.

88 The Government announced its intention to introduce legislation to reform the insolvency framework in an announcement by the Secretary of State for BEIS on 28 March 2020.

Suspension of wrongful trading liability

89 This is a temporary measure to support company directors to continue to trade companies during the COVID-19 crisis, without the threat of personal liability. The Government announced its intention to introduce this legislation on 28 March 2020.

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[4] Government response: Corporate Governance Reform. August 2018

Statutory Demands and Winding-up petitions

90 As advance knowledge of this measure could have led to some creditors bringing forward winding-up petitions to avoid being caught by the restriction and therefore undermining the policy objective of protecting businesses, it was not possible to undertake consultation prior to its announcement.

Meetings and filing requirements

91 Relevant stakeholders in the corporate and legal fields have been consulted on this policy and it has been developed in close collaboration with Companies House, the Financial Conduct Authority (in relation to mutual societies and registered branches) and the Charity Commission (in relation to charitable incorporated organisations).

Does the bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why does the Government judge that their inclusion is not appropriate?

92 The company law measures, suspension of wrongful trading liability, and statutory demands and winding-up petitions measures are all are time limited measures introduced to support UK companies during the COVID-19 crisis. The suspension of wrongful trading liability, and statutory demands and winding-up petitions measures will expire on 30 June 2020 or one month after the coming into force of this Bill, whichever is the later. The AGM measures will expire on 30 September 2020 and the filing requirements measure will expire on 5 April 2021. Some of these provisions will be extendable and it will be possible to extend some provisions of the Bill while letting others expire if they are deemed no longer necessary.

93 The insolvency framework measures (i.e. moratorium, arrangements and reconstructions for companies in financial difficulty (restructuring plan), and termination clauses in supply contracts) are all permanent measures. They have previously been consulted on, in August 2018, the government announced plans to introduce new insolvency restructuring procedures. Additional time-limited measures will be introduced to support business during the COVID-19 pandemic.

Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the Government judge their inclusion is not appropriate?

94 The company law measures, suspension of wrong trading liability, and statutory demands and winding-up petitions measures are all temporary measures. The permanent measures will be reviewed as and when appropriate.

Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?

95 An impact assessment has been carried out on both the permanent measures and the temporary measures to confirm that existing legislation is not sufficient to deal with the issues this Bill addresses. The impact assessment on the permanent measures can be found published alongside this document. The economic assessment and regulatory impact of the temporary measures can be found in **Annex B**.

Has the relevant parliamentary committee been given the opportunity to scrutinise the legislation?

96 The chair of BEIS Select Committee was engaged prior to the introduction of this

legislation.

Commentary on provisions of Bill/Act

Moratorium

Clause 1: GB Moratoriums

97 This clause introduces a new Part A1 to the Insolvency Act 1986. It will be situated before Part 1 but within the First Group of Parts of that Act. The new Part A1 is made up of 8 Chapters, which set out details for determining whether a company is eligible for a moratorium, how a moratorium is obtained, the length of a moratorium, the effects of a moratorium, details regarding the role of the monitor, and further miscellaneous and supplementary matters.

Chapter 1: provides an overview of new Part A1 and introduces Schedule ZA1

98 This inserts a new Schedule into the Insolvency Act 1986 (new Schedule ZA1), which sets out detailed provisions in determining a company's eligibility for a moratorium.

Schedule ZA1

99 Schedule ZA1 (Moratorium: eligible companies) is inserted before Schedule A1, which is repealed by Schedule 3 paragraph 2 of this Bill.

100 This Schedule sets out which companies are eligible for the moratorium. Companies are generally eligible, unless excluded. Companies are ineligible if at the date of filing for a moratorium:

- the company is already subject to a formal insolvency procedure (including a moratorium that is in force at the date of filing);
- during the period of 12 months prior to the filing date, it has been subject to a moratorium, unless the court has ordered that the previous moratorium is not to be taken into account for this purpose;
- during the period of 12 months prior to the filing date, it has been subject to CVA or administration (for a temporary period this restriction is lifted by Schedule 4 to account for the impact of the COVID-19 pandemic).

101 The remaining paragraphs set out those financial services companies that are ineligible. They include: insurance companies; banks; electronic money institutions; investment banks and firms; companies which are parties to market contracts or any of whose property is subject to a market charge (market contract and market charge being defined by Part 7 of the Companies Act 1989); payment institutions; companies which are participants in a designated system or have property subject to a collateral security charge (within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999); operators of payments systems, infrastructure companies, recognised investment exchanges, clearing houses and CSDs; securitisation companies; parties to capital market arrangements; public-private partnership project companies; and overseas companies whose functions correspond to those mentioned above and which would be ineligible if they were registered under the Companies Act 2006 in England and Wales or Scotland.

102 The Secretary of State may amend the list of companies that are excluded from entering a moratorium by regulations subject to the affirmative resolution procedure. In addition, Welsh or Scottish Ministers (as appropriate) may amend this Schedule to provide for the

eligibility or ineligibility of a social landlord registered under either Part 1 of the Housing Act 1996 or Part 2 of the Housing (Scotland) Act 2010 for the purposes of the moratorium under Part A1 of the Insolvency Act 1986.

Chapter 2: sets out how an eligible company may obtain a moratorium

103 The directors of a company may obtain a moratorium by filing the relevant documents at court. If there is an outstanding winding-up petition against the company, or an overseas company is seeking to use these moratorium provisions, then the directors must apply to the court so that the court can determine whether it is appropriate to allow a moratorium (for a temporary period by operation of Schedule 4, a company (other than an overseas company) with an outstanding winding-up petition will be able to obtain a moratorium by filing at court, to account for the COVID-19 pandemic).

104 An overseas company will only be eligible for a moratorium if it is one which could be wound up under Part 5 of the Insolvency Act 1986; it is anticipated that the courts will exercise the same discretion when considering such an application as they would when considering the winding up of an overseas company. Even during COVID-19 an overseas company will need to apply to court for a moratorium, to ensure that it is within the jurisdiction of the UK courts before receiving the protection of a moratorium

105 The documents that must be filed are notices and statements confirming that: the directors wish to obtain a moratorium; the proposed monitor is qualified and consents to act in relation to the proposed moratorium; the company is eligible; in the opinion of the directors, the company is, or is likely to become, unable to pay its debts; and, in the proposed monitor's view, it is likely that a moratorium would result in the rescue of the company as a going concern (although this requirement will be modified by Schedule 4 for a specified period to account for the impact of the COVID-19 pandemic). Rescue may be achieved by, for example, a company voluntary arrangement, a restructuring plan or simply a refinance. The notice does not need to specify via which route 'rescue as a going concern' is to be achieved.

106 Where it is proposed that more than one person should act as the monitor, each of them must make the necessary statements and their statement of consent to act must include details of which functions are to be carried out by which monitor; or whether they are to be carried out jointly. The list of documents that must be filed may be amended by secondary legislation.

107 A moratorium for a company comes into force on the date and time at which either the relevant documents are filed at court or, if the directors have applied to the court, at such time as the court makes the order. When the moratorium comes into force, the proposed monitor becomes the monitor in relation to the moratorium.

108 The monitor must notify the registrar of companies and all the company's creditors, of which the monitor is aware, as soon as reasonably practicable that the moratorium is in force and when it will end.

Chapter 3: sets out how long a moratorium has effect.

109 As noted in paragraph 104 above, a moratorium will come in to force on the date and time that either the relevant documents are filed at court, or that the court makes the order. A moratorium will end at the end of the 20th business day beginning with the business day after the day on which the moratorium comes into force, unless it is extended or terminated early. For example, if the moratorium came into force on 1 June 2020, unless it were extended, it would end at the end of 29 June 2020. A moratorium cannot be extended once it has come to an end.

110 The directors may extend the moratorium for a further 20 business days if they file a notice and certain other documents at court. The first extension cannot happen until 15 business days have passed since the start of the moratorium. Where the directors extend the moratorium without creditor consent, the revised date will be 20 business days after the end of the initial period regardless of when, after the first 15 business days, the notice is filed at court. For example, if the directors file the necessary notice after 17 business days have passed from commencement, the revised moratorium end date will be 40 business days from commencement – not 37 business days. Those documents include statements that: the company is still, or is still likely to become, unable to pay its pre-moratorium debts; that all moratorium debts and pre-moratorium debts from which the company does not have a payment holiday that have fallen due have been met; and that, in the monitor's view, the rescue of the company is still likely. Creditor consent for such an extension is not required. A moratorium liability is one that was incurred after the beginning of the moratorium and has fallen due.

111 Thereafter, the directors may (with consent from the company's pre-moratorium creditors) file a notice with the court to extend the moratorium, which may then extend beyond 40 business days. The pre-moratorium creditors are creditors of pre-moratorium debts from which the company has a payment holiday, and which have fallen due or may fall due before the proposed revised end date of the moratorium. Directors cannot file such a notice until at least 15 business days have passed since the start of the moratorium. This will ensure that creditors have had the chance to experience dealing with the company in moratorium to know whether they wish to consent to the extension. There is no restriction from engaging with creditors in the first 15 business days of a moratorium if the company wishes to do so. Once the required documents referred to in paragraph 107 above (with the addition of a statement from the directors that creditors' consent has been obtained) are filed at court, the moratorium is extended so that it ends with the revised date agreed with creditors. A moratorium may be extended more than once in this way, subject to not being greater than one year from commencement.

112 The directors may also apply to the court to seek an extension of the moratorium beyond 40 business days. This application for an extension cannot be made until at least 15 business days have passed since the start of the moratorium. The same documents as referred to in paragraph 107 (with the addition of a statement from the directors as to whether pre-moratorium creditors have been consulted and, if not, why not) must accompany the application. The court may extend the moratorium to a date specified in the order or may make such order as it thinks appropriate. When considering the application, the court must consider the interests of the pre-moratorium creditors and the likelihood that the extension will result in the rescue of the company as a going concern. A moratorium may be extended more than once in this way. In the course of other relevant proceedings, for example, an application to the court in relation to a scheme of arrangement or a restructuring plan, the court may also order that a moratorium which is in force be extended.

113 If the directors make a proposal for a company voluntary arrangement, and the moratorium would have ended before the proposal has been disposed of, then the moratorium will not end until the proposal is disposed of.

114 The moratorium will be brought to an end if the company enters a restructuring plan or a scheme of arrangement or if a voluntary arrangement takes effect, or if the company enters an insolvency procedure such as administration or liquidation.

115 The directors must notify the monitor of any change to the end of the moratorium. The

monitor must then notify the registrar of companies and the company's creditors of which they are aware.

Chapter 4: sets out the effect of moratorium on the company and its creditors

Introductory

116 This chapter contains provisions about the main effects of a moratorium for a company. It includes restrictions on the enforcement or the payment of debts that are defined as pre-moratorium debts for which a company has a payment holiday during the moratorium. A reference to pre-moratorium debts for which a company has a payment holiday during the moratorium is to pre-moratorium debts that have fallen due before the moratorium, or fall due during the moratorium, other than amounts payable in respect of: (a) the monitor's remuneration or expenses (which is a contractual matter between the monitor and the company, the agreement for which may have been entered prior to the monitor's appointment), (b) goods or services supplied during the moratorium (services include the continued provision and usage of property owned by another, for example a leased photocopier, or a software license, where the obligation (lease, license, etc) was entered into prior to the moratorium), (c) rent in respect of a period during the moratorium, (d) wages or salary arising under a contract of employment, (e) redundancy payments, or (f) debts or other liabilities arising under a contract or other instrument involving financial services.

117 This chapter also introduces Schedule ZA2 into the Insolvency Act 1986, which sets out the meaning of "contract or other instrument involving financial services". It also makes clear that the "monitor's remuneration or expenses" does not include anything done by a proposed monitor before the moratorium begins.

Schedule ZA2

118 New Schedule ZA2 (Moratorium: contract or other instrument involving financial services) is inserted into the Insolvency Act 1986, immediately after Schedule ZA1. It sets out the type of contracts which fall under the definition of a "contract or other instrument involving financial services" in section A18, which provides that pre-moratorium debts and liabilities arising from such contracts and falling due before or during the moratorium will not be caught by the definition of pre-moratorium debts for which a company has a payment holiday during a moratorium. Such contracts include market contracts, qualifying collateral arrangements and property transfers, contracts secured by certain charges or arrangements, default arrangements and transfer orders, capital market arrangements, contracts forming part of a public-private partnership, derivatives, financial contracts, spot contracts, card-based payment transactions and securities financing transactions. The Secretary of State may amend the meaning of "contract or other instrument involving financial services" by regulations subject to the affirmative resolution procedure.

Publicity about moratorium

119 During the moratorium the company must display the name of the monitor and that a moratorium is in force for the company on each and every website and business document issued by or on behalf of the company. Business premises must also display notice of the moratorium.

Effects on creditors

120 Except in certain circumstances (e.g. a director presenting a winding-up petition, or a public interest winding-up petition presented by the Secretary of State) no insolvency

proceedings can be commenced against the company during the moratorium period. If the directors intend to commence insolvency proceedings, they must notify the monitor. Except with the leave of the court, no steps may be taken to enforce any security over the company's property (unless it is a security created under a financial collateral arrangement or a step to enforce a collateral security charge) or repossess any goods in the company's possession under any hire-purchase agreement. No other proceedings or other legal process can be commenced or continued during the moratorium, except those before an employment tribunal (or arising therefrom), those relating to claims between an employer and a worker, or those with the court's permission (which cannot be for the enforcement of pre-moratorium debts for which the company has a payment holiday).

121 A landlord may not exercise a right of forfeiture by peaceable re-entry (a right of irritancy in Scotland) in relation to premises let to the company, except where the court gives permission.

122 While in force the moratorium prevents a floating charge from crystallising and prevents restrictions being imposed on the disposal of any of the company's property. If, due to the operation of the moratorium, the holder of a floating charge is prevented from giving notice that would have the effect of causing the floating charge to crystallise, or imposing restrictions on the disposal of the company's property, the holder of the floating charge can give the relevant notice as soon as practicable after the end of the moratorium (or it later, the date it is notified of the end of the moratorium).

123 Security may only be given over a company's assets during the moratorium, and will only be enforceable, if the monitor consented to the security being given because the monitor believed that the grant of security would support the rescue of the company as a going concern.

124 The directors of the company must notify the monitor before presenting a petition to wind the company up; before making an administration application; or before appointing an administrator; or before recommending that the company passes a resolution for voluntary winding up. Failure to do so without reasonable excuse would constitute a criminal offence.

Restrictions on transactions

125 During a moratorium, the company may not obtain credit of more than £500 from a person, unless that person has been informed that a moratorium is in force for the company. This includes entering a conditional sale agreement, entering into a hire-purchase agreement under which goods are bailed or hired and where the company is paid in advance for the supply of goods and services. The requirement to inform (as set out in section A25(1)) may be satisfied by the company's compliance with the publicity requirements set out in section A19 (as described in paragraph 116 above), depending on the circumstances.

126 During a moratorium, the company cannot enter into a market contract, enter into a financial collateral arrangement, give a transfer order, grant a market charge or system-charge or provide collateral security (terms as defined in the Companies Act 1989, the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226), the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469) and the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979)).

Restrictions on payments and disposal of property

127 During a moratorium, the company may only make a payment above the permitted threshold in respect of a pre-moratorium debt from which the company has a payment holiday if:

- the monitor consents, or
- the court has ordered that it be paid or
- the payment discharges security against property that has been disposed of, with the permission of the court.

128 The permitted threshold, in respect of each person to whom the company makes a payment or payments, is the greater of £5,000 and 1% of the value of the unsecured debts owed by the company at the start of the moratorium. The monitor may give consent only if they think that the payment will support the rescue of the company as a going concern.

129 There are restrictions on the company disposing of property during the moratorium. Property that is not subject to security may only be disposed of if (i) the disposal is in the ordinary course of business (ii) the monitor consents or (iii) there is a court order. The monitor may give consent only if they think that the disposal will support the rescue of the company as a going concern. Property that is subject to security or is under a hire-purchase agreement may only be disposed of with the permission of the court, or if the disposal is in accordance with the terms of the security/agreement.

Disposals of property free from charges

130 During the moratorium the company will be allowed to dispose of property subject to a security interest and goods which are the subject of a hire-purchase agreement with the permission of the court or in accordance with the terms of the security/agreement. Consent will only be given if the court thinks that the disposal will support the rescue of the company as a going concern. Where the court gives its permission in relation to such property, it is a condition of the permission that the net proceeds (which the court may determine as the net amount that would be realised on sale of the property at an open market value) of the disposal are applied towards discharging the sums secured or payable under the hire-purchase agreement.

131 If a company contravenes certain provisions in this Chapter, it does not make any transaction void or unenforceable, nor does it affect the validity of any other thing.

Chapter 5: contains provisions about the monitor

132 During the moratorium, the monitor must monitor the company's affairs in order to establish whether it remains likely that the moratorium will result in the rescue of the company as a going concern. The monitor may require the directors of the company to provide information and can rely on information provided by the company when forming this view, unless there are reasons to doubt its accuracy.

133 The monitor must bring the moratorium to an end at any time by filing a notice at court if the monitor thinks that: the moratorium is no longer likely to result in the rescue of the company as a going concern; the company has been rescued as a going concern; the monitor is unable to carry out its functions because the directors have failed to provide the information required by the monitor ; or the company is unable to pay its moratorium debts, and pre-moratorium debts from which the company does not have a payment holiday, which have fallen due. The moratorium ends on the date the notice is

filed at court. The monitor may apply to the court for directions about carrying out their functions.

134 On an application by the directors or the monitor, the court may make an order to replace the monitor or appoint an additional monitor. Any monitor to be so appointed must make a statement that they are qualified to act and consent to do so. Any statement of consent to act must include details of which functions are to be carried out by which monitor; or whether they are to be carried out jointly. The monitor must notify the registrar of companies and the company's creditors of which they are aware of the removal of a monitor or the appointment of a new monitor.

135 Where two or more persons act jointly as the monitor, a reference to the monitor is a reference to those persons acting jointly; where an offence of omission is committed, each of the persons appointed to act jointly commits the office and may be punished individually. Where persons act jointly in respect of only some of the functions of the monitor, this only applies in relation to those functions.

Chapter 6: contains provisions about challenges

136 A creditor, director, member of the company or any other person affected by the moratorium may apply to the court on the grounds that an act, omission or decision of the monitor during a moratorium has unfairly harmed the applicant. This could include a challenge that the monitor has not terminated the moratorium when they should have done on the grounds that the company is no longer rescuable (or on the grounds that rescue has been achieved). The court may confirm, reverse or modify an act or decision of the monitor; it may give the monitor directions; or it may make any other such order as the court sees fit, including bringing the moratorium to an end (although it may not order that the monitor pay compensation). Such an application may be made during the moratorium or after it has ended.

137 Rules may be made to enable the administrator or liquidator of a company that has previously been subject to a moratorium to apply to court to challenge the monitor's remuneration on the grounds that it was excessive. Agreement on the monitor's remuneration would have been between the company and the monitor.

138 During the moratorium, a creditor or member of the company may apply to the court on the grounds that the company's affairs, business and property are being or have been managed in a way that has unfairly harmed the interests of its creditors or members generally or some in particular; or that any act or proposed act or omission causes or would cause such harm. The court may make any order it thinks fit, including bringing the moratorium to an end, regulating the management of the directors or requiring the directors to stop taking the action complained of.

Chapter 7: contains provisions about offences

139 If the monitor becomes aware that any officer of the company has committed an offence in relation to the moratorium, the monitor must report the matter to the appropriate authority and provide such information as that authority may require. In the case of a company registered in England or Wales, the appropriate authority is the Secretary of State; in the case of a company registered in Scotland, it is the Lord Advocate. In the case of an unregistered company, the appropriate authority is—

(i) if it has a principal place of business in England and Wales but not Scotland, the Secretary of State,

(ii) if it has a principal place of business in Scotland but not England and Wales, the Lord Advocate, and

(iii) if it has a principal place of business in both England and Wales and Scotland, the Secretary of State and the Lord Advocate;
(iv) if it does not have a principal place of business in England and Wales or Scotland, the Secretary of State.

140 The offences are detailed in full in Part A1. In addition, an officer of the company will commit an offence if they make a false representation, or fraudulently do, or omit to do, anything, for the purpose of obtaining a moratorium or an extension. There are also general offences which include, during a moratorium or within the 12 months leading up to a moratorium: an officer of the company concealing company property to the value of £500 or more, concealing any debt due to or from the company, fraudulently removing company property to the value of £500 or more, concealing or destroying any document affecting or relating to the company's affairs or pawning, pledging or disposing of any company property obtained on credit (unless it is in the ordinary course of business). It is a defence to some of these general offences for a person to prove that they had no intent to defraud or, for other of the offences specified, that they had no intent to conceal the state of affairs of the company.

Chapter 8: contains miscellaneous and general provisions, including definitions and provision about regulations under this part

141 If the moratorium is in respect of certain types of regulated company, then the notice that the monitor sends of the commencement, extension or end of the moratorium, as well as a notice of change in monitor, must also be sent to the appropriate regulator. They must also be given notice of any qualifying decision procedure by which a decision is being sought from the company's creditors. The regulator may participate (but not vote) in any qualifying procedure. The regulator is entitled to be heard on any application to court for permission to dispose of charged property or hire-purchase property. The regulator may apply to court to challenge either the monitor's or director's actions; or is entitled to be heard if another person has applied. The regulator will also be required to consent to the appointment of the proposed monitor and any proposed replacement monitor, and will be able to apply to court for an order to change the monitor.

142 The Secretary of State may by regulations modify Part A1 as it applies in relation to a company for which there is a special administration regime, or make provisions in connection with the interaction between Part A1 and any other insolvency procedure in relation to such a company. The Welsh and/or Scottish Ministers may, by regulations, modify this Part as it applies in relation to a company that is a social landlord registered under Part 1 of the Housing Act 1996 or Part 2 of the Housing (Scotland) Act 2010 respectively; or make provision in connection with the interaction between this Part and any other insolvency procedure in relation to such a company. In section A49, "insolvency procedure" includes the provision set out in section 143A to 159 of the Housing and Regeneration Act 2008, section 39 to 50 of the Housing Act 1996 and Part 7 of the Housing (Scotland) Act 2010; "ordinary administration" means the insolvency procedure provided for by Schedule B1; and "special administration regime" means an insolvency procedure that is similar or corresponds to ordinary administration and provides for the administrator to have one or more special objectives instead of or in addition to the objectives of an ordinary administration.

143 A floating charge document cannot provide that the obtaining of a moratorium or anything done with a view to obtaining a moratorium is an event which causes the charge to crystallise, imposes restrictions on the disposal of property that would not

otherwise apply or is grounds for appointment of a receiver. Any such provision is void.

144 Chapter 8 also provides useful interpretations that are used throughout the Part. In particular, the terms "pre-moratorium debt" and "moratorium debt" are defined. The wording used in the definition of "pre-moratorium debt" is intended to bring in the distinction made in Re Nortel GmbH (in administration) and related companies [2013] UKSC 52, between provable debts and expenses in administration. Following the Supreme Court's reasoning, liabilities such as contribution notices and financial support directions under the Pensions Act 2004 should be considered pre-moratorium debts (and, therefore, not payable during the moratorium) even if the request to pay them arises after the start of the moratorium.

145 Provision is made so that regulations made under this Part of the Insolvency Act can make different provision for different purposes, and consequential, supplementary, incidental, transitional or saving provision.

Clause 2 and Schedule 3: further amendments

146 This clause introduces Schedule 3, which contains consequential and other amendments to do with moratoriums under new Part A1 of the Insolvency Act 1986. There is a savings provision in relation to existing moratoriums in place under Schedule A1 of the Insolvency Act 1986.

Schedule 3

147 *Paragraphs 1- 8:* make various amendments to Part 1 of the Insolvency Act 1986 (company voluntary arrangements) to ensure that directors of a company that is subject to a moratorium may propose a voluntary arrangement for the company. They also remove references to Schedule A1, which is repealed by this Schedule. Paragraph 4 provides protection for creditors of unpaid moratorium debts (and unpaid pre-moratorium debts that the company was required to pay during the moratorium) in a subsequent company voluntary arrangement. Where the nominee's report that leads to approval of a company voluntary arrangement is made during or within 12 weeks of the end of the moratorium, such creditors must be paid in full unless they agree otherwise.

148 *Paragraphs 9, 13 and 14:* ensure that unpaid moratorium debts (and unpaid pre-moratorium debts that the company was required to pay during the moratorium), as well as any fees and expenses of the official receiver, rank above all other claims and expenses, other than those of fixed charge creditors (to the extent such creditors can be paid out of the assets charged) where proceedings for winding up are begun during or within 12 weeks of the end of a moratorium. This is partly achieved by the insertion of new section 174A into the Insolvency Act 1986.

149 *Paragraphs 10, 11 and 15:* remove references to the old Schedule A1 moratorium in a CVA procedure as that has been removed from the Act.

150 *Paragraph 12:* ensures that section 127 of the Insolvency Act 1986 (avoidance of property dispositions etc.) has no effect in relation to a company where the winding-up order is based on a petition presented before the moratorium begins, unless the petition was presented under section 367 of the Financial Services and Markets Act 2000.

151 *Paragraph 16:* amends section 246ZD to include the ability of an administrator or liquidator to challenge the remuneration charged by a monitor in relation to a moratorium as a right of action that may be assigned.

152 *Paragraphs 17 and 18*: amend sections 246A and 246B to add the monitor and the moratorium to the list of office-holders and proceedings which can allow for remote

attendance at meetings and the use of a website as a means of delivering or sending a notice.

153 *Paragraph 19*: amends section 247 to include a moratorium under Part A1 within the meaning of insolvency.

154 *Paragraph 20*: amends section 387 to remove references to the old Schedule A1 from the "relevant date" in relation to preferential debts.

155 *Paragraph 21*: amends section 388 so that acting as a monitor is included within the meaning of "acting as an insolvency practitioner".

156 *Paragraphs 22, 23 and 27*: amend sections 411 (company insolvency rules), 414 (fees order) and 431 (summary proceedings) to include the new moratorium procedure.

157 *Paragraph 24*: inserts new section 415B which will allow the Secretary of State to amend the monetary limits in relation to the moratorium.

158 *Paragraph 25*: removes existing section 417A (which relates to the old Schedule A1) from the Act.

159 *Paragraphs 26 and 28*: make amendments for the inclusion of the relevant criminal offences related to the moratorium scheme, and update section 430 Insolvency Act 1986 in light of the Criminal Justice Act 2003.

160 *Paragraph 29*: amends section 434 to ensure that the provisions in Part A1 also bind the Crown.

161 *Paragraph 30*: omits Schedule A1 from the Insolvency Act 1986.

162 *Paragraphs 31*: amends Schedules B1 (Administration) to remove references to the old Schedule A1 and ensure that unpaid moratorium debts (and unpaid pre-moratorium debts that the company was required to pay during the moratorium) rank above all other claims and expenses, other than those of fixed charge creditors (to the extent such creditors can be paid out of the assets charged) where a company enters administration upon or within 12 weeks of the end of a moratorium. This is partly achieved by the insertion of new paragraph 64A into Schedule B1 of the Insolvency Act 1986.

163 *Paragraph 32*: amends Schedule 8 (Provision capable of inclusion in company insolvency rules) so that rules in respect of the matters listed in Schedule 8 can also be made for the moratorium under Part A1.

164 *Paragraph* 33: amends Schedule 10 (Punishment of Offences) to remove the entries that relate to offences under the old Schedule A1 and add the maximum sentences for the new offences introduced in Part A1.

165 *Paragraph 34*: amends the Building Societies Act 1986 to omit reference to section 1A of the Insolvency Act 1986, which has been omitted by paragraph 2 of this Schedule.

166 *Paragraph 35*: amends the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 to remove references that relate to Schedule A1.

167 *Paragraphs 36-38*: amend the legislation for limited liability partnerships so that the moratorium provisions also apply to them.

168 *Paragraph 39*: amends the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 by adding reference to the monitor and their functions to Schedule 2 of those regulations.

169 *Paragraph 40*: amends the Financial Collateral Arrangements (No.2) Regulations 2003 by omitting paragraph (5) because it disapplied certain paragraphs of Schedule A1 to the Insolvency Act 1986, which is being repealed by this Bill.

170 *Paragraph 41:* amends the Insolvency Practitioners Regulations 2005 to ensure that an insolvency practitioner acting as a monitor is covered by these regulations.

171 *Paragraph 42*: amends section 154 of the Banking Act 2009 to remove references that relate to Schedule A1.

172 *Paragraphs 43-45:* amend the Charities Act 2011 to provide (in relation to section 245 of that Act) that regulations under (1)(b) of that Act may not apply Part A1 of the Insolvency Act 1986 in relation to a CIO that is a social landlord registered under Part 1 of the Housing Act 1996; but new section 247A is inserted to allow Welsh Ministers to provide by regulations that Part A1 of the Insolvency Act 1986 may apply (with or without modifications as set out in the regulations) to a CIO that is a registered social landlord under the Housing Act 1996. In addition, the consequential power in section 347 of the Charities Act 2011 Act may be used to disapply or modify specified provisions of the Housing and Regeneration Act 2008 and the Housing and Planning Act 2016 in relation to registered social landlords that are CIOs.

173 *Paragraphs 46-48*: amend the Investment Bank Special Administration Regulations 2011 to remove references that relate to Schedule A1.

174 *Paragraph 49*: amends the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 to apply new Part A1 of the Insolvency Act to CIOs; except where the CIO is a private registered provider of social housing or is registered as a social landlord under Part 1 of the Housing Act 1996.

175 *Paragraphs 50-53*: amend the Co-operative and Community Benefit Societies Act 2014 to remove references that relate to Schedule A1 and to ensure that secondary legislation can be made, by the Treasury with the concurrence of the Secretary of State, to apply the moratorium provisions to co-operative and community benefit societies, while not allowing it to apply in relation to a society that is registered as a social landlord under the Housing Act 1996 or Housing (Scotland) Act 2010. Welsh and Scottish Minsters, respectively, may, by regulations, provide for the moratorium provisions to apply to social landlords registered under these Acts.

176 *Paragraph 54:* amends the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 to alter the definition of the Insolvency Act 1986 so as to save the Schedule A1 moratorium provisions until the new Part A1 provisions are modified and applied by regulations.

177 *Paragraph 55*: amends The International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 to ensure that the moratorium provisions do not override anything contained in these regulations in respect of an aircraft object in respect of which an international interest has been registered.

Clause 3 and Schedule 4: temporary modifications in light of coronavirus

178 This clause introduces Schedule 4 to the Bill, which makes temporary modifications to the moratorium provisions in Part A1 of the Insolvency Act 1986 in light of the coronavirus. Part 2 of Schedule 4 contains the modifications which have been made to the permanent provisions of the moratorium during the COVID-19 crisis. Part 3 of Schedule 4 makes temporary rules for England and Wales and Part 4 makes temporary

rules for Scotland.

Schedule 4

179 The Schedule sets out the "relevant period" for the provisions in Schedule 4. The relevant period will begin on the day on which Schedule 4 comes into force and end on 30 June 2020 or one month after the coming into force of the Act (whichever is later). The end date may be shortened or extended by regulations; and may be extended more than once. There is also a power to cease the effect of any of the provisions in the Schedule before the end of the relevant period.

180 During the relevant period, a company is not eligible for a moratorium if the company is a regulated company that (a) has a permission under Part 4A of the Financial Services and Markets Act 2000 to carry out regulated financial activities and (b) is not subject to any limitation under Financial Services and Markets Act 2000 preventing the company holding money for a client (whether on trust or otherwise).

181 During the relevant period, the directors of an eligible company that is subject to an outstanding winding-up petition and is not an overseas company may obtain a moratorium for the company by filing the relevant documents at court (rather than by application to the court).

182 During the relevant period, a modified statement from the monitor is required as part of the relevant documents set out in section A6. The monitor is required to disregard any worsening of the financial position of the company that relates to COVID-19. Paragraph 6(1)(b) of part 2 of Schedule 4 has made an amendment in section A6(1)(e) of Insolvency Act 1986 by inserting at the end of it: "or would do so if it were not for any worsening of the financial position of the company for reasons relating to coronavirus".

183 The monitor will be required to state that in their view it is likely that a moratorium would result in the rescue of the company as a going concern or would do so if it were not for any worsening of the financial position of the company for reasons relating to coronavirus. A modified statement will also be required when an extension to the moratorium is being sought in sections A10, A11 and A13.

184 During the relevant period, companies that, within twelve months prior to filing for a moratorium have been subject to a previous moratorium, a CVA or in administration (but are not currently subject to a moratorium, CVA or in administration) are permitted to file or apply for a moratorium.

185 When a company enters a moratorium during the relevant period, the monitor's obligation to monitor the company's affairs will be modified. The monitor will be required to form a view whether it is likely that the moratorium will result in the rescue of the company as a going concern, or that, if one were to disregard any worsening of the financial position of the company for reasons relating to coronavirus, it is likely that the moratorium would result in the rescue of the company as a going concern.

186 When a company enters a moratorium during the relevant period, the monitor's obligation to bring the moratorium to an end will be modified. If the monitor thinks that the moratorium is not likely to result in the rescue of the company as a going concern, and that, even if one were to disregard any worsening of the financial position of the company for reasons relating to coronavirus, the moratorium would not be likely to result in the rescue of the company as a going concern, the monitor must bring the moratorium to an end.

187 Part 3 of this Schedule sets out provisions that will apply pending the necessary

amendments being made to the Insolvency (England and Wales) Rules 2016 (the Rules) and Part 4 of this Schedule sets out provisions that will apply pending the necessary amendments being made to the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 (the Scottish Rules) and Rules of Court. These temporary provisions will cease to have effect at the end of the relevant period (30 June 2020 or one month after the coming into force of the Act, whichever is later).

188 With regard to England and Wales and Part 3 of the Schedule, the provisions ensure that the court dealing with a moratorium application is the court that has jurisdiction to wind up the company. Provision is made about the content and timing of the director's notice to obtain and extend a moratorium, the proposed monitor's statement and consent to act (including those of a replacement or additional monitor), the monitor's notice to the company's creditors and registrar of companies when the moratorium comes into force and the notices required for a change in the end date of the moratorium. Rules 1.4, 1.8 and 1.9 of the Rules apply regarding the format of documents in so far as they are relevant to any requirement imposed by provisions in Part 3 of the Schedule and rule 1.5 of the Rules applies for the purposes of authentication where documents are required to be authenticated. Specified rules contained in Chapter 9 of Part 1 of the Rules apply in relation to the delivery of documents. In respect of applications to court, the provisions of the Civil Procedure Rules and any related Practice Directions apply for the purposes of proceedings under Part A1 of the Insolvency Act 1986 (the moratorium) together with rule 1.35 and specified and modified rules from Part 12 of the Rules. In addition, Part 3 of the Schedule draws on the relevant rules in Parts 15 and 16 of the Rules (with modifications) to apply the qualifying decision-making procedure (defined in the Insolvency Act 1986 section 246ZE), voting rights and majority rules when directors are seeking creditors' consent to extend the moratorium. The notice period of the directors' notice to the monitor before entering insolvency proceedings, and the contents of the monitor's notice to the court to end the moratorium are specified. Part 3 of the Schedule also sets the priority of moratorium debts in a subsequent administration or winding up and sets a time limit on when a challenge can be made to a monitor's fees by a subsequent administrator or liquidator. Information that must be used to identify and contact both the company and the monitor are listed. In deciding whether to bring the moratorium to an end, the monitor must disregard any debts that are likely to be paid within 5 days, and any debts which the creditor has agreed to defer until a later date.

189 With regard to Scotland and Part 4 of the Schedule, the provisions ensure that the court dealing with a moratorium application is the court that has jurisdiction to wind up the company. Provision is made about the content and timing of the director's notice to obtain and extend a moratorium, the proposed monitor's statement and consent to act (including those of a replacement or additional monitor), the monitor's notice to the company's creditors and registrar of companies when the moratorium comes into force and the notices required for a change in the end date of the moratorium. Rules 1.5, 1.9 and 1.10 of the Scottish Rules apply regarding the format of documents in so far as they are relevant to any requirement imposed by provisions in Part 4 of the Schedule and rule 1.6 of the Scottish Rules applies for the purposes of authentication where documents are required to be authenticated. Specified rules contained in Chapter 9 of Part 1 of the Scottish Rules apply in relation to the delivery of documents. In addition, Part 4 of the Schedule draws on the relevant rules in Parts 5 and 6 of the Scottish Rules (with modifications) to apply the qualifying decision-making procedure, voting rights and majority rules when directors are seeking creditors' consent to extend the moratorium. The notice period of the directors' notice to the monitor before entering insolvency proceedings, and the contents of the monitor's notice to the court to end the moratorium

are specified. Part 4 of the Schedule also sets the priority of moratorium debts in a subsequent administration or winding up and sets a time limit on when a challenge can be made to a monitor's fees by a subsequent administrator or liquidator. Information that may be used to identify and contact both the company and the monitor are listed. In deciding whether to bring the moratorium to an end, the monitor must disregard any debts that are likely to be paid within 5 days, and any debts which the creditor has agreed to defer until a later date.

Clause 4 and Schedule 5 and 6: Moratoriums in Northern Ireland

190 This clause makes provision for Northern Ireland that is equivalent to that made by clause 1 for Great Britain. It inserts a new Part 1A into the Insolvency (Northern Ireland) Order 1989, corresponding to the new Part A1 of the Insolvency Act 1986.This clause also introduces Schedules 5 and 6 which respectively insert Schedule ZA1 dealing with conditions for eligibility and Schedule ZA2 dealing with contracts involving financial services into the Insolvency (Northern Ireland) Order 1989. These provisions are essentially identical to what is done for Great Britain. There are some technical differences in the drafting, due to minor differences in the underlying law in Northern Ireland.

Clause 5 and Schedule 7: Moratoriums in Northern Ireland - further amendments

191 This clause introduces Schedule 7, which contains consequential and other amendments to do with moratoriums under new Part 1A of the Insolvency (Northern Ireland) Order 1989. For the most part, the amendments made by Schedule 7 correspond to those made by Schedule 3. However, Schedule 7 does not include amendments to UK-wide legislation that deal with reserved matters.

Clause 6 and Schedule 8: Moratoriums in Northern Ireland – temporary modifications

192 Clause 6 introduces Schedule 8 which makes temporary modifications to Part 1A of the Insolvency (Northern Ireland) Order 1989 in the light of COVID-19.

193 As with Schedule 4, Schedule 8 sets out the "relevant period" for the temporary moratorium provisions that will apply to Northern Ireland. The relevant period will begin on the day this act will come into force and end on 30 June 2020 or one month after the coming into force of the Act (whichever is the later). The end date may be shortened or extended by regulations; and may be extended more than once. There is also a power to cease the effect of any of the provisions in the Schedule before the end of the relevant period. These powers are to be exercised by the Department for the Economy in Northern Ireland. The modifications to the Insolvency (Northern Ireland) Order 1989 that are made by Part 2 of the Schedule correspond to those made by Part 2 of Schedule 4..

194 Part 3 of this Schedule sets out provisions that will apply pending the necessary amendments being made to the Insolvency Rules (Northern Ireland) 1991. These temporary provisions will cease to have effect at the end of the relevant period (30 June 2020 or one month after the coming into force of the Act, whichever is later).

195 Provision is made about the content and timing of the director's notice to obtain a moratorium, the proposed monitor's statement and consent to act (including those of a replacement or additional monitor) and the notices required for a change in the end date of the moratorium. Relevant Rules are applied regarding the format of documents in so

far as they are relevant to any requirement imposed by provisions in Part 3 of the Schedule and in relation to the delivery of documents. The requirements for authentication of documents are set out. In respect of applications to the High Court, the provisions of the Insolvency Rules (NI) 1991 apply for the purposes of proceedings under Part 1A of the Insolvency (Northern Ireland) Order 1989 (the moratorium), with certain of those Rules being modified. In addition, Part 3 of the Schedule draws on the relevant Rules (with modifications) to apply the procedures for meetings, voting rights and majority rules when directors are seeking creditors' consent to extend the moratorium. Part 3 of the Schedule also sets the priority of moratorium debts in a subsequent administration or winding up and sets a time limit on when a challenge can be made to a monitor's fees by a subsequent administrator or liquidator.

Arrangements and reconstructions for companies in financial difficulty

Clause 7 and Schedule 9

196 This clause introduces Schedule 9 into the Bill. That Schedule inserts a new Part 26A (Arrangements and Reconstructions for Companies in Financial Difficulties) into the Companies Act 2006, which sets out the arrangements for a company to enter into a 'restructuring plan', and makes consequential amendments.

Schedule 9

197 *Paragraph 1*: inserts Part 26A into the Companies Act 2006 immediately after Part 26 ("Arrangements and Reconstructions", now named "Arrangements and Reconstructions General"); it is entitled: "Arrangements and Reconstructions for Companies in Financial Difficulty".

198 *Section 901A:* sets out that this Part of the Act applies to a company: that has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect its ability to carry on business as a going concern; and a compromise or arrangement (a 'restructuring plan') is proposed between the company and its creditors and/or its members, for the purpose of eliminating, reducing, preventing or mitigating those financial difficulties. In this Part, the term "arrangement" includes a reorganisation of the company's share capital by consolidation of shares of different classes or by the division of different shares into shares of different classes (or both). "Company" means a company liable to be wound up under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989. In relation to section 901J "company" refers to a company within the meaning of the Companies Act 2006). The provisions of this Part have effect subject to Part 27 (mergers and divisions of public companies) where that Part applies (in particular sections 902 and 903

199 *Section 901B:* allows the Secretary of State, by regulations, to provide that this Part does not apply where (a)the company proposing the restructuring plan is an authorised person (within the meaning of the Financial Services and Markets Act 2000) or an authorised person of a specified description (specified in regulations), or (b) a plan is proposed between a company, or a company of a specified description, and any of its creditors and those creditors are, or include, creditors of a specified description. This will allow for the exclusion under this Part of certain companies providing financial services. Such regulations are subject to the affirmative resolution procedure.

200 *Section 901C:* sets out who may apply to the court for an order to summon a meeting. This section provides that, as a default, creditors and members whose rights would be affected by the compromise or arrangement must be permitted to participate in a meeting ordered by the court. However, if the court is satisfied that a class of creditors or members has no genuine economic interest in the company (an 'out of the money' class), the court may order for that class of creditors or members to be excluded from the meeting summoned in subsection (1). An application to exclude an out of the money class of creditors or members must be made by the original applicant under subsection (1). This section is subject to 901H and 901I (see below).

201 *Sections 901D and 901E*: deal with what information must be provided to creditors and members where a meeting is summoned under section 901C. Every notice of the meeting must be accompanied by a statement that, amongst other things, explains the effect of the proposed 'restructuring plan' and any material interests of the directors of the company and the effect of the plan on those interests, if it is different to that on the similar interests of others. Likewise, if the plan affects the rights of debenture holders of the company in a different way, the statement must provide the same details for the trustees of any deed for securing the issue of the debentures. Where notice of the meeting is given by advertisement, that advertisement must state how a copy of the statement may be obtained free of charge by any creditor or member. If the company fails to comply with these sections, the company and any officer of the company who is in default (which could include a liquidator or administrator of the company and a trustee of a deed for securing the issue of debentures) commits an offence, unless the default was due to the refusal of a director, or trustee for debenture holders, to supply the necessary particulars of their interests (in which case that person commits an offence). It is the duty of any director of the company and any trustee for its debenture holders to give notice to the company of such matters that are necessary for the statement.

202 *Section 901F:* If 75% or more in value of creditors (or class of creditors) or members (or class of members) present and voting either in person or by proxy at the meeting agree to a restructuring plan, then an application may be made to the court to sanction the plan. Drawing on well-established principles in schemes of arrangement, the court has absolute discretion over whether to refuse to sanction a plan even though the necessary procedural requirements have been met. This may be, for example, because a plan is not just and equitable. The restructuring plan is binding on all creditors and members included within its scope once the court's order sanctioning it is filed with the registrar of companies (or, if the plan is in relation to an overseas company not required to register particulars, published in the Gazette). Where the court makes an order sanctioning the plan, if the company is in administration or being wound up, the court order may provide an order for the administration or winding up to be stayed, or for the appointment of the administrator or liquidator to cease to have effect; or give such directions with regard to the conduct of the administration or liquidation as it thinks appropriate for facilitating the plan. This section is subject to sections 901G, 901H and 901I (see below).

203 *Section 901G:* sets out when a restructuring plan may be sanctioned using cross-class cram down. This section provides that the court may sanction a despite it not having been agreed by 75% in value of a class of creditors or a class of members ("the dissenting class"), if certain conditions apply. Those conditions are that: (A none of the members of a dissenting class would be any worse off under the restructuring plan than they would be in the event of the relevant alternative (see below); and (B) that at least one class who would receive a payment or would have a genuine economic interest in the

company in the event of the relevant alternative, must have voted in favour of the plan.

204 When determining the 'relevant alternative' the court should consider what would be most likely to occur in relation to the company if the restructuring plan were not sanctioned. As with section 901F, the court will still have an absolute discretion whether or not to sanction a restructuring plan, and may refuse sanction on the grounds that it would not be just and equitable to do so, even if the conditions in section 901G have been met.

205 The Secretary of State may by regulations, subject to the affirmative procedure, add, remove or vary the conditions that must be met before the court may sanction a restructuring plan to which a class, or classes, of creditors or members have dissented.

206 Section 901H: provides specific provisions for those companies seeking a restructuring plan in relation to moratorium debts. If an application to the court under 901C(1) is made before the end of the period of 12 weeks beginning a day after the end of a moratorium under Part A1 of the Insolvency Act 1986 (or Part 1A of the Insolvency (Northern Ireland) Order 1989), and the proposed plan includes provision in respect of creditors with moratorium or pre-moratorium debts, the court may not sanction that plan if the relevant creditor has not agreed to that provision. An equivalent change has also been made to the existing Part 26 of the Companies Act 2006 (see new section 899A which is added by paragraph 35 of Schedule 9).

207 *Section 901I*: makes specific provision for those companies seeking a restructuring plan in relation to aircraft-related interests. If an application is made to the court under 901C and the proposed restructuring plan includes provision in respect of creditors with an aircraft-related interest (a registered interest within the meaning of the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015), then the court may not sanction the plan if any such creditor has not agreed to that provision. An equivalent change has also been made to the existing Part 26 of the Companies Act 2006 (see new section 899B which is added by paragraph 35 of Schedule 9).

208 *Section 901J:* provides the court with powers, while sanctioning a 'restructuring plan' that involves the reconstruction of one or more companies, or the amalgamation of two or more companies, to make provision to facilitate that reconstruction or amalgamation.

209 *Section 901K:* If a court order sanctioning a restructuring plan amends the company's articles of association or any constitutional resolution or agreement, the company must send a copy of the amended articles or resolution/agreement to the registrar of companies with a copy of the court order. If the company fails to comply then the company and every officer of the company who is in default commits an offence.

210 *Part 2:* makes consequential amendments to other legislation affected by these changes, to ensure that the new Parts 26A fits as appropriate.

Winding-up petitions

Clause 8 and Schedule 10

211 This clause introduces Schedule 10 into the Bill. The Schedule prevents certain statutory demands made by creditors from being effective. It temporarily prohibits a winding-up petition from being brought against a company on the grounds that it is unable to pay its debts, or a winding-up order from being made on those grounds, where the inability to pay is the result of COVID-19.

Schedule 10

212 Paragraph 1 prevents the use of a statutory demand to bring a winding-up petition against a company, effectively voiding it. The provision applies to all statutory demands served between 1 March 2020 and 30 June 2020 (or one month after the coming into force of the Bill when enacted, whichever is the later), and prevents them from forming the basis of a winding-up petition presented at any point after 27 April 2020.

213 Paragraphs 2 and 3 prohibit (for registered and unregistered companies respectively) a petition from being presented against a company on the grounds that it is unable to pay its debts, unless the petitioner has reasonable grounds to believe that the inability to pay is not the result of COVID-19. The policy was announced on 25 April 2020 as taking effect from 27 April 2020.

214 Paragraph 4 sets out that where a petition is presented in the period between the policy taking effect (on 27 April 2020) and before the Bill being enacted and coming into force, but the above condition was not met, the court may make an order for the company's position to be restored to what it would have been if the petition had not been made. This allows the court to undo any negative effects of winding-up petitions that are brought under the pre-existing law, and may lead to the petitioner becoming liable for the cost of doing so.

215 The official receiver is a statutory office holder and officer of the court who is required by law to investigate the company's affairs when a winding-up order is made. Where the official receiver considers that a petition was presented in the above period and the above condition was not met, they must refer the matter to the court for it to determine whether an order should be made restoring the company's position to what it would have been had the winding-up order not been made. There is no official receiver in Scotland and therefore the obligation to refer the matter to court has been given to the interim liquidator. That is the person who is first appointed liquidator when a winding-up order is made in Scotland.

216 Paragraphs 5 and 6 prohibit a winding-up order from being made against a company on the grounds that it is unable to pay its debts. The order may only be made if the court is satisfied that the company would be unable to pay its debts even if coronavirus had not had a financial effect on the company.

217 As a result of paragraph 7, any winding-up order that is made in the interim period between this policy taking effect on 27 April 2020, and the Bill being enacted, is void if it does not meet the above requirement. Any actions taken by the official receiver, liquidator or provisional liquidator in respect of that order, however, will not make them liable in any civil or criminal proceedings. This is to protect insolvency office-holders who have taken actions that were required during the currency of the order, such as collecting in and selling company property. The court may direct the official receiver, liquidator, or provisional liquidator to take whatever action is necessary to restore the company to the position it was in prior to the petition being presented. Where the official receiver (or, in Scotland, interim liquidator) considers that an order is void due to this paragraph, and that it might be appropriate for the court to make directions, they must refer the matter to the court.

218 Paragraphs 8 to 18 make provision for the adjustment of time limits in other provisions of the Insolvency Act 1986, where the winding-up petition was presented in the period between 27 April 2020 and the later of one month after the Bill has been enacted and come into force and 30 June, and the court has wound up the company on the grounds that it is unable to pay its debts.

219 The commencement of winding up will be from the date of the winding-up order, rather than the date that the petition was filed. This means that the petition will not prevent disposals of the company's property (which are voided from the commencement of the winding up unless the court orders otherwise). As a result of the change, the company will not need to seek permission from the court to engage in its normal trading once a petition has been presented. The change also protects, for example, financial institutions who do business with the company, who due to the change in advertising of the petition (paragraph 19(3)) may not be aware that a petition has been made.

220 When a winding-up order is made, certain transactions that the company entered into prior to winding up may be reversed for the benefit of its creditors and certain fraudulent behaviour prior to winding up can attract criminal liability. The Schedule adjusts the periods in which transactions can be overturned or possible fraudulent behaviour assessed (extending them backwards) to take account of the change in commencement date. This extension is limited to a maximum of six months.

221 Paragraphs 19 and 20 make provision to modify the Insolvency Rules 2016, and, in Scotland, Rules of Court, where a winding-up petition has been presented in the period between the day on which the Bill is enacted and come into force and a month thereafter or 30 June 2020 whichever is the later. The Rules are, in summary, modified such that any requirements or permissions to provide notice of the petition or to publish it do not apply until the court has determined that it is likely to be able to make a winding-up order. The winding-up petition must contain a statement by the creditor that they consider the additional condition for the making of the winding-up order is met (i.e. that the company's inability to pay its debts is not the result of COVID-19). The court does have power to give permission disapplying certain of these modifications.

Clause 9 and Schedule 11

222 This clause and Schedule make provision for Northern Ireland corresponding to that made for GB by clause 8 and Schedule 10.

Wrongful trading

Clause 10: suspension of liability for wrongful trading – GB

223 The measure to temporarily suspend liability under wrongful trading provisions in the Insolvency Act 1986 is in section 10 of this Act. The provision does not formally amend the Insolvency Act 1986, but instead alters how the relevant sections of that Act will be applied in relation to a company's financial position during the relevant period.

224 *Subsection (1):* sets out that the court will not hold a director responsible for any worsening of the financial position of the company or its creditors during the relevant period, which is defined later. There is no requirement to show that the company's worsening financial position was due to the COVID-19 pandemic.

225 *Subsections (3), (4) and (5):* set out that subsection (1) does not apply if at any time during the relevant period the company is excluded from being eligible by virtue of its inclusion within specified paragraphs of Schedule ZA1 to the Insolvency Act 1986 (insurance companies, banks, electronic money institutions, investment banks and firms, payment institutions etc.).

226 *Subsection (2):* defines the relevant period as beginning on 1 March 2020 and ending on 30 June 2020 or one month after the coming into force of this Act, whichever is the later.

227 *Subsection (7):* confirms that the provisions must be treated as if they are contained in Part 4 of the Insolvency Act 1986 (for liquidation) or Part 6 of that Act (for administration). This means that the suspension will apply wherever wrongful trading provisions are applied by the Insolvency Act 1986 or other legislation, for example, in the case of limited liability partnerships.

228 *Subsection (8):* sets out that this provision does not have effect in relation to building societies, friendly societies or credit unions.

Clause 11: suspension of liability for wrongful trading – NI

229 This clause temporarily suspends liability under wrongful trading provisions in the Insolvency (Northern Ireland) Order 1989.

230 *Subsection (1):* sets out that the court will not hold a director responsible for any worsening of the financial position of the company or its creditors during the relevant period, which is defined later. There is no requirement to show that the company's worsening financial position was due to the COVID-19 pandemic.

231 *Subsection (2):* defines the relevant period as beginning on 1 March 2020 and ending on 30 June 2020 (or one month after Royal Assent if later).

232 The end date may be amended by the Department for the Economy in Northern Ireland under clause 40.

233 *Subsections (3) to (6) and (8)*: set out the companies, mainly those involved in financial services, whose directors do not get the benefit of the clause.

234 Subsection (7): confirms that the clause must be treated as if contained in Part 5 of the Insolvency (NI) Order 1989. This means that the suspension will apply wherever wrongful trading provisions are applied by the Insolvency (NI) Order 1989 or other legislation, for example, in the case of limited liability partnerships.

Termination clauses in supply contracts

Clause 12: protection of supplies of goods and services

235 This clause introduces two new sections, 233B and 233C and Schedule 4ZZA into the Insolvency Act 1986. Section 233B prohibits the use of termination and other insolvency related clauses in contracts for the supply of goods and services unless exempted under Schedule 4ZZA. Section 233C includes powers to amend both 233B and the exemptions listed in Schedule 4ZZA, by regulations.

Section 233B

236 A new section 233B is inserted into the Insolvency Act 1986. It prohibits reliance on termination and other clauses in contracts for the supply of goods and services that would otherwise apply when a company enters the following 'relevant insolvency procedure':

- the company enters a (new-style) moratorium as set out in Part A1 of the Insolvency Act 1986
- the company enters administration;
- an administrative receiver is appointed, other than in succession to another administrative receiver;
- a CVA proposal is approved under Part I of Insolvency Act 1986;

- a company goes into liquidation;
- a provisional liquidator is appointed, other than in succession to another provisional liquidator; or
- a court order is made under section 901C(1) of the Companies Act 2006 (order summoning meeting in relation to compromise or arrangement)

237 A provision of a contract for the supply of goods or services, which would entitle the supplier to terminate or do 'any other thing' in respect of that contract because the company enters a relevant insolvency procedure, ceases to have effect. Where an event has occurred that would have allowed a supplier to terminate a supply contract before the company entered a relevant insolvency procedure but that right has not been exercised, it is suspended once the company enters the relevant insolvency procedure. If the supplier's right to terminate arises after the insolvency procedure begins (for example, non-payment for goods supplied after that time) then this right is not prohibited.

238 Where a provision of a contract ceases to have effect, or is suspended under this section the supplier may terminate the contract in the following circumstances:

- where the office-holder, as defined under this section, or company (as applicable) consents to the termination of the contract, or
- with the permission of the court, where the court is satisfied that the continuation of the contract would cause the supplier hardship.

This provides safeguards for suppliers who may terminate the contract in these circumstances.

Section 233C

239 A new section 233C is inserted into the Insolvency Act 1986 and allows the Secretary of State to remove a relevant insolvency procedure from section 233B and make changes to Schedule 4ZZB, so as to remove, amend or add exemptions to the application of section 233B. These powers may be exercised by regulations made under an affirmative procedure statutory instrument which may include different provision for different purposes consequential, transitional and supplementary provisions. The power to amend enactments includes Acts of the Scottish Parliament and secondary legislation made under a Scottish Act.

240 The provisions of sections 233A and 233B and Schedule 4ZZA bind the Crown. The amendments made under clause 12 have effect in relation to contracts entered into before or after the day on which it comes into force.

Section 4ZZA

241 A new Schedule 4ZZA is inserted into to the Insolvency Act 1986. Part 1 specifies exclusions from the restrictions on termination and other clauses that apply under section 233B where a company has entered a relevant insolvency procedure. This includes certain financial services.

242 It also ensures that certain 'essential' supplies, which are already subject to sections 233 and 233A, are not also subject to section 233B, thereby avoiding overlap between new and existing provisions.

Clause 13: temporary exclusion for small suppliers

243 Suppliers which are small entities are temporarily excluded from the effect of the new section 233B of the Insolvency Act 1986. Where the company enters a relevant insolvency procedure and a supplier to the company meets the qualifying conditions of

a small entity, set out in this section, section 233B of the Insolvency Act shall not apply to that supplier. The qualifying conditions are that at least two of the following apply: the supplier's turnover was not more than £10.2 million (or an average of £850,000 each calendar month if the supplier is in its first financial year) ; the supplier's balance sheet total was (or is) not more than £5.1 million; and the number of the supplier's employees was (or is) not more than 50. The period for which this exclusion applies begins with the day on which this Act comes into force and ends with 30 June 2020 or one month after the coming into force of this Act, whichever is later.

Clause 14: protection of supplies of electricity, gas, water etc - Northern Ireland

244 This clause 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 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. Article 197 is the equivalent for Northern Ireland of section 233 of the Insolvency Act 1986. The amendments made by clause 14 correspond to those that were made to section 233 by Article 2 of the Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015/989). They are intended to keep the Article in line with that section. They are necessary because the amendments made by clauses 12 and 13 build on them.

Clause 15: further protection of essential supplies - Northern Ireland

245 This clause inserts 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. The new Article corresponds to section 233A of the Insolvency Act 1986, which was inserted by Article 4 of the Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015/989). Its insertion is necessary because the amendments made by clauses 12 and 13 build on it.

Clause 16: protection of supplies of goods and services – Northern Ireland

246 This clause makes provision for Northern Ireland that corresponds to the provision made by clause 12 for Great Britain. The clause introduces two new Articles 197B and 197C and Schedule 2ZZA into the Insolvency (Northern Ireland) Order 1989. Article 197B prohibits the use of termination and other insolvency related clauses in contracts for the supply of goods and services unless exempted under Schedule 2ZZA. Article 197C includes powers to amend both Article 197B and the exemptions listed in Schedule 2ZZA by regulations. The Articles and Schedule correspond to sections 233B and 233C and Schedule 4ZZA of the Insolvency Act 1986, respectively.

247 This clause amends Article 197 of the Insolvency (Northern Ireland) Order 1989. The amendments made by clause 14 correspond to those that were made to section 233A by Article 4 of the Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015/989).

They are intended to keep the Article in line with that section. They are necessary because the amendments made by clauses 12 and 13 build on them.

Clause 17: temporary exclusion for small suppliers – Northern Ireland

248 This clause makes provision for Northern Ireland corresponding to that made for Great Britain by clause 13, providing the same exclusion from Article 197B of the 1989 Order that clause provides from section 233B of the 1986 Act.

Power to amend corporate insolvency or governance legislation

Clause 18: power to amend corporate insolvency or governance legislation

249 This clause sets out how and under which circumstances the power to make temporary amendments under this provision may be used. Modifications may be made both to the circumstances under which an insolvency procedure applies, and to the procedure itself. Modifications may also be made to provisions on the liability and duties of company directors and other persons with corporate responsibility.

Clause 19: purposes

250 This section sets out conditions for using the power, in that it may only be used to reduce or assist in reducing the number of companies entering insolvency processes or restructuring procedures, to mitigate the impact of an increased number of cases entering those procedures, or to mitigate the effect of the insolvency regime on the responsibilities of directors of those companies whose businesses are struggling due to the impact of the COVID-19 pandemic.

Clause 20: restrictions

251 Restrictions on the use of the power contained within the provision, as set out in the narrative above, are in this clause.

Clause 21: time-limited effect

252 This clause prescribes the time limited nature of the temporary amendments made under the power. These may be in place, or apply to circumstances occurring, for a maximum of 6 months, but that period may be extended by repeated use of the power. Subsections (3) and (4) impose a duty on the Secretary of State to keep temporary changes under review, and to revoke them if they are no longer needed or to amend them if circumstances have changed.

Clause 22: expiry

253 The expiry of this temporary power to make regulations is dealt with by this clause, which states that the Secretary of State may not use the power after 30 April 2021. This date may be changed, but may not be extended beyond a year. Such an extension of up to a year may however be made more than once.

Clause 23: consequential provision etc

254 This section allows for consequential, incidental and supplementary changes to be made

in respect of temporary amendments.

Clause 24: procedure for regulations

255 This clause sets out the procedure which must be followed when regulations are made by SI under this provision.

256 SIs containing regulations for temporary amendments made under section 18, including extensions to those already made, are subject to the "made affirmative" procedure, so are effective immediately but must be laid as soon as possible after being made, and approved by both Houses within 40 days. If that time expires before debate has been possible, the SI may be re-made.

- Where under section 21 a temporary change is no longer required, it may be revoked by SI using the negative resolution process.
- An SI making regulations under 18 which acts to merely revoke other regulations made by powers under that section, may also be effected through a negative resolution process.
- An SI containing regulations under section 22 to extend the period during which the power under section 18 may be used, is subject to the standard affirmative procedure.

Clause 25: interpretation

257 Section 25 defines terms used in sections 18 to 24. In particular it sets out to which legislation amendments may be made using the power under section 18, and what is meant by a corporate insolvency and a corporate restructuring procedure.

Power to amend corporate insolvency or governance legislation: Northern Ireland

Clause 26: power to amend corporate insolvency or governance legislation

258 This clause provides the Department for the Economy in Northern Ireland or the Secretary of State with the power to make regulations amending Northern Ireland corporate insolvency and governance legislation corresponding to the power provided to the Secretary of State under clause 18 to make regulations for the same purpose to apply in GB.

Clauses 27, 28, 29, 30, 31 and 34: purposes, restrictions, time-limited effect, expiry, consequential provision etc, interpretation.

259 These clauses correspond to clause 19, 20, 21, 22, 23, and 25 for GB respectively.

Clause 32: procedure for regulations made by the Department

260 This clause provides the procedure for making regulations relating to the amendment of Northern Ireland corporate insolvency or governance legislation where the regulations are made by the Department for the Economy in Northern Ireland.

Clause 33: procedure for regulations made by the Secretary of State

261 This clause provides the procedure for making regulations relating to the amendment of Northern Ireland corporate insolvency or governance legislation where the regulations

are made by the Secretary of State for Business, Energy and Industrial Strategy.

Meetings and filing requirements

Clause 35 and Schedule 14: meetings of companies and other bodies

262 Clause 35 and Schedule 14 make provision about qualifying meetings of qualifying bodies.

263 *Paragraph 1 of Schedule 14:* make provision as to the meaning of a "qualifying body".

264 *Paragraph 2:* makes provision as to the meaning of the "relevant period". The relevant period begins with 26 March 2020 and end with the 30 September 2020. The Secretary of State (or, in certain cases, the Scottish Ministers or the Department for the Economy in Northern Ireland) may by regulations shorten or extend the end of the relevant period. If regulations are extending the relevant period, they must do so by no more than three months at a time and the period must not be extended beyond 5 April 2021. This is intended to ensure that the temporary flexibilities provided for in Schedule 14 only apply for so long as they are needed to enable bodies to hold meetings in a manner consistent with the need to prevent the spread of COVID-19.

265 *Paragraph 3:* makes provision as to the manner in which AGMs and other meetings may be held during the relevant period. It provides that a meeting need not be held at a particular place; that meetings may be held and votes may be cast by electronic or other means; that the meeting may be held without a quorum of participants having to be together in one place; and that members do not have the right to attend in person, to participate other than by voting, or to vote by particular means. Members will however continue to have a right to vote by some means.

266 These temporary provisions are intended to ensure that qualifying bodies are able to hold AGMs and other meetings in a manner consistent with the need to prevent the spread of COVID-19. The requirements of a qualifying body's constitution or rules, and any relevant provisions in legislation, have effect subject to these temporary provisions.

267 *Paragraph 4:* enables the appropriate national authority to by regulations make further or connected provision, or to make provision about any notice or other document relating to a meeting held by a qualifying body during the relevant period. The power may be used to make provision to disapply a qualifying body's constitution or rules, and to disapply or modify any relevant legislative provision.

268 *Paragraph 5:* makes provision to extend the period within which a qualifying body must hold an AGM. It applies in circumstances where a qualifying body was or is required to hold an AGM before the end of a period expiring during the period between 26 March to 30 September 2020. It has the effect of giving businesses until the end of that period to hold their AGM.

269 *Paragraph 6:* confers a power to make regulations to extend the period within which a qualifying body must hold an AGM. The power is exercisable in relation to qualifying bodies with a requirement to hold an AGM during a period which overlaps with the relevant period ("the overlapping period"). Regulations made under this paragraph may not be used to extend the period for holding an AGM by more than 8 months. In the case of a qualifying body to which paragraph 5 applies, the period beginning with the due

period and ending with the relevant period will be the "overlapping period" (see paragraph 5(2)), and so regulations made under this paragraph will have the effect of further extending the period within which the body must hold its AGM.

Clauses 36, 37 and 38: temporary extension of period for company to file accounts and reports

270 These clauses make provision to extend the period within which companies must file certain information.

271 Clause 36 provides for a temporary extension to the period which a public company has to file accounts and reports with the registrar at Companies House. By way of example, if a public company's accounting reference period ends on 1 December 2019 then under section 442 of the Companies Act 2006, the directors of the company must deliver to the registrar the company's accounts and reports on or by 1 June 2020. This deadline of 1 June 2020 falls within the time period specified in subsection (1) and is therefore extended by subsection (2) until the 30 September 2020.

272 Clause 37 applies to Companies, European Economic Interest Groupings, Limited Liability Partnerships, Limited Partnerships, Overseas Companies, Societas Europaea, Unregistered Companies and Scottish Qualifying Partnerships who are required to file certain documents, or in respect of whose assets an interested person wishes to register a charge with the registrar at Companies House ("the Filings").

273 *Subsection (1):* enables the Secretary of State to make regulations to extend the time period which a company or other entity has to provide the registrar with the Filings. This is to recognise the difficulties which businesses may face in meeting the existing statutory deadlines due to the circumstances created by COVID-19.

274 *Subsection (2):* contains the maximum time periods which may be substituted for the existing periods for the Filings.

275 *Subsection (8):* provides that the power to extend the time periods for the Filings is time limited.

276 Clause 38 lists the provisions referred to in subsection (1) of clause 37 and allows for certain deadlines to be extended. These deadlines include the periods for filing accounts and confirmation statements. They also include the time allowed to notify the registrar of certain relevant events that are covered by the confirmation statement, such as notifying the registrar of a change in director. In addition, the regulations may extend the deadline for registering a charge with Companies House.

Power to change periods

Clause 39: power to change period during which GB temporary provisions operate

277 This clause provides a power, which allows the Secretary of State by regulations to amend relevant provisions, which relate to the COVID-19 pandemic and therefore only have temporary effect, by either curtailing the time period specified in that provision or prolonging it by up to six months. The provisions are: suspension of liability for wrongful trading; prohibition of petitions based on statutory demands; restriction on petitions where company affected by coronavirus; modification of Insolvency Rules; and

temporary exclusion for small suppliers.

Clause 40: power to change period during which NI temporary provisions operate

278 This clause makes similar provision for Northern Ireland

Implementation of insolvency measures

Clause 41: modified procedure for regulations applying new insolvency measures etc

279 This clause allows certain specified types of provision made by regulations, which would ordinarily be subject to the affirmative procedure, to instead for a temporary period of six months be made using the negative procedure.

280 The types of provision specified include provision made applying, or in connection with, the new insolvency measures (those relating to the moratorium or termination clauses in supply contracts) to charitable incorporated organisations under the Charities Act 2011, provisions made in connection with the application of the moratorium to LLPs under the Limited Liability Partnership Act 2000, as well as provision made under the new section A49 of the Insolvency Act 1986 (power to modify Part A1 (moratoriums) in relation to certain companies) and amendment to the list of companies eligible for the moratorium. For the same temporary period, the clause also disapplies the consultation duty contained in the Charities Act 2011 in relation to any such regulations concerning CIOs.

Clause 42: modified procedure for regulations of the Welsh Ministers

281 This clause allows certain specified types of provision made by Welsh Ministers by regulations, which would ordinarily be subject to the affirmative procedure, to instead for a temporary period of six months be made using the negative procedure.

282 The provisions specified are provisions under section A49(2) or paragraph 21 of Schedule ZA1 to the Insolvency Act 1986 or section 247A of the Charities Act 2011. All provisions relate to how the moratorium provisions relate to social landlords registered under the Housing Act 1996.

Clause 43: modified procedure for regulations of the Scottish Ministers

283 This clause allows certain specified types of provisions made by Scottish Ministers by regulations, which would ordinarily be subject to the affirmative procedure, to instead for a temporary period of up to six months, be made using the negative procedure.

284 The provisions specified are provisions under section A49(3) or paragraph 22 of Schedule ZA1 to the Insolvency Act 1986. All provisions relate to how the moratorium provisions relate to social landlords registered under the Housing (Scotland) Act 2010.

General

Clause 44: power to make consequential provision

285 This clause provides a power which allows the Secretary of State or the Treasury, by regulations, to make provision that is consequential on this Act.

286 In particular, the power may be used to amend, repeal, revoke or otherwise modify any provision within this Act or any provision made by or under primary legislation passed or made either before this Act is passed or later in the same Parliamentary session. The power to amend or repeal any provision made by this Act cannot be used more than 3 years after the day on which it is passed.

287 Regulations under this section may make different provision for different purposes and may include transitional or transitory provisions or savings.

288 Where regulations modify primary legislation, the affirmative procedure must be used. Otherwise, the regulations can be made under the negative procedure. This provision may be used to amend primary legislation passed in any part of the United Kingdom.

Clause 45: extent

289 This clause sets out the territorial extent of this Bill, which describes the jurisdiction in which the Bill forms part of the law. The territorial extent of the Bill is, variously, the United Kingdom; England and Wales and Scotland; England and Wales only; Scotland only; or Northern Ireland only.

290 To the extent that the provisions of the Bill fall within the legislative competence of devolved legislatures, the legislative consent procedure would be appropriate.

Clause 46: commencement

291 This clause sets out that the provisions in this Bill, except paragraph 51 of Schedule 3, will come into force on the day after the Act is passed. Paragraph 51 of Schedule 3 will instead come into force on the day appointed using regulations made by the Secretary of State.

Clause 47: short title

292 This clause is self-explanatory.

Commencement

293 The provisions in this Bill will come into force on the day after the Act is passed with the exception of paragraph 51 of Schedule 3 which relates to the amending of the Co-operative and Community Benefit Societies Act 2014, which will come into force on the day appointed by regulations.

Financial implications of the Bill

294 This Bill has no financial implications.

Parliamentary approval for financial costs or for charges imposed

295 A money resolution is required where a Bill gives rise to, or creates powers that could be used so as to give rise to, new charges on the public revenue (broadly speaking, new public expenditure). This Bill does not require a money resolution.

Compatibility with the European Convention on Human Rights

296 The Secretary of State for Business, Energy and Industrial Strategy, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

'In my view the provisions of the Corporate Insolvency and Governance Bill are compatible with the Convention rights.'

297 The Government has published a separate ECHR memorandum with its assessment of the Bill's compatibility with the European Convention on Human Rights. It confirms that the Bill is compatible with the Convention rights.

Related documents

298 The following documents are relevant to the Bill and can be read at the stated locations:

- impact assessment;
- delegated powers memorandum;
- ECHR memorandum;
- Government response to consultation on insolvency and corporate governance.

Annex A - Territorial extent and application in the United Kingdom

This table summarises the territorial extent and application for the clauses in the Bill. The territorial extent of the Bill is, variously, the United Kingdom; England and Wales and Scotland; England and Wales only; Scotland only; or Northern Ireland only. [5]

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Moratorium								
Clause 1	Yes	Yes	Yes	Yes (in part)	N/A	N/A	N/A	Yes (S)
Clause 2, 3 and Schedule 1, 2, 3, 4	Yes	Yes	Yes	No	N/A	N/A	N/A	Yes (S)
Clause 4, 5, 6 and Schedule 5, 6, 7, 8	No	No	No	Yes	N/A	N/A	N/A	Yes (NI)
Reconstruction								
Clause 7 and Schedule 9	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (NI)
Winding-up petitions								
Clause 8 and Schedule 10	Yes	Yes	Yes	No	N/A	N/A	N/A	Yes (S)
Clause 9	No	No	No	Yes	N/A	N/A	N/A	Yes (NI)
Wrongful trading								
Clause 10	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clause 11	No	No	No	Yes	N/A	N/A	N/A	Yes (NI)
Termination clauses								

[5] References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clauses 12, 13 and Schedule 12	Yes	Yes	Yes	No	N/A	N/A	N/A	Yes (S)
Clauses 14 - 17	No	No	No	Yes	N/A	N/A	N/A	Yes (NI)
Power to amend								
Clauses 18 – 22	Yes	Yes	Yes	No	N/A	N/A	N/A	Yes (S)
Clause 23 - 25	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clauses 26 - 34	No	No	No	Yes	N/A	N/A	N/A	Yes (NI)
Meetings and filings								
Clause 35 and Schedule 14	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S - CIOs), (NI - certain mutual societies)
Clauses 36, 37, 38	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Powers to change periods								
Clause 39	Yes	Yes	Yes	No	N/A	N/A	N/A	Yes (S)
Clause 40	No	No	No	Yes	N/A	N/A	N/A	Yes (NI)
Implementation of insolvency measures								
Clause 41	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clause 42	No	Yes	No	No	N/A	N/A	N/A	No
Clause 43	No	No	Yes	No	N/A	N/A	N/A	Yes
General								
Clause 44	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

Subject matter and legislative competence of devolved legislatures

The provisions in Clauses 1, 2 and 3 and Schedules 1 - 4 extend to Great Britain. In Clause 1, the inserted sections A49(4) to (6) and A53 by necessary implication extend also to Northern Ireland. These measures introduce a new moratorium provision to give companies breathing space from their creditors whilst they seek a rescue. The measures themselves do not engage any legislative consent process. However, powers are granted to both Scottish and Welsh Ministers (by clause A49, Schedule 1 and further amendments in Schedule 3). The powers relate to registered social landlords under the

Housing Act 1996 (for which powers are given to Welsh Ministers to make provision under the law of England and Wales) and under the Housing (Scotland) Act 2010) (for which powers are given to Scottish Ministers to make provision under the law of Scotland) in relation to the reserved matter of the moratorium. A regulation making power for the Secretary of State to make any provision appropriate in view of the use of those powers extends to Great Britain and Northern Ireland.

The provisions in clauses 4 to 6 and Schedules 5 to 8 extend to Northern Ireland. They make provision corresponding to that made for Great Britain by clause 1 to 3 and Schedules 1 to 4. Insolvency is a transferred matter in relation to Northern Ireland, and these Northern Ireland provisions of the Bill engage the legislative consent process.

Clause 7 and Schedule 9 extend to Great Britain and Northern Ireland. These measures will allow struggling companies, or their creditors, to propose a new restructuring procedure under Part 26A of the Companies Act 2006. The measures will introduce a "cross-class" cram down provision that will allow dissenting classes of creditors to be overruled and bound to the plan.

Clause 8-and Schedule 10 extend to Great Britain. These measures temporarily preventing a company being wound-up on the basis of an unpaid statutory demand served during the period of the COVID-19 outbreak. It also provides a temporary requirement that prevents a company being wound-up on the grounds that it is unable to pay its debts where the company's financial position is due to the COVID-19 outbreak. This provision also falls within the "floating charge" exception since it will contain provision to extend the period in which steps may be taken in respect of transactions, (including the creation of a floating charge) that took place within a specified period before the start of winding-up. It engages the legislative consent process.

Clause 9 and Schedule 11 extend to Northern Ireland, and make provision corresponding to that made by clause 8 and Schedule 10. As they relate to insolvency, which is a transferred matter in relation to Northern Ireland, they engage the legislative consent process.

Clause 10 extends to Great Britain. It temporarily removes the threat of personal liability for wrongful trading from directors who try to keep their companies afloat through the COVID-19 emergency.

Clause 11 extends to Northern Ireland and makes provision corresponding to that made by Clause 10. As it relates to insolvency, which is a transferred matter in relation to Northern Ireland, it engages the legislative consent process.

Clauses 12 and 13 and Schedule 12 extend to Great Britain. These measures prohibit termination and other clauses that engage on insolvency, so preventing suppliers from making payment of outstanding sums a condition of supply while a company is going through a rescue process. This measure (which applies in administrative receivership and as such falls within the exception of "Floating charges and receivers") engages the legislative consent process.

Clauses 14 to 17 and Schedule 13 extend to Northern Ireland. Clause 16 and 17 and Schedule 13 make provision corresponding to that made by Clauses 12 and 13 and Schedule 12. Clauses 14 and 15 make provision corresponding to provision already made for Great Britain. As these Northern Ireland provisions relate to insolvency, which is a transferred matter in relation to Northern Ireland, they engage the legislative consent process.

Clauses 26 to 34 extend to Northern Ireland and give power to amend aspects of company and insolvency law. Those are transferred matters in relation to Northern Ireland and, although it has been

agreed by the Northern Ireland Executive that no LCM is required in relation to amendments of company law, the legislative consent process is engaged so far as the clauses relate to insolvency law.

The provisions in Clauses 35 and Schedule 14 extend to the whole of the United Kingdom. In relation to Wales, the provisions deal with reserved matters. In relation to Scotland, the provisions concern reserved matters except insofar as they apply to Charitable Incorporated Organisations and in respect of which it has been agreed that an LCM will be taken forward. In relation to Northern Ireland, company law is a transferred matter and so is within the legislative competence of the Northern Ireland Assembly, but it has been agreed by the Northern Ireland Executive that no LCM is required. The provisions also concern transferred matters insofar as they apply to certain mutual societies, being cooperatives, community benefit societies and credit unions, and in respect of which it has been agreed that an LCM will be taken forward. There are no Charitable Incorporated Organisations in Northern Ireland.

The provisions in Clauses 36, 37 and 38 extend to the whole of the United Kingdom. In relation to Northern Ireland, company law is a transferred matter and so within the legislative competence of the Northern Ireland Assembly, but it has been agreed with by the Northern Ireland Executive that no LCM is required.

Clause 40 extends to Northern Ireland and gives power to amend periods specified in certain Northern Ireland provisions of the Bill relating primarily to insolvency. As insolvency law is a transferred matter, the clause engages the legislative consent process.

Clause 44 extends throughout the United Kingdom but, as a power to make only consequential amendments of legislation, it does not engage the legislative consent process.

Annex B - Economic assessment and regulatory impact of temporary measures

The Bill consists of two sets of measures:

1) Measures to support businesses in challenging financial situation. While these measures are of particular relevance during the ongoing emergency, they are not intended to be temporary. This set of measures includes:

   1.1) Widening of the "ipso facto" suspension provisions

   1.2) Introduction of a moratorium

   1.3) Creation of a new restructuring plan

2) Temporary measures to support all businesses during the Coronavirus pandemic. These include:

   2.1) Flexibility on holding AGMs and other meetings

   2.2) Extending filing deadlines at Companies House

   2.3) Temporary suspension of wrongful trading

   2.4) Temporary suspension of statutory demand provisions and a restriction on winding-up petitions

1) Impact of permanent measures

In accordance with Better Regulation guidance, detailed analysis for these measures in the accompanying impact assessment have been published. It sets out clearly the rationale for intervention as well as the likely (de)regulatory and economic effects. Overall, it is estimated that the proposals will provide substantial net benefits to business and society as a whole. Over a ten-year appraisal period, it is estimated net benefits to total over £1.9billion in today's prices (£1,918.5million net present value) with an 'Equivalent Annual Net Direct Cost to Business' (EANDCB) of -£222.9million per annum. By far the largest proportion of benefits derives from the suspension of Ipso Facto (termination) clauses, which will result in significant benefits to creditors due to an increase in company rescue efforts and accompanying improved returns. Please refer to the impact assessment for further detail.

2) Impact of temporary measures

Due to the restricted time-frame available, the need to act with urgency, and the temporary nature of the measures, a full impact assessment has not been carried out, and it is not required by the Better Regulation Framework. However, the Government has considered and will continue to assess and monitor the possible and likely impacts of these deregulatory measures, their scope as well as potential risks.

2.1) Flexibility on holding AGMs and other meetings

Scope

The Department proposes to temporarily introduce greater flexibility for companies and other bodies with respect to the manner in which AGMs and other meetings are held, and to temporarily extend the deadline within which AGMs must be held.

For a temporary period, the measures will provide additional flexibility to companies and other bodies that need to hold AGMs and other meetings in a way that is consistent with both the need to limit the spread of pandemic and their legislative or constitutional arrangements. Affected companies and other bodies are either: a) required under the Companies Act 2006 or other legislation to hold an AGM or other meeting; b) required to hold an AGM or other meeting by their constitution or rules; or c) required to hold an AGM or other meeting to take certain decisions, for example to approve emergency capital raising.

As well as companies, these measures will apply to mutual societies (including building societies, co-operatives, community benefit societies, credit unions and friendly societies) and charitable incorporated organisations. Like companies, mutual societies and charitable incorporated organisations may be required to hold AGMs either by legislation or their own rules, or may need to hold a meeting of members for practical business purposes, such as approving an amalgamation with another mutual society.

a) Companies required to hold AGMs or other meetings by legislation

Certain companies are required by legislation to hold an AGM. Public companies are required to hold an AGM within six months of their accounting reference data, and private traded companies are required to hold an AGM within nine months of their accounting reference date.

There are currently around 6,300 public companies on the UK company register (ca 5,500 on the 'effective' register[6]) directly benefitting from the proposals. Our analysis using information from the FAME database, the FCA's official list and the London Stock Exchange (LSE) shows that, of these 6,300 public companies, the majority are unlisted public companies, with 'just' around 2,000 companies being listed on the LSE; 1,440 of which being UK incorporated companies. Of these companies, 650 are listed on AIM with ca. 790 being listed on the Main Market. Factoring in UK companies that are listed on regulated foreign exchanges, there are around 900 UK 'quoted' companies (around 600 of which are 'commercial' companies, with the rest being investment trusts or funds). Almost all 'traded' companies are also 'quoted' companies apart from around 15 specialist investment firms on the Specialist Fund Segment. In summary, it is estimated that there are around 6,300 UK public companies, with 1,440 of them being listed on the LSE and just over 900 being 'traded' companies.

[6] The 'effective register' removes companies that are currently in liquidation or in the process of removal from the register.

b) Companies required to hold AGMs or other meetings via their constitution or rules

There are currently around 4.3million private companies registered at Companies House (ca. 4.0million on the 'effective' register). There is no data available that would enable us to provide a robust estimate of how many of these companies have a relevant provision within their articles of association. It is likely that the perceived need to hold an AGM, and thus the likelihood of a company having a relevant provision within its articles, is related to business size and complexity. Analysis using the FAME database, relying on information from company accounts, has shown that over 99% of companies are 'small' or 'medium' (as per the Companies Act 2006 definition), with around 15,600 companies being identified as 'large'.

c) Companies which might need to hold an AGM or GM to take certain decisions

Due to lack of available data, one cannot provide a robust estimate of the companies and other bodies that might fall into this category, though the logic and analysis provided in b) above applies to some extent to this group as well.

d) Mutuals

Mutual organisations have varied statutory requirements to hold AGMs, depending on the legislation governing their incorporation.

The Building Societies Act 1986 determines that a building society must hold an AGM in the first four months of each financial year. There are 43 building societies in the UK. HMT estimates that for approximately two thirds of these, the financial year ends in December. Therefore, the majority of building societies must hold their AGMs by the end of April of this year.

A friendly society registered under the Friendly Societies Act 1992 must hold an AGM each year and no more than 15 months may elapse between the date of one AGM and the next. There are 27 friendly societies registered under the 1992 Act.

Friendly societies registered under the Friendly Societies Act 1974, co-operatives, community benefit societies, and credit unions, do not have a statutory requirement to hold an AGM. However, the rules of these organisations may make provision for the holding of meetings including AGMs. These rules are binding on these organisations and their members. There are approximately 9000 such societies.

e) Charitable Incorporated Organisations

Charitable Incorporated Organisations, and Scottish Charitable Incorporated Organisations have varied requirements to hold General Meetings, usually set out in their constitutions, which are binding on the organisations and their members. The constitutions of some charitable incorporated organisations do not currently permit members' meetings to be held other than face to face. There are approximately 22,000 charitable incorporated organisations in England and Wales, and 4,500 Scottish charitable incorporated organisations.

(De)regulatory and economic impacts

In the absence of this legislative change, companies and other bodies that are required to hold an AGM or other meeting either through legislation, or due to their constitution or rules, may not be able to fulfil those requirements without being in breach of social distancing rules. This proposal will enable companies to comply with existing law, resolving a potential clash between their company law

duties and measures introduced to manage and contain the ongoing pandemic. While this might not apply to group c) above, these companies and other bodies would find it difficult or impossible to make urgent business decisions and changes, potentially resulting in worse operational outcomes. This applies equally to mutual organisations and to charitable incorporated organisations. While holding an AGM or meeting via different methods than usual might require some companies and bodies to investigate and buy in software and solutions, 'normal' AGMs and other meetings for large companies or other bodies are likely to be a large and expensive undertaking. If anything, it is likely that the pure financial costs of holding an AGM or other meeting via alternative means is lower than in the 'normal' scenario. Additionally, the correct counterfactual to this proposal is not the situation in which companies or other bodies hold 'normal' AGMs. Instead, the correct counterfactual is a situation in which many companies or other bodies would struggle to hold the required meeting altogether. The proposal assessed here clearly is beneficial to companies or other bodies compared to that counterfactual. The same is true for mutual societies and charitable incorporated organisations.

Finally, the extent of benefit to individual companies or other bodies will largely depend on two factors: firstly, how much need there is to make legally binding and important business decisions at the AGM or other meeting; and secondly, whether their required meeting is likely to fall within the peak period of the pandemic.

- The size of the body concerned and, in the case of a company, its listing status, will determine complexity and the actions that legally need to be actioned at an AGM. The most immediate impact will fall onto the approximately 6,300 UK public and traded companies with an actual legal requirement to hold an AGM in company law. However, within this group 'only' around 1,440 companies are listed on the LSE (with a small number being listed overseas). 'Listed' companies must comply with additional requirements under the Listing Rules and are on average much larger than public unlisted companies, which are often small in size. Finally, the around 900 'quoted' companies are subject to further regulatory requirements that are carried out at an AGM, such as voting on annual director remuneration reports. It is likely that these companies and especially the largest FTSE companies, which are currently experiencing the highest pressure with regards to AGMs, will benefit most from this proposal.
- The company's account referencing date ('ARD') determines when an AGM must be held. Public companies are required to hold their AGMs within six months following their 'ARD'. Companies with a reference date of 31 December therefore need to hold an AGM by end June, while companies with an 'ARD' of 31 March need to hold their AGM by end September. This means, for example, that companies with 'ARDs' between July and March currently have a less urgent need for the changes proposed here as they already held their most recent AGMs between January and March. Based on this, it is judged that those companies with 'ARDs' between 31 October and 31 March, and thus AGM deadlines between end April until end September, have the most urgent need for clarification, and are thus the predominant beneficiaries. Analysis using the FAME database showed that 31 December is by far the most common 'ARD' for public companies; around 40% of companies use this date. The second most common date is 31 March, which

accounts for a further 19% of public companies. Overall, 72% of public companies were identified as having 'ARDs' between (including) 31 October and 31 March; the group of companies that was identified as in most need for the additional flexibility provided by these changes.[7]

Risks

There is a risk that the provisions in the Bill do not come into force in time for affected bodies to be able to benefit from these provisions. To mitigate against this to a degree, the Department proposes to apply the provisions to AGMs and other meetings before the Bill comes into force, which would in effect allow AGMs and other meetings which have been held in accordance with the new measures to be treated as if they had been validly convened.

Some stakeholders have raised concerns with regards to security and the practicability for example of AGMs held by electronic or other means. It is partially due to this that the Bill does not prescribe the alternative means by which an AGM or other meeting must be held. It is up to companies and shareholders to develop a solution most suitable to their needs. And the measures allow bodies to temporarily postpone their AGM if necessary. The same is true for mutual societies and charitable incorporated organisations.

There is some concern especially from smaller retail investors that alternative means of holding an AGM could restrict the ability for investors to put questions to company boards in real time, thus reducing shareholder scrutiny. The Government is keen to ensure that retail investors in particular are not overlooked and will thus work with them to provide guidance to companies about how they should accommodate investors' expectations if they meetings which cannot be attended in person.

2.2) Extending filing deadlines at Companies House

Scope

Currently, the registrar at Companies House has a discretion to extend the deadline for filing accounts by companies and certain other entities when they submit an application. During the period affected by COVID-19, demand for this has substantially increased, with over 40,000 applications for extended accounts filing deadlines submitted in March and the first half of April 2020 compared to an average of 19 per day in March 2019. These proposals move from an applications-based system of granting extensions to a system where the registrar, on behalf of the Secretary of State can grant extensions for all relevant companies and other entities.

The Bill provides the Secretary of State with a discretionary power to extend deadlines for three types of filing: accounts, confirmation statements (including event driven filings that are required to be submitted in advance of the confirmation statement) and registration of charges. The extensions will apply to all relevant companies or other entities, with certain limited exceptions, where they are required to submit the relevant filings. There are currently around 4.3million companies registered at Companies House (ca. 4.0million on the 'effective' register). In addition, the around 51,400 Limited

[7] The numbers are even slightly higher among the largest listed companies with around half of FTSE350 companies using 31 December as their 'ARD'.

Liability Partnerships, just under 51,800 Limited Partnerships (as of March 2019)[8] and approximately 11,800 overseas companies registered at Companies House are also subject, to a varying degree, to filing requirements and are thus also affected to a degree.

The Secretary of State can choose which filing deadlines to extend from within a list of deadlines that are subject to the power; how much to extend each deadline by (subject to maximum increases set out in the Bill for each deadline); and the window of time in which deadlines will fall that are the subject of the extension.

(De)regulatory and economic impacts

Currently, many businesses are finding it difficult to keep up with their filing requirements. This is evidenced by the large number of applications for extensions which Companies House has already received. The problem is accentuated by the time of year, because many companies have an 'ARD' between October and March, with a specifically large number using the end of the calendar year as their 'ARD',[9] which means that many companies are currently in the process of preparing their accounts.

While the Government has already taken action within existing powers to allow companies to apply for an extension to the filing of company accounts, and while Companies House has already declared that those citing issues around COVID-19 will be automatically and immediately granted an extension,[10] the proposals assessed here go further by: a) giving extensions automatically rather than upon application; and b) increasing the scope of extensions from just company accounts to confirmation statements, relevant events and charges.

Primarily, the proposals thus have two main benefits and beneficiaries. They relieve the burden on businesses (including lenders registering a charge) if they are unable to meet existing filing deadlines because of the ongoing pandemic, but also on Companies House which will not need to process a large volume of applications for extensions for the filing of company accounts.

The decrease in regulatory burden will though be largely temporary in nature, meaning that the burden will be shifted to some extent to a later point in time, because companies will still have to file the necessary information, though to different deadlines. However, the shifting of burden from a period during which companies are already under pressure to a later period will provide companies with additional breathing space at a time in which it is most necessary.

Finally, the degree to which individual companies will benefit largely depends on the degree of complexity of their filings as well as the specific filing requirements that they are legally subject to. This will largely differ by company size, complexity and type of the incorporated vehicle. For

[8] Approximately 33,600 of which were 'Scottish' Limited Partnerships.

[9] Please refer to the data provided in the assessment of 2.1) for further detail.

[10] https://www.gov.uk/government/news/companies-house-support-for-businesses-hit-by-covid-19

example, Limited Partnerships face more limited filing requirements than private or public companies, and smaller companies are likely experiencing less frequent changes to their directors or beneficial owners than larger companies. Overall, around 76% of companies did not make any changes using the CS01 (confirmation statement) during last year, meaning that a significant proportion of largely smaller private companies will not benefit much from an extension in the filing deadline for confirmation statements.

Risks

Research commissioned by BEIS and Companies House recently demonstrated the large value of data provided by Companies House. It estimated that the data provides economic value of between £1bn and £3bn per year to users[11]. The usefulness of the data and company register maintained by Companies House to its users (such as, amongst others, creditors, customers or supplier businesses), as well as its ability to support law enforcement in identifying and taking action against unlawful behaviour and bad business practice, depends to some extent on the timeliness and accuracy of data. There is some risk that extending filing deadlines will negatively impact the accuracy and timeliness of the data contained on the company register.

However, this risk is assed to be limited and temporary in nature. This Bill provides the Secretary of State with a power to extend deadlines. When assessing the degree of extension, the Secretary of State will balance the impact on the integrity of the companies register against the benefits to business from extending the deadline given the practical difficulties of meeting it during the period affected by COVID-19. The Secretary of State can choose which filing deadline to extend from within a list of deadlines that are subject to the power; how much to extend it by (subject to maximum increases set out in the Bill for each deadline); and the window of time in which deadlines will fall that are the subject of the extension. And, as assessed above, a large proportion of companies has limited information to file and should thus be able to file in a timely fashion, meaning that a large proportion of the company register will be as up to date as possible.

2.3) Temporary suspension of wrongful trading

Scope

The period during which a company's directors could incur liability for an action by a liquidator or an administrator for wrongful trading will be suspended with effect from 1st March to 30th June, or one month after the provision comes into force, whichever is later, with a power to extend the end date by order. This will mean that the court will be unable to declare the directors liable to contribute to the company's assets as a result of losses caused to creditors during this period and subsequent to the point at which insolvency proceedings could not be avoided.

[11] https://www.gov.uk/government/publications/companies-house-data-valuing-the-user-benefits

Changes within the Small Business, Enterprise and Employment Act 2015 extended wrongful trading; while claims against directors could previously only been made by liquidators, the Act extended this right to an administrator. Analysis at the time showed that not many claims of wrongful trading had been taken forward. It assessed that "*responses to the Transparency and Trust discussion paper suggested that there have only been 29 reported cases under s214 of the Insolvency Act 1986 (IA86), (wrongful trading claims) between 1986 and 2013 with liability being imposed in only 11 of those cases*".[12] We are not aware of any data that suggests that claims of wrongful trading have become more frequent since.

(De)regulatory and economic impacts

Removing the threat of personal liability arising from wrongful trading for directors when they are making the decision as to whether to allow struggling companies to continue to trade means that companies which would be viable but for the uncertainty caused by the pandemic will be more likely to continue trading using their best efforts even if the company ultimately becomes insolvent. These companies are the main beneficiaries of this temporary measure, and they can continue to provide employment and create economic activity that they might otherwise not have created.

The temporary suspension of wrongful trading will though, at least in theory, shift some economic risk and cost onto creditors (it transfers it from affected businesses to creditors), especially where companies whose problems are not caused by the ongoing pandemic, and which should not continue to trade, now feel like there is less risk to them of doing so. Why this risk and associated costs are deemed to be relatively minor is explained below.

Risks

This measure will temporarily remove the deterrent of personal liability. It will allow directors more flexibility and enable them to use their best efforts to make decisions on going concern trading and future viability in an uncertain trading environment. In isolation, such a change, increases the risk of reckless behaviour that can cause economic harm to others (in particular creditors). However, as evidenced, wrongful trading claims are currently already rarely taken forward. While one cannot rule out that wrongful trading is not widespread precisely because of the threat of legal action, the risks caused by the suspension are largely mitigated because other protections still exist in company law, insolvency and enforcement regimes. These include the more serious liability for "fraudulent trading" (Section 213 of The Insolvency Act 1986) and the fact that general director duties set out in company law and the director disqualification regime continue to apply as normal. Thus any increase in risk to creditors is judged to be very small compared to the support provided to many businesses and directors who cannot realistically make a sound judgment about the state of solvency of their business during these times, and who might thus otherwise close businesses and stop creating economic activity due to fear for personal liability.

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[12] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/324713/bis-14-908b-impact-assessments-part-b-director-disqualification-regime-transparency-and-trust.pdf

2.4) Statutory demands and winding-up petitions

Scope

This measure contains two elements:

a. Statutory demands served between 1 March 2020 and 30 June 2020 (date of end temporarily extendable by order) are void, if a petition has not yet been issued.

b. Petitions for winding up under S122(1(f)) can only be made by a creditor with permission of the court where it is satisfied that the inability to pay debts is not as a result of COVID-19. To be in force until 30 June 2020 (temporarily extendable).

This resolves the problem of statutory demands being served and includes a retrospective provision to catch those demands issued in the context of the COVID-19 emergency before this legislation was brought forward. It prevents their use by creditors to put pressure on businesses to pay debts immediately. The changes will also, for the immediate future, stop winding-up petitions that are COVID-19 related.

The Department has been made aware that businesses, particularly in the retail and hospitality sectors, are receiving statutory demands for payments of outstanding debts (primarily rents). While many landlords are working closely with tenants to find an approach that works for both parties, including rent deferrals or new payment schedules, some commercial landlords appear to be using statutory demands as a heavy-handed tactic to force tenants to pay rent and other debts despite the Government's call for forbearance.

(De)regulatory and economic impacts

The COVID-19 lockdown and the Government's decision to order all non-essential retail and leisure establishments to close has significantly affected those business' ability to generate income and thus pay their ongoing debts, including rent due to their commercial landlords. Government's priority has been to protect productive firms through a package of fiscal support measures followed by the regulatory easements included in this Bill. In order to protect businesses from eviction by landlords, government implemented a moratorium through the Coronavirus Act 2020 on forfeiture lasting until the end of June.

Some landlords are pursuing aggressive tactics to seek rental income, albeit potentially motivated by business vulnerability. These actions are within the letter but not the spirit of the forbearance the Government has legislated and called for from commercial landlords, and risks creating a significant and unnecessary risk of insolvency for otherwise viable companies at an already challenging time. In the absence of government action, it is likely that some viable companies that create economic activity and employment will be unnecessarily forced down the route into insolvency.

While it is not thought that all commercial landlords would follow through with a petition to wind up a company if a statutory demand is not paid, for many businesses the filing of a petition alone can cause significant practical issues that may prevent them from continuing to trade. For example, the effect of section 127 of the Insolvency Act means that when banks learn that a petition has been filed, they will usually freeze bank accounts. This is to prevent any untoward disposal of the company's property; but it also means that a company with a winding-up petition against it must make an application to court for each payment it needs to make from a frozen account. This can severely affect its ability to trade. For many companies the reputational damage is high when a petition becomes public knowledge, usually seven days after being filed.

It is recognised that supporting tenants in the ways outlined above will put more of the burden on creditors, many of whom will themselves be under financial pressure from their own creditors. In addition, one must not dismiss the importance of supporting creditors in turn, or that doing so can benefit all parties. Landlords that are confident in their underlying financial position, for example, are more likely to agree further rent deferrals or lower rents, and many are already doing so. In these challenging times, however, the proposals will to some extent help to re-balance the economic risk faced by companies and their creditors by removing the possibility of aggressive and inappropriate debt-recovery actions.

Risks

While the measures will provide an element of relief to business tenants in particular, they will further increase pressures in the commercial property market. The longer social distancing and lock down policies are necessary, effectively preventing whole sectors from trading, the deeper the second-order impact on commercial landlords is likely to be.

It is clear that many landlords are working closely with tenants to find an approach that works for both parties, including rent deferrals or new payment schedules. Recognising the challenges facing all those investing in property, the Government welcomes this approach and are grateful to those being so flexible. The Government will continue to work with landlords and their representatives on support for the sector.

Government has announced a significant package of business support, include grants and government-backed loans. Part of this challenge is that commercial landlords have their own obligations to meet, which is why the Government has asked lenders and investors to offer equal understanding. The expectation here is equally clear: lenders and investors should consider how debt obligations can be met in a way that does not put unnecessary pressure on retail and hospitality tenants.

Overall, while the Government acknowledges that the measure will to some extent increase risks to commercial landlords, some of which might be under pressure themselves, it assesses that the re-balancing of risks described above is an appropriate temporary intervention, especially considering the Government's wider business support measures.

CORPORATE INSOLVENCY AND GOVERNANCE BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Corporate Insolvency and Governance Bill as introduced in the House of Commons on 20 May 2020 (Bill 128).

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