THE CORPORATE INSOLVENCY AND GOVERNANCE BILL

Memorandum from the Department for Business, Energy and Industrial Strategy to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Corporate Insolvency and Governance Bill ("the Bill"). This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. The Bill is part of the Government's concerted effort across the UK to help business deal with the serious economic consequences of the Covid-19 pandemic. The Government has already introduced a package of financial support to help business through the crisis. This includes for example, the job retention scheme, deferment of VAT, business rate relief and loan schemes for businesses of all sizes.

3. The Bill contains reforms to the corporate insolvency regimes across the UK introduced on an urgent basis to assist business in dealing with the effects of the lock-down resulting from the Covid-19 pandemic. The measures in the Bill fall into two categories. It contains temporary measures proposed as a direct result of the pandemic, which relieve companies from complying with aspects of insolvency and company law. Then there is a package of permanent reforms to the corporate insolvency and governance framework. The permanent measures were consulted on in 2016 and the Government published its response in August 2018 announcing its intention to bring forward proposals when parliamentary time allowed. A copy of the Government response can be found at https://www.gov.uk/government/consultations/a-review-of-the-corporate-insolvency-framework. The current crisis means that these permanent reforms need to be introduced urgently to assist businesses that are struggling as a result and help them to survive as the economy emerges. There are also a number of temporary modifications to these permanent measures to assist with the impact of Covid-19.

Insolvency and Company Law

4. The aim of the permanent measures is to make it easier for companies to restructure in the current climate and going forwards and therefore improve the chances of successful rescue.

5. There is a short-term policy objective to give the UK economy more permanent restructuring tools that are flexible to help UK companies get through the Covid-19 emergency and be able to continue trading when the economy emerges. One example is a new moratorium which will provide vital breathing space from creditor enforcement actions whilst a financially distressed company explores options for rescue. These measures will also have a longer-term benefit of saving viable companies, maintaining productivity and preserving jobs.

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

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

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

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

- suspend, initially for a four month period from 1 March 2020 to 30 June 2020, director liability in respect of wrongful trading (so that when the court is considering whether to declare a director liable to contribute to a company's assets under wrongful trading provisions and are considering the amount to be contributed, it will not take into account losses incurred during the period); suspend the use of statutory demands made between 1 March 2020 and 30 June 2020 and restrict winding up petitions presented from 27 April to 30 June, where a company cannot pay its bills due to the Covid-19 emergency;
- modify the new permanent measure prohibiting termination clauses in supplier contracts that engage upon an insolvency event so that small suppliers are excluded, initially until 30 June 2020;
- modify the new moratorium to relax the eligibility criteria and conditions for entry to make the procedure accessible to a wider range of companies impacted by Covid-19, initially until 30 June 2020;
- provide a general power to modify certain aspects of insolvency law, such as the conditions for an insolvency procedure to apply, aspects of that procedure and duties of directors and others with corporate responsibility. This power is restricted to modifications that may be expedient to reduce or assist in reducing the impact of the Covid-19 pandemic on corporate insolvencies and insolvency procedures, must be exercised proportionately and only where this cannot be achieved by any non-legislative means. This power will expire on 30 April 2021 (although there will be scope to extend this deadline).

Meetings and filing requirements: Companies and other bodies

8. Companies and other bodies may be required to hold an Annual General Meeting ("AGM") or other meeting by virtue of legislation, their constitution or rules. For example, a public company is required to hold an AGM within six months of its accounting reference date and building societies must hold an AGM in the first four months of each financial year. Companies and other bodies may be required to hold AGMs and other meetings in a particular manner, for example, their constitution or rules may require that their AGM be held at a particular venue.

9. Companies and certain other entities must comply with duties to provide information and notices within periods prescribed by the Companies Act 2006 and other legislation. Those statutory filing requirements include filing the company's accounts and reports, giving notice of the place where the register of directors and register of secretaries are kept, and giving notice of a change in directors or secretaries.

10. These bodies may have found themselves, and may continue to find themselves, unable to comply with these requirements as a consequence of the Covid-19 pandemic. They may have been, and may continue to be, unable to hold an AGM or other meeting because of the need to limit the spread of the pandemic and to comply with social distancing requirements which are currently in place. They may be unable to hold those meetings electronically because of requirements in their constitution or rules. Companies and other entities may have difficulty providing information and notices within the periods prescribed by legislation because of the pressures they are facing as a consequence of the pandemic.

11. These measures make temporary provision to:

- allow companies and other bodies to hold AGMs and other meetings in a more flexible way;
- extend the period during which companies and other bodies must hold an AGM;
- extend the period during which companies and certain other entities must comply with various statutory filing requirements.

C. DELEGATED POWERS

Clause 1 (Moratorium) and section 422 of the Insolvency Act 1986

Power conferred on: the Secretary of State with the concurrence of the Treasury and after consultation with the Financial Conduct Authority and the Prudential Regulatory Authority

Power exercised by: order

Parliamentary procedure: negative resolution procedure

Context and purpose
Section 422 of the Insolvency Act 1986 gives a power to provide that specified provisions of the first Group of Parts in the Insolvency Act 1986 shall apply with modifications to any person who has a liability in respect of a deposit which they accepted in accordance with the Banking Act 1979 or 1987, but does not have

permission under Part 4A of the Financial Services and Markets Act 2000 to accept deposits. The Bill will extend this power to apply to the new moratorium provisions contained in Part A1 to the Insolvency Act 1986, as clause 1 states that Part A1 will sit within the first Group of Parts.

Justification for power
This is an existing power which will extend to the moratorium by virtue of the moratorium provisions being added to the first Group of Parts of the Insolvency Act 1986.

Justification for procedure
This is an existing power which will extend to the moratorium by virtue of the moratorium provisions being added to the First Group of Parts of the Insolvency Act 1986.

Clause 1 (Moratorium) and section A6(3): The relevant documents (rules)

Power conferred on: England and Wales: the Lord Chancellor with the concurrence of the Secretary of State and, for rules which affect court procedure, with the concurrence of the Lord Chief Justice; Scotland: the Secretary of State (see section 411 of the Insolvency Act 1986)

Power exercised by: Statutory instrument (rules)

Parliamentary procedure: Negative resolution procedure

Context and purpose
Section A6(3) provides that rules may make provision about the date on which any statement in a relevant document is to be made.

Justification for taking the power
Detail around procedural matters in the Insolvency Act 1986 (in this case the date of the statement) is generally made by rules in order that there is flexibility to change them from time to time when there are developments in insolvency practice or in other legislation which might impinge on insolvency procedures. Making rules is permitted by the standard power under section 411 of the Insolvency Act 1986 to make rules for the operation of that Act. The provisions made by rules are very detailed and are subject to periodic change. The level of detail would not be suitable for primary legislation.

Justification for the procedure
The Insolvency Rules contain very detailed provisions about the operation of insolvency procedures under the Insolvency Act 1986. The current Rules for England and Wales are around 440 pages long. The Lord Chancellor is required to consult the Insolvency Rules Committee before making rules for England and Wales (section 413 of the Insolvency Act 1986). The Committee includes relevant members of the judiciary and practitioners from the legal, and accountancy professions. They provide their services on a voluntary and unremunerated basis. Secretariat support to the Committee is provided by the Insolvency Service. The Committee will consider amendments to the rules and give their recommendations

to the Lord Chancellor. The corresponding rules for Scotland are made by the Secretary of State, following consultation with Scottish stakeholders, and largely mirror the rules for England and Wales. Rules are made by statutory instrument and are subject to the negative procedure (section 411(6)). The negative procedure is sufficient scrutiny when the rules are made given the requirements for prior consultation.

Clause 1 (Moratorium) and section A6(4): The relevant documents
Power conferred on: *The Secretary of State*

Power exercised by: *Regulations*

Parliamentary Procedure: Affirmative resolution procedure

Context and purpose

Section A6(1) of the new Part defines "the relevant documents" which are required to accompany an application for a moratorium (see sections A3(2), A4(3) and A5(3)). These include the following in relation to the financial state of the company:

- a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its debts;
- a statement from the monitor that, in their view, it is likely that a moratorium for the company would result in the rescue of the company as a going concern.

Subsection (4) enables the Secretary of State to change the definition of "relevant documents" by regulations. The effect of the power would enable the conditions for applying for a moratorium to be changed. Subsection (5) provides that these regulations are subject to affirmative resolution procedure.

Justification for taking the power
As a new procedure in our insolvency framework, we will want to monitor information and feedback from stakeholders and industry on how effective the moratorium procedure is at helping companies in financial trouble and the impact on other businesses affected by the moratorium. The moratorium is intended as a light touch procedure to avoid imposing unnecessary administrative burdens on companies which are already struggling with financial difficulties. The documents that are required to accompany an application for a moratorium have therefore been kept to a minimum. We may in the future want to review the documents necessary to accompany an application for a moratorium and their contents (which in effect set out the criteria for being able to enter a moratorium) in order to ensure that they remain fit for purpose. For example, we may determine that additional information should be provided about the financial state of the company on entry to a moratorium, such as a statement of affairs provided by the directors. As a consequence, we would therefore want to be able to amend the definition of "relevant documents" that are required to accompany an application. The use of delegated powers, in these circumstances, will avoid taking up Parliamentary time unnecessarily.

Justification for the procedure
This power enables the Secretary of State to amend the Act by secondary legislation (a Henry VIII power). As a change in entry criteria to the moratorium

would be a material change in the operation of the moratorium it is right that Parliament should have the opportunity to debate it and so, in line with the usual practice, the Regulations are subject to affirmative procedure.

Clause 1 and section A10(2): Extension by directors without creditor consent (rules)

Power conferred on: England and Wales: the Lord Chancellor with the concurrence of the Secretary of State and for rules which affect court procedure with the concurrence of the Lord Chief Justice; and Scotland: the Secretary of State (see section 411 of the Insolvency Act 1986)

Power exercised by: Statutory instrument (rules)

Parliamentary procedure: Negative resolution procedure

Context and purpose
Subsection (2) of section A10 provides that rules may make provision about the date on which the statements must be made which are required for an extension of a moratorium without the creditors' consent. The statements are included in the documents which need to be filed at court in order to obtain the extension.

Justification for taking the powers
Details around procedural matters in the Insolvency Act 1986 (in this case the date of the statement) is generally made by rules in order that there is flexibility to change them from time to time when there are developments in insolvency practice or in other legislation which might impinge on insolvency procedures. . Making rules is permitted by the standard power under section 411 of the Insolvency Act 1986. The provisions made by rules are very detailed and are subject to periodic change. The level of detail would not be suitable for primary legislation.

Justification for the procedure
The Insolvency Rules contain very detailed provisions about the operation of insolvency procedures under the Insolvency Act 1986. The current Rules for England and Wales are around 440 pages long. The Lord Chancellor is required to consult the Insolvency Rules Committee before making rules for England and Wales (section 413 of the Insolvency Act 1986). The Committee includes relevant members of the judiciary and practitioners from the legal, and accountancy professions. They provide their services on a voluntary and unremunerated basis. Secretariat support to the Committee is provided by the Insolvency Service. The Committee will consider amendments to the rules and give their recommendations to the Lord Chancellor. The corresponding rules for Scotland are made by the Secretary of State, following consultation with Scottish stakeholders, and largely mirror the rules for England and Wales. Rules are made by statutory instrument and are subject to the negative procedure (section 411(6)). The negative procedure is sufficient scrutiny when the rules are made given the requirements for prior consultation.

Clause 1 (moratorium) and section A10(4) (extension by directors without creditor consent)

Power conferred on: The Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Affirmative resolution

Context and Purpose
The power in section A10(4) enables the Secretary of State to change the list of documents the directors are required to file with the court for the moratorium to be extended without creditor consent. Regulations are subject to affirmative procedure (subsection (5)).

The list of documents currently includes the following:

- a statement from the directors that, in their view, the company is, or is likely to become unable, to pay its pre-moratorium debts
- a statement from the monitor that, in their view, it is likely that a moratorium for the company would result in the rescue of the company as a going concern
- a statement from the directors that it has paid any of the following that have fallen due: moratorium debts and pre-moratorium debts from which it does not have a payment holiday under section A18.

Justification for taking the power
As a new procedure in our insolvency framework we will want to monitor information and feedback from stakeholders on the effectiveness of the moratorium in helping companies in financial distress and the impact on other businesses affected by the moratorium. The moratorium is intended to be a light touch procedure to avoid imposing unnecessary burdens on companies which are already struggling with financial difficulties. The documents that are required to extend a moratorium without creditor consent have therefore been kept to a minimum. From time to time we may wish to review the relevant documents (and in effect the conditions) for extending the moratorium without creditor consent and court approval in order to ensure that they remain fit for purpose. For example, we may want to add a requirement to provide a progress report on the state of the company since entering the moratorium. As a consequence, we would therefore want to be able to amend the list of required documents that directors are required to file with the court without using primary legislation. The use of delegated powers in these circumstances will avoid taking up Parliamentary time unnecessarily

Justification for the procedure
This power enables the Secretary of State to amend the Act by secondary legislation (a Henry VIII power). As a change in the criteria to extend the moratorium would be a material change in the operation of the moratorium it is right that Parliament should have the opportunity to debate it and so, in line with the usual practice, the Regulations are subject to affirmative procedure.

Clause 1 (Moratorium) and section A11(2): Extension by directors with creditor consent) (rules)

Power conferred on: England and Wales: the Lord Chancellor with the concurrence of the Secretary of State and for rules which affect court procedure with the

concurrence of the Lord Chief Justice; Scotland: the Secretary of State (see section 411 of the Insolvency Act 1986)

Power exercised by: Statutory instrument (rules)

Parliamentary procedure: Negative resolution procedure

Context and purpose
Subsection (1) of section A11 sets out the statements which need to be filed at court in order to obtain the extension with creditor consent. Subsection (2) provides that the rules may make provision about the date on which the statements must be made in order to obtain the extension.

Justification for taking the powers
Detail around procedural matters in the Insolvency Act 1986 (in this case the date of the statement) is generally made by rules in order that there is flexibility to change them from time to time when there are developments in insolvency practice or in other legislation which might impinge on insolvency procedures. Making rules is permitted by the standard power under section 411 of the Insolvency Act 1986 to make rules for the operation of that Act. The provisions made by rules are very detailed and are subject to periodic change. The level of detail would not be suitable for primary legislation.

Justification for the procedure
The Insolvency Rules contain very detailed provisions about the operation of insolvency procedures under the Insolvency Act 1986. The current Rules for England and Wales are around 440 pages long. The Lord Chancellor is required to consult the Insolvency Rules Committee before making rules for England and Wales (section 413 of the Insolvency Act 1986). The Committee includes members of the judiciary and professional practitioners. The corresponding rules for Scotland are made by the Secretary of State, following consultation with Scottish stakeholders and largely mirror the rules for England and Wales. Rules are made by statutory instrument and are subject to the negative procedure (section 411(6)). The negative procedure is sufficient scrutiny when the rules are made given the requirements for prior consultation.

Clause 1 and section A11(5): extension by directors with creditor consent

Power conferred on: The Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Affirmative resolution

Context and Purpose
The power enables the Secretary of State to change the list of documents which the directors are required to file with the court for the moratorium to be extended with creditor approval. Such regulations are subject to affirmative procedure (subsection (6)).

The list of documents currently includes the following:

- a statement from the directors that, in their view, the company is, or is likely to become unable, to pay its pre-moratorium debts
- a statement from the monitor that, in their view, it is likely that a moratorium for the company would result in the rescue of the company as a going concern
- a statement from the directors that it has paid any of the following that have fallen due: moratorium debts and pre-moratorium debts from which it does not have a payment holiday under section A18
- a statement from the directors that consent has been obtained from creditors to extend the moratorium and the revised end date of the moratorium

Justification for taking the power
As a new procedure in our insolvency framework we will want to monitor information and feedback from stakeholders on the effectiveness of the moratorium in helping companies in financial distress and the impact on other businesses affected by the moratorium. The moratorium is intended to be a light touch procedure to avoid imposing unnecessary burdens on companies which are already struggling with financial difficulties. The list of documents that are required to file at court to extend a moratorium with creditor approval has therefore been kept to a minimum. From time to time we may wish to review the list of documents (and in effect the conditions) for extending the moratorium with creditor approval in order to ensure that they remain fit for purpose. For example, we may want to add a requirement to provide a progress report on the state of the company since entering the moratorium to the list of documents. As a consequence, we would therefore want to be able to amend the list of required documents that directors are required to file with the court without using primary legislation. The use of delegated powers in these circumstances will avoid taking up Parliamentary time unnecessarily.

Justification for the procedure
This power enables the Secretary of State to amend the Act by secondary legislation (a Henry VIII power). As a change in the criteria to extend the moratorium would be a material change in the operation of the moratorium it is right that Parliament should have the opportunity to debate it and so, in line with the usual practice, the Regulations are subject to affirmative procedure.

Clause 1 and section A12(6): creditor consent for the purposes of section A11

Power conferred on: The Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Affirmative resolution

Context and Purpose
The power enables the Secretary of State to change the definition of “pre-moratorium creditor”, being each creditor who will be able to vote on whether to approve an extension of the moratorium by the directors with creditor consent. Currently, the creditors that will be able to vote will be creditors of debts defined as pre-moratorium debts for which the company has a payment holiday during the moratorium. Such regulations are subject to affirmative procedure (subsection (6)).

Justification for taking the power

As a new procedure in our insolvency framework we will want to monitor information and feedback from stakeholders on the effectiveness of the moratorium in helping companies in financial distress and the impact on other businesses affected by the moratorium. The moratorium is intended to be a light touch procedure to avoid imposing unnecessary burdens on companies which are already struggling with financial difficulties. From time to time we may wish to review the criteria determining which creditors should be able to vote on whether to extend the moratorium with creditor approval, in order to ensure that the approval requirements remain fit for purpose. As a consequence, we would therefore want to be able to change the definition of "pre-moratorium creditor" without using primary legislation. The use of delegated powers in these circumstances will avoid taking up Parliamentary time unnecessarily.

Justification for the procedure
This power enables the Secretary of State to amend the Act by secondary legislation (a Henry VIII power). As a change in the creditors that can vote on whether to approve the extension of the moratorium would be a material change in the operation of the moratorium it is right that Parliament should have the opportunity to debate it and so, in line with the usual practice, the Regulations are subject to affirmative procedure.

Clause 1 and section A13(3): extension by court on application of directors (rules)

Power conferred on: England and Wales: the Lord Chancellor with the concurrence of the Secretary of State and for rules which affect court procedure with the concurrence of the Lord Chief Justice; Scotland: the Secretary of State (see section 411 of the Insolvency Act 1986)

Power exercised by: statutory instrument (rules)

Parliamentary procedure: negative resolution procedure

Context and purpose
Subsection (2) lists the documents, consisting of statements, which need to be filed at court in order to obtain an extension of a moratorium past 40 business days without creditor consent. The list of documents includes statements from the directors of the company and the monitor. Subsection (3) provides that the rules may make provision about the date on which the statements must be made which are required to obtain the extension.

Justification for taking the powers
Detail around procedural matters in the Insolvency Act 1986 (in this case the date on which statements must be made to obtain an extension of a moratorium by application to court by the directors) is generally made by rules in order that there is flexibility to change them from time to time when there are developments in insolvency law. Making rules is permitted by the standard power under section 411 of the Insolvency Act 1986 to make rules for the operation of that Act. The provisions made by rules are very detailed and are subject to periodic change. The level of detail would not be suitable for primary legislation.

Justification for the procedure

The Insolvency Rules contain very detailed provisions about the operation of insolvency procedures under the Insolvency Act 1986. The current Rules for England and Wales are around 440 pages long. The Lord Chancellor is required to consult the Insolvency Rules Committee before making rules for England and Wales (section 413 of the Insolvency Act 1986). The Committee includes relevant members of the judiciary and practitioners from the legal, and accountancy professions. They provide their services on a voluntary and unremunerated basis. Secretariat support to the Committee is provided by the Insolvency Service. The Committee will consider amendments to the rules and give their recommendations to the Lord Chancellor. The corresponding rules for Scotland are made by the Secretary of State, following consultation with Scottish stakeholders, and largely mirror the rules for England and Wales. Rules are made by statutory instrument and are subject to the negative procedure (section 411(6)). The negative procedure is sufficient scrutiny when the rules are made given the requirements for prior consultation.

Clause 1 and section A13(9): extension by court on application of directors

Power exercisable by: The Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Affirmative resolution procedure

Context and purpose
The power in section A13(9) enables the Secretary of State to change the list of documents which the directors are required to file at court with an application for a court approved extension to the moratorium. Such regulations are subject to affirmative procedure (subsection 10).

The list of documents currently includes the following:

- a statement from the directors that, in their view, the company is, or is likely to become unable, to pay its pre-moratorium debts
- a statement from the monitor that, in their view, it is likely that a moratorium for the company would result in the rescue of the company as a going concern
- a statement from the directors that it has paid any of the following that have fallen due: moratorium debts and pre-moratorium debts from which it does not have a payment holiday under section A18.

Justification for the power
As a new procedure in our insolvency framework, we will want to monitor information and feedback from stakeholders on the effectiveness of the moratorium procedure in helping companies in financial distress and the impact on other businesses affected by the moratorium. The moratorium is intended to be a light touch procedure to avoid imposing unnecessary administrative burdens on businesses which are already struggling with financial difficulties. The list of documents that directors are required to file for a court approved extension have therefore been kept to a minimum. From time to time we may want to review the list of documents (and in effect the conditions) for applying for a court approved extension to a moratorium. For example, we may want to include a requirement to

provide a progress report on the state of the company since entering the moratorium. As a consequence, we would therefore want to be able to amend the list of documents required to accompany an application to court without using primary legislation. The use of delegated powers in these circumstances will avoid taking up Parliamentary time unnecessarily.

Justification for the procedure
This power enables the Secretary of State to amend the Act by secondary legislation (a Henry VIII power). As a change in the criteria to extend the moratorium would be a material change in the operation of the moratorium it is right that Parliament will have the opportunity to debate it in line with the usual practice of Regulations that are subject to affirmative procedure.

Clause 1 and section A17(5): Obligations to notify change in end of moratorium (rules)

Power conferred on: England and Wales: the Lord Chancellor with the concurrence of the Secretary of State and for rules which affect court procedure with the concurrence of the Lord Chief Justice; Scotland: the Secretary of State (see section 411 of the Insolvency Act 1986)

Power exercised by: statutory instrument (rules)

Parliamentary procedure: negative resolution procedure

Context and Purpose
Section A17(1) requires the directors of a company to notify the monitor when a moratorium is extended or comes to an end. Section A17(2), (3) and (4) require the monitor to notify various parties when a moratorium is extended or comes to an end. Paragraph (5) of that section enables the rules to make further provision about the timing of notice required to be given under this section and require a notice to be accompanied by other documents.

Justification for taking the powers
Detail around procedural matters in the Insolvency Act 1986 (such as the notification to parties of the extension or end of a moratorium) is generally made by rules in order that there is flexibility to change them from time to time when there are developments in insolvency practice or in other legislation which might impinge on insolvency procedures. Making rules is permitted by the standard power under section 411 of the Insolvency Act 1986 to make rules for the operation of that Act. The provisions made by rules are very detailed and are subject to periodic change. The level of detail would not be suitable for primary legislation.

Justification for the procedure
The Insolvency Rules contain very detailed provisions about the operation of insolvency procedures under the Insolvency Act 1986. The current Rules for England and Wales are around 440 pages long. The Lord Chancellor is required to consult the Insolvency Rules Committee before making rules for England and Wales (section 413 of the Insolvency Act 1986). The Committee includes relevant members of the judiciary and practitioners from the legal, and accountancy professions. They provide their services on a voluntary and unremunerated basis.

Secretariat support to the Committee is provided by the Insolvency Service. The Committee will consider amendments to the rules and give their recommendations to the Lord Chancellor. The corresponding rules for Scotland are made by the Secretary of State, following consultation with Scottish stakeholders, and largely mirror the rules for England and Wales. Rules are made by statutory instrument and are subject to the negative procedure (section 411(6)). The negative procedure is sufficient scrutiny when the rules are made given the requirements for prior consultation.

Clause 1 and section A18(4): Overview and construction of references to payment holidays (rules)

Power conferred on: England and Wales: the Lord Chancellor with the concurrence of the Secretary of State and for rules which affect court procedure with the concurrence of the Lord Chief Justice; Scotland: the Secretary of State (see section 411 of the Insolvency Act 1986)

Power exercised by: statutory instrument (rules)

Parliamentary procedure: negative resolution procedure

Context and Purpose
Section A18(3)(b) provides that the definition of pre-moratorium debts for which a company has a payment holiday during the moratorium will not include pre-moratorium debts which consist of amounts payable in respect of goods and services supplied during the moratorium.

Section A18(4) provides that rules can be used to set out what does or does not count as the supply of goods or services for the purposes of section A18(3)(b).

Justification for taking the power
We are taking this power to allow for further clarification of what is meant by “goods or services”, should it be required. The list is also likely to change over time as case law develops. This type of detailed matter is generally made by rules in order that there is flexibility to change the rules from time to time when there are developments in insolvency practice or in other legislation which might impinge on insolvency procedures. Making rules is permitted by the standard power under section 411 of the Insolvency Act 1986 to make rules for the operation of the Act and are subject to periodic change. The level of detail would not be suitable to use for primary legislation.

Justification for the procedure
The Insolvency Rules contain very detailed provisions about the operation of insolvency procedures under the Insolvency Act 1986. The current Rules for England and Wales are around 440 pages long. The Lord Chancellor is required to consult the Insolvency Rules Committee before making rules for England and Wales (section 413 of the Insolvency Act 1986). The Committee includes relevant members of the judiciary and practitioners from the legal, and accountancy professions. They provide their services on a voluntary and unremunerated basis. Secretariat support to the Committee is provided by the Insolvency Service. The Committee will consider amendments to the rules and give their recommendations

to the Lord Chancellor. The corresponding rules for Scotland are made by the Secretary of State, following consultation with Scottish stakeholders, and largely mirror the rules for England and Wales. Rules are made by statutory instrument and are subject to the negative procedure (section 411(6)). The negative procedure is sufficient scrutiny when the rules are made given the requirements for prior consultation.

Clause 1 and section A18(5): Overview and construction of references to payment holidays

Power conferred on: The Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative Resolution Procedure

Context and Purpose
Section A18 provides that the definition of pre-moratorium debts for which a company has a payment holiday during the moratorium will not include pre-moratorium debts that are set out in the list in section A18(3)(a) to (f). The power in subsection (5) enables the Secretary of State to amend this list by regulations. Subsection (6) provides that regulations are subject to affirmative procedure.

Justification for taking the power
The aim of excluding the various debts specified in the list in section A18(3)(a) to (f) from the definition of pre-moratorium debts for which a company has a payment holiday during the moratorium is to enable the company to carry on trading while also balancing the interests of key creditors and workers. However, as this is a new procedure in our insolvency framework, we will want to monitor information and feedback from stakeholders on the effectiveness of the moratorium procedure in helping companies in financial distress and the impact on other businesses affected by the moratorium. This will include the keeping this list of types of debt under review to ensure the list remains fit for purpose. Before using the power we would consult stakeholders on what changes might be needed. The power will allow for amendment, if required, without further primary legislation, and enable changes to be made more rapidly, therefore avoiding any potential long-term adverse impact on businesses. We would provide information to businesses and industry professionals to make them aware of the changes.

Justification for the procedure
This power enables the Secretary of State to amend the Act by secondary legislation (a Henry VIII power). As a change in the definition of pre-moratorium debts for which the company has a payment holiday would be a material change in the operation of the moratorium it is right that Parliament should have the opportunity to debate it and so, in line with the usual practice, the Regulations are subject to affirmative procedure.

Clause 1 and section A24(3): duty of directors to notify monitor of insolvency proceedings etc (rules)

Power conferred on: England and Wales: the Lord Chancellor with the concurrence of the Secretary of State and for rules which affect court procedure with the concurrence of the Lord Chief Justice; Scotland: the Secretary of State (see section 411 of the Insolvency Act 1986)

Power exercised by: statutory instrument (rules)

Parliamentary procedure: negative resolution procedure

Context and Purpose
Section A24 requires the directors of a company to notify the monitor before taking steps during a moratorium that would lead to the company entering administration or liquidation. Paragraph (3) of that section enables the rules to make provision about the timing of notices required to be given under this section.

Justification for taking the power
Detail such as the timing of giving notices in insolvency legislation is customarily set out in insolvency rules. This type of detailed matter is generally made by rules in order that there is flexibility to change the rules from time to time when there are developments in insolvency practice or in other legislation which might impinge on insolvency procedures. Making rules is permitted by the standard power under section 411 of the Insolvency Act 1986 to make rules for the operation of the Act and are subject to periodic change. The level of detail would not be suitable to use for primary legislation.

Justification for the procedure
The Insolvency Rules contain very detailed provisions about the operation of insolvency procedures under the Insolvency Act 1986. The current Rules for England and Wales are around 440 pages long. The Lord Chancellor is required to consult the Insolvency Rules Committee before making rules for England and Wales (section 413 of the Insolvency Act 1986). The Committee includes relevant members of the judiciary and practitioners from the legal, and accountancy professions. They provide their services on a voluntary and unremunerated basis. Secretariat support to the Committee is provided by the Insolvency Service. The Committee will consider amendments to the rules and give their recommendations to the Lord Chancellor. The corresponding rules for Scotland are made by the Secretary of State, following consultation with Scottish stakeholders, and largely mirror the rules for England and Wales. Rules are made by statutory instrument and are subject to the negative procedure (section 411(6)). The negative procedure is sufficient scrutiny when the rules are made given the requirements for prior consultation.

Clause 1 and section A38(2) and (4): Termination of moratorium by monitor (rules)

Power conferred on: England and Wales: the Lord Chancellor with the concurrence of the Secretary of State and for rules which affect court procedure with the concurrence of the Lord Chief Justice; Scotland: the Secretary of State (see section 411 of the Insolvency Act 1986)

Power exercised by: statutory instrument (rules)

Parliamentary procedure: negative resolution procedure

Context and Purpose
This section sets out circumstances in which the monitor must file a notice with the court bringing the moratorium to an end.

These include, in subsection (1)(d), where the monitor thinks the company is unable to pay its moratorium debts, or pre-moratorium debts for which the company does not have a payment holiday under section A20. Subsection (2) enables the rules to provide for debts that are to be disregarded for the purposes of subsection (1)(d), which would mean the monitor would not have to terminate the moratorium in certain circumstances. This could be, for example, because the monitor has reasonable grounds to believe that an unpaid debt is likely to be paid shortly. Subsection (4) further provides that the rules may make provision about the timing of the notice the monitor must file with the court bringing the moratorium to an end.

Justification for taking the powers
As this is a new procedure in our insolvency framework, we need to keep the circumstances in subsection (1)(d) under review. If it is considered necessary to change them in light of the evidence, then the power will enable amendment without further primary legislation.

The timing of the notice under subsection (1) is a detailed provision which should be in the rules where it can be changed from time to time to allow for developments in insolvency practice or in other legislation which might impinge on insolvency procedures.

Justification for the procedure
The Insolvency Rules contain very detailed provisions about the operation of insolvency procedures under the Insolvency Act 1986. The current Rules for England and Wales are around 440 pages long. The Lord Chancellor is required to consult the Insolvency Rules Committee before making rules for England and Wales (section 413 of the Insolvency Act 1986). The Committee includes relevant members of the judiciary and practitioners from the legal, and accountancy professions. They provide their services on a voluntary and unremunerated basis. Secretariat support to the Committee is provided by the Insolvency Service. The Committee will consider amendments to the rules and give their recommendations to the Lord Chancellor. The corresponding rules for Scotland are made by the Secretary of State, following consultation with Scottish stakeholders, and largely mirror the rules for England and Wales. Rules are made by statutory instrument and are subject to the negative procedure (section 411(6)). The negative procedure is sufficient scrutiny when the rules are made given the requirements for prior consultation.

Clause 1 and section A38(5): Termination of moratorium by monitor

Power conferred on: The Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Affirmative procedure

Context and Purpose
This section sets out in subsection (1) the circumstances in which the monitor must file a notice with the court bringing the moratorium to an end.

The circumstances in which the monitor must bring the moratorium to an end are currently as follows:

- the monitor thinks that the moratorium is no longer likely to result in the rescue of the company as a going concern
- the monitor thinks that the objective of rescuing the company as a going concern has been achieved
- the monitor thinks that, because of a failure by the directors to provide information, the monitor is unable to carry out its functions
- the monitor thinks that the company is unable to pay any of the following that have fallen due: moratorium debts and pre-moratorium debts from which it does not have a payment holiday under section A18.

Subsection (5) enables the Secretary of State to amend the section in order to change the circumstances in which the monitor must bring the moratorium to an end. Subsection (6) provides that such regulations are subject to the affirmative procedure.

Justification for taking the powers
As this is a new procedure in our insolvency framework, we will want to monitor information and feedback from stakeholders on the effectiveness of the moratorium procedure in helping companies in financial distress and the impact on other businesses affected by the moratorium. There may in the future be a need to amend the circumstances in which the moratorium will come to an end to reflect changes made to the entry criteria and criteria that need to be met at the time of extension under sections A6(3), A10(4), A11(5) and A13(9). Before using the power we would consult stakeholders on what changes might be needed. The power will allow for amendment, if required, without further primary legislation, and enable changes to be made more rapidly, therefore avoiding any potential long-term adverse impact on businesses. We would provide information to businesses and industry professionals to make them aware of the changes.

Justification for the procedure
This power enables the Secretary of State to amend the Act by secondary legislation (a Henry VIII power). As a change to the circumstances in which the monitor must bring the moratorium to an end would be a material change in the operation of the moratorium it is right that Parliament should have the opportunity to debate it and so, in line with the usual practice, the Regulations are subject to affirmative procedure.

Clause 1 and section A39(6): Replacement of monitor or additional monitor (rules)

Power conferred on: England and Wales: the Lord Chancellor with the concurrence of the Secretary of State and for rules which affect court procedure with the concurrence of the Lord Chief Justice; Scotland: the Secretary of State (see section 411 of the Insolvency Act 1986)

Power exercised by: statutory instrument (rules)

Parliamentary procedure: negative resolution procedure

Context and purpose
Subsection (4) requires that a replacement monitor files a statement with the court confirming he or she is a qualified person to be a monitor and consents to act as one in relation to the moratorium. Subsection (6) enables the rules to provide for the date on which the statement must be made by a replacement monitor as to being a qualified person and consenting to act as monitor.

Justification for taking the powers
Detail around procedural matters in the Insolvency Act 1986 (in this case the date on which a statement must be made by a replacement monitor) is generally made by rules in order that there is flexibility to change them from time to time when there are developments in insolvency practice or in other legislation which might impinge on insolvency procedures. Making rules is permitted by the standard power under section 411 of the Insolvency Act 1986 to make rules for the operation of that Act. The provisions made by rules are very detailed and are subject to periodic change. The level of detail would not be suitable for primary legislation.

Justification for the procedure
The Insolvency Rules contain very detailed provisions about the operation of insolvency procedures under the Insolvency Act 1986. The current Rules for England and Wales are around 440 pages long. The Lord Chancellor is required to consult the Insolvency Rules Committee before making rules for England and Wales (section 413 of the Insolvency Act 1986). The Committee includes relevant members of the judiciary and practitioners from the legal, and accountancy professions. They provide their services on a voluntary and unremunerated basis. Secretariat support to the Committee is provided by the Insolvency Service. The Committee will consider amendments to the rules and give their recommendations to the Lord Chancellor. The corresponding rules for Scotland are made by the Secretary of State, following consultation with Scottish stakeholders, and largely mirror the rules for England and Wales. Rules are made by statutory instrument and are subject to the negative procedure (section 411(6)). The negative procedure is sufficient scrutiny when the rules are made given the requirements for prior consultation.

Clause 1 and section A43(1): Challenges to monitor remuneration in insolvency proceedings (rules)

Power conferred on: England and Wales: the Lord Chancellor with the concurrence of the Secretary of State and for rules which affect court procedure with the Lord Chief Justice; and Scotland: the Secretary of State (see section 411 of the Insolvency Act 1986)

Power exercised by: statutory instrument (rules)

Parliamentary procedure: negative resolution procedure

Context and Purpose
Section A43(1) provides that the rules may confer on an administrator or liquidator of a company the right to apply to the court on the ground that remuneration charged by a monitor in relation to a prior moratorium for the company was excessive. Such rules may (among other things) make provision as to time limits, disposals available to the court and the treatment of costs (in Scotland expenses) of the application in the administration or winding up.

Justification for taking the powers
The insolvency rules for England and Wales and for Scotland already contain rules to enable creditors or members to challenge an office holder's remuneration. This power will enable similar rules to be made to enable an officer holder in insolvency proceedings to challenge a prior monitor's remuneration.

Justification for the procedure
The Insolvency Rules contain very detailed provisions about the operation of insolvency procedures under the Insolvency Act 1986. The current Rules for England and Wales are around 440 pages long. The Lord Chancellor is required to consult the Insolvency Rules Committee before making rules for England and Wales (section 413 of the Insolvency Act 1986). The Committee includes relevant members of the judiciary and practitioners from the legal, and accountancy professions. They provide their services on a voluntary and unremunerated basis. Secretariat support to the Committee is provided by the Insolvency Service. The Committee will consider amendments to the rules and give their recommendations to the Lord Chancellor. The corresponding rules for Scotland are made by the Secretary of State, following consultation with Scottish stakeholders, and largely mirror the rules for England and Wales. Rules are made by statutory instrument and are subject to the negative procedure (section 411(6)). The negative procedure is sufficient scrutiny when the rules are made given the requirements for prior consultation.

Clause 1 and section A48(6): regulated companies: modifications to this Part (rules)

Power conferred on: England and Wales: the Lord Chancellor with the concurrence of the Secretary of State and for rules which affect court procedure with the concurrence of the Lord Chief Justice; Scotland: the Secretary of State (see section 411 of the Insolvency Act 1986)

Power exercised by: statutory instrument (rules)

Parliamentary procedure: negative resolution procedure

Context and Purpose
Section A48 contains modifications to the provisions in respect of moratoriums which apply to "regulated companies". Subsection (6) allows the appropriate

regulator to participate in any creditors' decision-making procedure in the way provided for in the rules.

Justification for taking the power
This power will enable the detail of a regulator's participation in a decision-making procedure to be set out in the rules. There is a similar power in paragraph 44(8A) of Schedule A1 of the Insolvency Act 1986 in respect of existing moratoriums under the same Schedule of the Act.

Justification for the procedure
The Insolvency Rules contain very detailed provisions about the operation of insolvency procedures under the Insolvency Act 1986. The current Rules for England and Wales are around 440 pages long. The Lord Chancellor is required to consult the Insolvency Rules Committee before making rules for England and Wales (section 413 of the Insolvency Act 1986). The Committee includes relevant members of the judiciary and practitioners from the legal, and accountancy professions. They provide their services on a voluntary and unremunerated basis. Secretariat support to the Committee is provided by the Insolvency Service. The Committee will consider amendments to the rules and give their recommendations to the Lord Chancellor. The corresponding rules for Scotland are made by the Secretary of State, following consultation with Scottish stakeholders, and largely mirror the rules for England and Wales. Rules are made by statutory instrument and are subject to the negative procedure (section 411(6)). The negative procedure is sufficient scrutiny when the rules are made given the requirements for prior consultation.

Clause 1 and section A48(14): Regulated companies: modifications to this Part

Power conferred on: the Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Affirmative resolution procedure

Context and Purpose
Section A48 contains modifications to the provisions in respect of moratoriums which apply to "regulated companies", which are defined in subsection (13). Subsection (14) enables the Secretary of State to change the definition of "regulated company" by regulations. Subsection (15) provides that such regulations are subject to affirmative procedure.

Justification for taking the power
As this is a new procedure in our insolvency framework, we will want to monitor information and feedback from stakeholders on the effectiveness of the moratorium procedure in helping companies in financial distress and the impact on other businesses affected by the moratorium. This will include the need to keep the definition of "regulated company" up to date as new activities and entities come within relevant regulated regimes. Before using the power, we would consult stakeholders on what changes might be needed. The power will allow for amendment, if required, without further primary legislation, and enable changes to

be made more rapidly, therefore avoiding any potential long-term adverse impact on businesses. We would provide information to businesses and industry professionals to make them aware of the changes.

Justification for the procedure
This power enables the Secretary of State to amend the Act by secondary legislation (a Henry VIII power). In line with the usual practice the Regulations are subject to affirmative procedure.

Clause 1 and section A49(1): Power to modify this Part etc in relation to certain companies

Power conferred on: the Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Affirmative resolution procedure

Context and purpose
This section enables the Secretary of State to make provision under the laws of England and Wales or Scotland, by regulations, to modify the application of Part A1 (moratoriums) to companies for which there is a special administration regime (subsection (1)(a)) and make provision for the way that Part A1 interacts with insolvency procedures (defined in subsection (9)) already available to such companies, including special administration regimes and existing moratoriums on disposal of land applicable to certain social landlords (subsection (1)(b)). Special administration regimes are available under legislation relating to particular sectors (air traffic, water supply and sewerage, railway companies, public-private partnerships, health care, postal services, housing, education and energy) and have special objectives, such as the continuity of critical services, which replace or are added to the usual objectives of an ordinary administration. Regulations made under this section may amend, repeal or revoke the provision of an enactment (subsection (5)).

The purpose of the power is to allow provision to be made which avoids conflict between the new Part A1 and insolvency procedures available for the relevant types of company, which include procedures only available to them. These procedures may protect the supply of services, such as energy supply to the public and the provision of social housing. The existing protections under these specific regimes take account of existing insolvency law but do not take account of Part A1.

Existing legislation may need to be amended and modified to make provision for the way in which the new moratorium will affect these companies, for example to provide for additional procedures to be followed, such as notice provisions, so that the Secretary of State or regulators are aware that Part A1 has or will be engaged and so that steps can be taken in accordance with objectives for which the legislation was enacted. By way of example, in the case of energy suppliers, the continuation of supply may be preserved by appointing a special administrator who has the objective of securing the continuation of the company's systems or the Gas and Electrics Markets Authority can appoint a "supplier of last resort". In the case of social housing, a special administrator may be appointed with the objective of

keeping social housing in the regulated sector or a manager may be appointed over the landlord's affairs. Further a moratorium on the disposal of land of a registered provider of social housing may be apply. This is for the benefit of tenants and of lenders into the sector who support the provision of affordable homes. Where such a moratorium or power to appoint a manager would ordinarily be triggered in the event of certain insolvency processes, as Part A1 is new, this will not currently be the case under the relevant sector specific legislation if a moratorium is applied for by a social landlord. The purpose of the power is to remedy issues such as these.

Under subsection (4) the Secretary of State may, by regulations, make any provision under the law of England and Wales, Scotland or Northern Ireland considered appropriate in view of the use of powers in subsection (1), (2) and (3). There is precedent for such a power in the devolution settlements (see section 104 of the Scotland Act 1998 and section 150 of the Government of Wales Act 2006) and this subsection makes bespoke provision for such a power.

Justification for taking the power
Modifications are likely to be needed to avoid conflict between Part A1 and other insolvency procedures available, and objectives provided for, in legislation applicable to these types of company to which the Part A1 moratorium will be available. The insolvency regimes in the relevant sectors all operate differently, because some of the procedures available are created by different legislation for different purposes. Therefore, it is appropriate to use regulations, which will be specific to the sector, to provide for the extent and manner in which Part A1 will apply to registered providers of social housing.

Justification for the procedure
This power enables the Secretary of State to amend primary legislation by secondary legislation (a Henry VIII power). In line with the usual practice the Regulations are subject to affirmative procedure (subsection (6)).

However, where modifications need to be put in place quickly during the initial period after Royal Assent so as to avoid conflict between Part A1 and the objectives behind other procedures to ensure the protection of the interests of stakeholders in the relevant sectors, the negative resolution procedure is made available for a period of 6 months after Royal Assent under clause 41(2)(a).

Clause 1 and section A49(2): Power to modify this Part etc in relation to certain companies

Power conferred on: the Welsh Ministers

Power exercised by: Regulations

Parliamentary procedure: Affirmative resolution procedure

Context and purpose
This section enables the Welsh Ministers to modify the application of Part A1 (moratorium) in relation to a company which is a registered social landlord and make provision in relation to the interaction between this Part and other insolvency procedures available to such a company (subsection (2)). Other insolvency procedures include a moratorium on the disposal of land of social landlords which

arises under housing legislation (sections 39 to 50 of the Housing Act 1996) (subsection (9)(b)).

The purpose of the power is for regulations to ensure that there is no conflict between these existing procedures and the procedure under Part A1 (as well as the insolvency procedures that Part A1 itself interacts with). The regulations may amend repeal or revoke any provision made by any enactment (subsection (4)).

Existing legislation may need to be amended and modified to make provision for the way in which the new Part A1 moratorium would affect these companies and where the new Part A1 moratorium applies, and this may include providing for additional procedures to be followed, such as notice provisions, so that Welsh Ministers are aware that Part A1 has or will be engaged and so that steps can be taken in accordance with objectives for which housing legislation was enacted. A moratorium on the disposal of social housing under the Housing Act 1996 may be used to prevent or control the disposal of social housing or have a manager appointed over the landlord's affairs. Where requirements on registered social landlords, the triggering of a housing moratorium or power to appoint a manager would ordinarily arise in the event of an existing insolvency process, this will not currently give rise to the same consequences where a company obtains a moratorium under the new Part A1 and so the power is to ensure that the same protections are in place in relation to the Part A1 moratorium.

Justification for taking the power
Modifications may be needed to avoid conflict between Part A1 and existing insolvency procedures available in the case of social landlords registered under the Housing Act 1996. The insolvency regime in this sector operates differently than for other companies and additional insolvency procedures are created by legislation for different purposes than usual insolvency procedures. Therefore, it is appropriate to use regulations, which will be specific to the sector, to provide for the extent and manner in which Part A1 will apply to registered social landlords.

Justification for the procedure
This power enables the Welsh Ministers to amend primary legislation by secondary legislation (a Henry VIII power). In line with the usual practice the regulations are subject to affirmative procedure (subsection (6)).

However, where modifications need to be put in place quickly so as to avoid conflict between Part A1 and the objectives behind other procedures to protect the interests of stakeholders in the sector, the negative resolution procedure is made available for a period of 6 months after Royal Assent under clause 42(2)(a). This reflects the need to respond quickly to the challenges that may be faced by registered social landlords in the current economic climate.

Clause 1 and section A49(3): Power to modify this Part etc in relation to certain companies

Power conferred on: the Scottish Ministers

Power exercised by: Regulations

Parliamentary procedure: Affirmative procedure (Scottish Parliament)

Context and purpose
This section enables the Scottish Ministers to modify the application of Part A1 (moratorium) in relation to a company that is a registered social landlords and make provision in relation to the interaction between this Part and other insolvency procedures available in relation to such a company (subsection (3)). Other insolvency procedures include a moratorium on the disposal of land of social landlords which arise under housing legislation (Housing (Scotland) Act 2010).

The purpose of the power is for regulations to ensure that there is no conflict between these existing procedures and the procedure under Part A1 (as well as the insolvency procedures that Part A1 itself interacts with). The regulations may amend repeal or revoke any provision made by any enactment (subsection (5)).

Existing legislation may need to be amended and modified to make provision for the way in which the new moratorium would affect these companies and where the Part A1 moratorium applies, and this may include providing for additional procedures to be followed, such as notice provisions, so that regulators are aware that Part A1 has or will be engaged and so that steps can be taken in accordance with objectives for which the legislation was enacted. A moratorium on the disposal of social housing under the Housing (Scotland) Act 2010 may be used to prevent or control the disposal of social housing or have a manager appointed over the landlord's affairs, for the benefit of tenants and of lenders into that sector who support the provision of affordable homes. Where requirements on registered social landlords, the triggering of a housing moratorium or power to appoint a manager would ordinarily arise in the event of an existing insolvency process, this will not currently give rise to the same consequences where a company obtains a moratorium under Part A1 and so the power is to ensure that the same protections are in place in relation to the Part A1 moratorium.

Justification for taking the power
Modifications may be needed to avoid conflict between Part A1 and existing insolvency procedures available in the case of social landlords registered under the Housing (Scotland) Act 2010. The insolvency regime in this sector operates differently than for other companies and additional insolvency procedures are created by legislation for different purposes than usual insolvency procedures. Therefore, it is appropriate to use regulations, which will be specific to the sector, to provide for the extent and manner in which Part A1 will apply to registered social landlords.

Justification for the procedure
This power enables the Scottish Ministers to amend primary legislation by secondary legislation (a Henry VIII power). In line with the usual practice the regulations are subject to affirmative procedure (subsection (6)).

However, where modifications need to be put in place quickly so as to avoid conflict between Part A1 and the objectives behind other procedures and to protect the interests of stakeholders in the sector, the negative procedure in the Scottish Parliament is made available for a period of 6 months after Royal Assent under

clause 43(2)(a). This reflects the need to respond quickly to the challenges that may be faced by registered social landlords in the current economic climate.

Clause 1 and section A51(4): Meaning of "pre-moratorium debt" and "moratorium debt"

Power conferred on: The Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative Resolution Procedure

Context and Purpose
Section A51 sets out the definitions of "pre-moratorium debt" and "moratorium debt" which are used throughout the new Part A1. In particular, these definitions are key to section A18 which establishes the definition of pre-moratorium debts for which a company has a payment holiday during the moratorium. The definitions also feed into, for example, the mechanism for creditor approval of an extension to the moratorium, the ability (or lack thereof) of a creditor to apply to court to enforce a debt during the moratorium and the treatment of any unpaid debts in a subsequent liquidation or administration. The power in subsection (4) enables the Secretary of State to amend this list by regulations. Subsection (5) provides that regulations are subject to affirmative procedure.

Justification for taking the power
These definitions tie into section A18 which establishes the definition of pre-moratorium debts for which the company has a payment holiday during the moratorium, as well as other features of the moratorium as described above. The aim of these definitions and the provisions they feed into is to ensure that the company can carry on trading while also balancing the interests of key creditors and workers. However, as this is a new procedure in our insolvency framework, we will want to monitor information and feedback from stakeholders on the effectiveness of the moratorium procedure in helping companies in financial distress and the impact on other businesses affected by the moratorium. This will include keeping the distinction between pre-moratorium debts and moratorium debts under review to ensure it remains fit for purpose. The power will allow for amendment, if required, without further primary legislation, allowing changes to be made more rapidly thereby avoiding any potential long-term adverse impact on of businesses.

Justification for the procedure
This power enables the Secretary of State to amend the Act by secondary legislation (a Henry VIII power). As a change in the distinction between pre-moratorium debts and moratorium debts would be a material change in the operation of the moratorium it is right that Parliament should have the opportunity to debate it and so, in line with the usual practice, the Regulations are subject to affirmative procedure.

Clause 1 and section A52(1): definition of "the court" (rules)

Power conferred on: England and Wales: the Lord Chancellor with the concurrence of the Secretary of State and for rules which affect court procedure with the concurrence of the Lord Chief Justice; Scotland: the Secretary of State (see section 411 of the Insolvency Act 1986)

Power exercised by: statutory instrument (rules)

Parliamentary procedure: negative resolution procedure

Context and Purpose
Section A52 contains the interpretation provisions for Part A1. Subsection (1) defines "the court" as such court as is prescribed by Insolvency Rules. This establishes which courts a company may apply to for a moratorium.

Justification for taking the power
Detail such as the applicable court for proceedings in insolvency legislation is customarily set out in insolvency rules.

Justification for the procedure
The Insolvency Rules contain very detailed provisions about the operation of insolvency procedures under the Insolvency Act 1986. The current Rules for England and Wales are around 440 pages long. The Lord Chancellor is required to consult the Insolvency Rules Committee before making rules for England and Wales (section 413 of the Insolvency Act 1986). The Committee includes relevant members of the judiciary and practitioners from the legal, and accountancy professions. They provide their services on a voluntary and unremunerated basis. Secretariat support to the Committee is provided by the Insolvency Service. The Committee will consider amendments to the rules and give their recommendations to the Lord Chancellor. The corresponding rules for Scotland are made by the Secretary of State, following consultation with Scottish stakeholders, and largely mirror the rules for England and Wales. Rules are made by statutory instrument and are subject to the negative procedure (section 411(6)). The negative procedure is sufficient scrutiny when the rules are made given the requirements for prior consultation.

Clause 1 (Moratorium): Part A1: section A52(4) (Definition of qualified person)

Power conferred on: *The Secretary of State*

Power exercised by: *Regulations*

Parliamentary Procedure: Affirmative resolution procedure

Context and purpose
Section A52 in the new Part contains the interpretation provisions. In subsection (1) a "qualified person" is defined as "a person qualified to act as an insolvency practitioner". Subsection (4) enables the Secretary of State to change that definition by regulations. Subsection (5) provides that the regulations are subject to affirmative resolution procedure.

Justification for taking the power

This power contemplates that, in the future, there might be another profession with a sufficiently robust regulatory framework, whose members were suitable to act as qualified persons and who could act as monitors. There are a number of professionals that are involved in supporting business rescue upstream of formal insolvency, for example solicitors, accountants and turnaround specialists. However, particularly in the case of turnaround specialists, they do not have the same degree of both statutory and regulatory oversight as insolvency practitioners, which would provide the necessary safeguards and reassurance for carrying out the role of monitor. By providing for the monitor's qualification requirements to be amended by regulations, this will allow other professions to develop regulatory frameworks in the future that meet market expectations and required standards of scrutiny. In which case the definition could be amended to make members of other professions eligible to act as monitors. This will also increase competition and capacity in the restructuring sector. The use of delegated powers, in these circumstances, will avoid taking up Parliamentary time unnecessarily.

Justification for the procedure
This power enables the Secretary of State to amend the Act by secondary legislation (a Henry VIII power). As a change in definition of qualified person will be a material change in the operation of the moratorium it is right that Parliament should have the opportunity to debate it and so, in line with the usual practice, the regulations are subject to affirmative procedure.

Clause 1 and section A53: Regulations

Power conferred on: the Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Affirmative resolution procedure

Context and Purpose
Section A53 supplements the powers to make regulations in the new Part A1 which is being inserted into the Insolvency Act 1986. Subsection (1) provides that such regulations may contain consequential, supplementary, incidental, transitional or saving provision and may make different provision for different purposes.

Subsection (3) defines "the affirmative resolution procedure" for the purposes of this part of the Bill.

Justification for taking the power
The powers in this section are standard powers in legislation to ensure that the principal provisions made by regulations can fit in properly with other legislation and make provision for different circumstances.

Justification for the procedure
The justification for the procedure depends on the principal power being used and is discussed in relation to each of the relevant powers above.

Clause 4: Moratorium Northern Ireland

The Bill makes equivalent provision for moratoriums in Northern Ireland by making amendments to Northern Ireland insolvency legislation and confers similar delegated powers to make regulations and rules in Northern Ireland. The justifications for the procedure and the power mirror those for the equivalent provisions for Great Britain and therefore have not been repeated.

Clause 4 (Section 13BC(3)) confers the same power to make rules in Northern Ireland about the date on which any statement comprised in the relevant documents in paragraph 1 must be made, as section A6(3) in Great Britain.

Clause 4 (Section 13BC(4)) confers the same power to make regulations in Northern Ireland for the purpose of changing the definition of the relevant documents to accompany an application for a moratorium as section A6(4) in Great Britain.

Clause 4 (Section 13CA(2)) confers the same power to make rules in Northern Ireland about the date on which statements mentioned in paragraph 1 to extend a moratorium without creditor consent must be made, as section A10(2) in Great Britain.

Clause 4 (Section 13CA(4)) confers the same power to make regulations in Northern Ireland for the purpose of changing the list of documents required to file for an extension of the moratorium without creditor consent as section A10(4) in Great Britain.

Clause 4 (Section 13CB(2)) confers the same power to make rules in Northern Ireland regarding the date on which statements mentioned in paragraph 1 to extend a moratorium with creditor consent must be made as section A11(2) in Great Britain.

Clause 4 (Section 13CB(5)) confers the same power to make regulations in Northern Ireland for the purpose of changing the list of documents required to be filed with the High Court for an extension of the moratorium with the consent of creditors as section A11(5) in Great Britain

Clause 4 (Section 13CC(7)) confers the same power to make regulations in Northern Ireland for the purpose of changing the definition of “pre-moratorium creditor” as section A12(6) in Great Britain.

Clause 4 (Section 13CD(3)) confers the same power to make rules in Northern Ireland about the date on which statements mentioned in paragraph 2 to accompany an application to the High Court for an order to extend the moratorium must be made, as section A13(3) in Great Britain.

Clause 4 (Section 13CD(9)) confers the same power to make regulations in Northern Ireland for the purpose of amending the list of documents required to apply to the High Court for an order that the moratorium be extended as section A13(9) in Great Britain.

Clause 4 (Section 13CH(5)) confers the same power to make rules in Northern Ireland about the timing of notices for directors to notify the monitor of a change in the end of the moratorium or to require a notice to be accompanied by other documents, as section A17(5) in Great Britain.

Clause 4 (Section 13D(4)) confers the same power to make rules in Northern Ireland as to what is, or is not, to count as the supply of goods or services supplied during the moratorium as section A18(4) in Great Britain.

Clause 4 (Section 13D(5)) confers the same power to make regulations in Northern Ireland for the purpose of amending the list of pre-moratorium debts which a company will need to pay as section A18(5) in Great Britain.

Clause 4 (Section 13DF(3)) confers the same power to make rules in Northern Ireland about the timing of notices to be given by the director of a company during a moratorium to notify the monitor before any steps are taken to commence insolvency proceedings as section A24(3) in Great Britain.

Clause 4 (Section 13ED(2)) confers the same power to make rules in Northern Ireland to provide for exceptions to the reasons set out in subsection (1) as to when a monitor must file a notice with the High Court to end a moratorium, as section A38(2) in Great Britain.

Clause 4 (Section 13ED(4)) confers the same power to make rules in Northern Ireland about the timing of a notice required to be given to end a notice by filing with the High Court as section A38(4) in Great Britain.

Clause 4 (Section 13ED(5)) confers the same power to make regulations in Northern Ireland for the purpose of changing the circumstances in which the monitor must bring a moratorium to an end as section A38(5) in Great Britain.

Clause 4 (Section 13EE(6)) confers the same power to make rules in Northern Ireland about the date on which a statement to Court by a replacement or additional monitor confirming that they are a qualified person and consents to act must be made, as section A 39(6) in Great Britain.

Clause 4 (Section 13FA(1)) confers the same power to make rules in Northern Ireland to enable an administrator or liquidator to apply to the High Court to challenge excessive fees charged by a monitor, as section A43(1) in Great Britain.

Clause 4 (Section 13H(6)) confers the same power to make rules in Northern Ireland to enable the detail of a regulator’s participation in a decision-making procedure to be set, as section A48(6) in Great Britain.

Clause 4 (Section 13H(14)) confers the same power to make regulations in Northern Ireland for the purpose of changing the definition of regulated company as section A48(14) in Great Britain.

Clause 4 (Section13HA(1)) confers the same power to make regulations in Northern Ireland to modify this Part of the Act as it applies in relations to a company that is subject to a special administration regime, or to make provision in connection with

the interaction between this Part of the Act and any other insolvency procedure available to such a company, as section A 49(1) in Great Britain.

Clause 4 (Section 13HC(4)) confers the same power to make regulations in Northern Ireland for the purpose of changing the definitions of “pre-moratorium debt” and “moratorium debt” as section A51(4) in Great Britain.

Clause 4 (Section 13HD(2)) confers the same power to change the definition of qualified person in paragraph 1 as section A 52(4) in Great Britain.

Clause 4 (Section 13HE) confers the same power to supplement the powers to make regulations in the new Part 1A inserted into the Insolvency (Northern Ireland) Order 1989, as section A53 does in Great Britain.

Clause 12 Protection of supplies of goods and services: section 233C(1)

Power conferred on: The Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative Resolution Procedure

Context and Purpose
Section 233B (which is inserted into the Insolvency Act 1986 by this clause) restricts a supplier from terminating contracts for the supply of goods or services to a company once it is subject to a “relevant insolvency procedure” or because of events occurring beforehand, and also restricts a supplier from making payment of outstanding charges a condition of continued supply. The relevant insolvency procedures are listed in subsection (2) paragraphs (a) to (g). Schedule 4ZZA (which is also inserted into the Insolvency Act 1986 by this clause) contains exclusions from the operation of section 233B.

Section 233C is a new section to be inserted into the Insolvency Act 1986. Subsection (1) contains a power to omit any of paragraphs (a) to (g) of section 233B(2) (relevant insolvency procedures). Section 233C(2) contains a power to remove or amend the exclusions in schedule 4ZZA or to add further exclusions.

Section 233C(5) enables regulations made under section 233C to contain different provision for different purposes, consequential, transitional and supplementary provisions. Subsection (6) provides that regulations made by virtue of subsection (5) may amend the Insolvency Act 1986 or other enactments. This includes, if paragraph 1(1) or (2) of Schedule 4ZZA is omitted, omitting sections 233A or 233 of the Insolvency Act 1986.

The exemptions in paragraph 1(1) or (2) of Schedule 4ZZA disapply section 233B where section 233 or section 233A of the Insolvency Act 1986 already applies. Sections 233 and 233A protect supplies by essential suppliers, being suppliers of utilities, communications and IT goods and services.

The supply of certain goods and services to companies in administration or a voluntary arrangement has been protected under section 233A of the Insolvency Act 1986 since 2015; however, the protection given by the new section 233B is

wider in scope. It applies to all supplies of goods and services (unless exempted) and all insolvency procedures, including those introduced by the Bill (moratorium and arrangements for companies in financial difficulties). Certain financial institutions, services and contracts have been identified as being the type of company, supply or contract that should be exempt from section 233B in the interests of preserving financial stability in the economy. These exemptions are included on the face of the Bill, in schedule 4ZZA of the Insolvency Act 1986.

These sections of the Insolvency Act are permanent measures, the intention of which is to protect all other supplies to any company that may need to trade whilst in an insolvency procedure, but the effectiveness of the provisions will not be apparent until after they come into force. If evidence shows that the operation of the provision is problematic, then the power will allow for the exemptions to be modified or removed.

Justification for taking the power
The power is to address those situations that cannot currently be foreseen by removing insolvency procedures to which section 233B applies and by amending schedule 4ZZA (a Henry VIII power). The power is not to change the operative provisions of section 233B. The use of a delegated power will allow changes to be made quickly, which will be of importance if the provision is found to be damaging to trade between businesses or to financial services or particularly detrimental to certain sectors or types of supplier. Any changes are likely to be specific to those business sectors and types of supplier or contract. Flexibility is required in the way that the provisions can be modified, given the wide application of the provision to various types of business, contracts and types of supply.

The use of delegated powers in these circumstances will avoid taking up Parliamentary time unnecessarily. The exemptions may need to be amended on more than one occasion over time, which could place an unnecessary burden on Parliament and delay were this not to be permitted by delegated powers.

If regulations are made then there may be a need to make consequential amendments, for example to financial services legislation or other legislation to which this section will apply by reference. It may also be necessary to make transitional and supplementary provision to ensure that amendments do or do not apply to contracts in existence and/or insolvency procedures ongoing at the time of the amendment.

Section 233B includes the same protections as in sections 233 and 233A of the Insolvency Act 1986 but on different terms, applying to different types of supplies and in different insolvency procedures. The exemptions in paragraph 1(1) and/or (2) of schedule 4ZZA avoid overlap of section 233B with sections 233 and 233A by excluding supplies already dealt with under the existing sections. If, in the future, it is considered appropriate to have only one set of protections for supplies made by all types of supplier, in all insolvency procedures and on the same terms then it would be possible to achieve this by removing exemptions in paragraph 1(1) and/or (2) of schedule 4ZZA at which time sections 233 and 233A can be removed. Subsection (6) makes provision for this.

There is precedent for the use of such a power. Sections 233 of the Insolvency Act 1986 prohibits suppliers to insolvent companies from making it a condition of supply that outstanding charges are paid. In its original form, the section applied to suppliers of gas; electricity; water; and electronic communications. By section 92 of the Enterprise and Regulatory Reform Act 2013 power (albeit specific) was given to the Secretary of State to amend the list of supplies by adding supplies by a specified description of persons and supplies for the purpose of enabling or facilitating anything done by electronic means. Sections 93 and 94 of the Enterprise and Regulatory Reform Act 2013 included a power to give further protection to essential supplies in the case of certain insolvency processes, by providing that insolvency related terms in contracts would cease to have effect when the insolvency event occurs. The use of this power resulted in the insertion of section 233A into the Insolvency Act 1986 by the Insolvency (Protection of Essential Supplies) Order 2015/989. Section 233 and 233A together include similar protection for supplies to those given by section 233B. The power to make these changes was exercised through an affirmative resolution procedure (see section 95 of the Enterprise and Regulatory Reform Act 2013).

Justification for the procedure:
The power is a Henry VIII power enabling the amendment of certain provisions of the Insolvency Act 1986. In accordance with normal practice for a Henry VIII power and consistent with the precedent in the Enterprise and Regulatory Reform Act 2103 (discussed above), it is subject to affirmative procedure.

Clause 16: Protection of supplies of goods and services (Northern Ireland)

Power conferred on: The Department for the Economy in Northern Ireland

Power exercised by: Regulations

Parliamentary Procedure: Affirmative Resolution Procedure

Context and Purpose
This clause makes provision in relation to Northern Ireland corresponding to that made in relation to Great Britain by clause 12, discussed above.

Sections 197B and 197C will be inserted into the Insolvency (Northern Ireland) Order 1989. Schedule 2ZZA will also be inserted, which provides for exclusions to Section 197B. Section 197C(1) provides a power to omit relevant insolvency procedures from at section 197(2)(a) to (g) and section 197(2) provides for regulations to remove, amend or add exclusions in Schedule 2ZZA. Regulations may make consequential, transitional and supplementary provision.

Clause 18: power to amend insolvency or corporate governance legislation (Great Britain)

Power conferred on: The Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative Resolution Procedure

Context and Purpose
Clause 18 (which must be read with clauses 19 to 25) enables the Secretary of State to make temporary amendments to modify both 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 sets out a purpose test which must be satisfied for regulations to be made under clause 18. It provides that the power in relation to procedures may only be used to reduce or assist in reducing the number of companies entering insolvency or restructuring procedures, to mitigate the effects on those procedures of any increased uptake or to mitigate difficulties created by the Covid-19 pandemic or public health measures responding to it in relation to the effect of the insolvency regime on the responsibilities of directors of those companies whose businesses are struggling due to the impact of Covid-19. The legislation to which amendments may be made includes the corporate provisions of the Insolvency Act 1986, Part 26A of the Companies Act 2006 (which relates to company restructuring and is inserted by this Act), the Company Directors Disqualification Act 1986, this Bill (once it becomes an Act), and any subordinate legislation made under any of those Acts.

Clause 20 places restrictions on any regulations made under clause 18, requiring the Secretary of State to consider the impact of the regulations on any person likely to be affected by them, that the Secretary of State must be satisfied that the provision is proportionate, that the purpose cannot be achieved effectively without legislation and that the power should not be used where the proposed modification could not be made using existing provisions whilst still achieving the objective of legislating sufficiently quickly. Furthermore, clause 21 places a time limit of six months in respect of the effect of any regulations made under clause 18. Any regulations made under clause 18 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.

Clause 22 provides that the Secretary of State may not make regulations under clause 16 after 30 April 2021. The Secretary of State may by regulations substitute a later date but the period for exercising the power may not be extended beyond a year. However, like the similar power to extend the power making provisions of the Coronavirus Act 2020, an extension of up to a year may be made more than once.

Justification for taking these powers
The Covid-19 emergency is unprecedented and calls for exceptional measures. The Government needs to be able to react with speed to changing developments in order to be able to deal with the economic consequences of the crisis. These powers will enable temporary legislative changes to be made quickly to the insolvency and business rescue regime in order that it can cope with significant and potentially unexpected future challenges caused by the impact of the Covid-19 emergency. There are no specific plans to use the power to make temporary changes at present, but it is likely that its use will be considered where representations have been made by industry or where discussions with key stakeholders have identified areas where urgent legislation could help save otherwise viable businesses or mitigate the impact of the pandemic otherwise.

As the powers are wide ranging, significant restrictions have been applied. First the power must be exercised for one of the purposes in clause 19 . These refer to

reducing or assisting in reducing the impact of the Covid-19 pandemic on corporate insolvencies, mitigating or dealing with the effect on corporate insolvency procedures of an increase or potential increase in their use, and mitigating various difficulties or constraints created by the coronavirus outbreak. Measures in relation to duties and liabilities of persons with corporate responsibility must be to ensure those duties and liabilities take account of the coronavirus outbreak. The measures must be proportionate and take account of the impact on persons affected, such as creditors and employees and can only be taken where the desired outcome cannot practicably be achieved by any non-legislative means. Additionally, the powers and their use will be time limited and any temporary changes must be removed as soon as the Covid-19 pandemic is no longer impacting insolvencies and/or insolvency procedures. Regulations made under clause 18 may not create new criminal offences or civil penalties (but may modify existing ones) and such regulations cannot impose or increase a fee (clause 22(3)).

Evidence from previous financial crises (such as in 2008) suggests that any resultant increase in insolvency case numbers occurs quickly, but the increased level is maintained for a much longer period. The power to extend the expiry date of the provision is therefore needed, because the impact of the pandemic on insolvency case levels, and hence the need for the use of the power to make temporary provisions, may not be felt until shortly before the expiry date approaches. In this way the power acts as a contingency provision, there being no modern equivalent model of the impact of a pandemic on UK business and insolvency over time. The extension will be by the affirmative resolution process, so will be subject to Parliamentary scrutiny, and as such will require justification.

Justification for this procedure
Clause 24 sets out the procedures for making regulations under clauses 18, 21, 22 and 23. Regulations made under clause 18 are subject to the made affirmative procedure. This provides an appropriate level of scrutiny given the breadth of this power (including the fact it can be used to amend primary legislation) by requiring parliamentary approval so that regulations may remain in force, but the procedure is a made affirmative procedure to ensure that regulations may be brought into force quickly to respond to changing circumstances. Regulations under clause 21 revoking or amending regulations made under clause 18 because the Secretary of State thinks the regulations made are no longer expedient or proportionate are subject to negative resolution procedure. The negative procedure is an appropriate procedure in these cases as the powers in these cases will be used to restore the status quo or scale back changes following a review. Regulations made under clause 22 extending the period in which the powers in clause 18 can be exercised are subject to affirmative procedure: this ensures parliament’s approval is secured before the expiry date set out in the Bill can be extended. Regulations under clause 22 making consequential etc provision are subject to negative procedure unless contained in regulations made under clause 18 that are laid before Parliament under clause 24(2). A negative procedure will be appropriate where only minor consequential changes are made.

Clause 26: power to amend insolvency or corporate governance legislation (Northern Ireland)

Power conferred on: The Department of the Economy or the Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative Resolution Procedure

Context and Purpose
Clause 26 confers a corresponding power in relation to Northern Ireland as that conferred in relation to Great Britain by clause 18. The power can be exercised either by the Secretary of State or by the Department for the Economy in Northern Ireland and there is provision for the regulations to be approved either by the Northern Ireland Assembly or the UK Parliament, depending on whether regulations are made by the Secretary of State or the Northern Ireland Department.

Justification for taking these powers
The Covid-19 emergency is unprecedented and calls for exceptional measures. The Government needs to be able to react with speed to changing developments in order to be able to deal with the economic consequences of the crisis. These powers will enable temporary legislative changes to be made quickly to the insolvency and business rescue regime in order that it can cope with significant and potentially unexpected future challenges caused by the impact of the Covid-19 emergency. There are no specific plans to use the power to make temporary changes at present, but it is likely that its use will be considered where representations have been made by industry or where discussions with key stakeholders have identified areas where urgent legislation could help save otherwise viable businesses or mitigate the impact of the pandemic otherwise.

As the powers are wide ranging, significant restrictions have been applied. First the power must be exercised for one of the purposes in clause 27. These refer to reducing or assisting in reducing the impact of the Covid-19 pandemic on corporate insolvencies, mitigating or dealing with the effect on corporate insolvency procedures of an increase or potential increase in their use, and mitigating various difficulties or constraints created by the coronavirus outbreak. Measures in relation to duties and liabilities of persons with corporate responsibility must be to ensure those duties and liabilities take account of the coronavirus outbreak. The measures must be proportionate and take account of the impact on persons affected, such as creditors and employees and can only be taken where the desired outcome cannot practicably be achieved by any non-legislative means. Additionally, the powers and their use will be time limited and any temporary changes must be removed as soon as the Covid-19 pandemic is no longer impacting insolvencies and/or insolvency procedures. Regulations made under clause 26 may not create new criminal offences or civil penalties (but may modify existing ones) and such regulations cannot impose or increase a fee (clause 28(3)).

Evidence from previous financial crises (such as in 2008) suggests that any resultant increase in insolvency case numbers occurs quickly, but the increased level is maintained for a much longer period. The power to extend the expiry date of the provision is therefore needed, because the impact of the pandemic on insolvency case levels, and hence the need for the use of the power to make temporary provisions, may not be felt until shortly before the expiry date approaches. In this way the power acts as a contingency provision, there being no modern equivalent model of the impact of a pandemic on UK business and

insolvency over time. The extension will be by the affirmative resolution process, so will be subject to Parliamentary scrutiny, and as such will require justification.

Justification for this procedure
Clauses 32 and 33 set out the procedures for making regulations under clauses 26, 29, 30 and 31. Clause 32 applies when regulations are made by the Department and clause 33 applies when regualtions are made by the Secretary of State. Regulations made under clause 26 are subject to the made affirmative procedure. This provides an appropriate level of scrutiny given the breadth of this power (including the fact it can be used to amend primary legislation) by requiring parliamentary approval so that regulations may remain in force, but the procedure is a made affirmative procedure to ensure that regulations may be brought into force quickly to respond to changing circumstances. Regulations under clause 29 revoking or amending regulations made under clause 26 because the Department or the Secretary of State thinks the regulations made are no longer expedient or proportionate are subject to negative resolution procedure. The negative procedure is an appropriate procedure in these cases as the powers in these cases will be used to restore the status quo or scale back changes following a review. Regulations made under clause 30 extending the period in which the powers in clause 26 can be exercised are subject to affirmative procedure: this ensures parliament's approval is secured before the expiry date set out in the Bill can be extended. Regulations under clause 30 making consequential etc provision are subject to negative procedure unless contained in regulations made under clause 26 that are laid before Parliament under clause 32(2) (or clause 33(2) if made by the Secretary of State). A negative procedure will be appropriate where only minor consequential changes are made.

Clause 37: Temporary power to extend periods for providing information to the registrar

Power conferred on: the Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative resolution procedure

Context and purpose
Clause 37 enables the Secretary of State to make regulations extending the period within which information must be provided by companies and other entities under various provisions of the Companies Act 2006 ("the 2006 Act") and other legislation listed in clause 38 ("the statutory filing requirements"). For example, the power may be used to extend the period within which notice must be given of a change of directors under section 167 of the 2006 Act. The power is intended to be exercised with a view to giving companies and other entities further time to comply with statutory filing requirements given the pressures companies are facing as a result of the pandemic.

The extended periods must not exceed certain limits, specifically 42 days (if the normal period which is being extended is 21 days or fewer), or 12 months (if the normal period is 3, 6, or 9 months). Regulations under this power may be used to make provision that applies generally or for specified cases only, provision that

applies subject to exceptions, consequential, incidental and supplementary provision (including provision modifying provision made by or under an enactment) and transitional provision and savings.

Regulations are subject to the negative resolution procedure and the power to make Regulations expires at the end of the current financial year (5 April 2021).

Justification for taking this power
The power provides a mechanism for the Secretary of State to extend the periods for each of the statutory filing requirements to relieve administrative burdens on businesses who are under pressure as a consequence of the pandemic. It is not possible to predict with certainty the path which the pandemic will take and the extent to which it will continue to impact on businesses. If the extension periods were prescribed on the face of the Bill the Government would lose the ability to proactively reduce or increase the periods in response to the changing needs of businesses. The power is limited to extensions that can be given on the statutory periods. The power will also expire at the end of the current financial year.

Justification for the procedure
While this is a Henry VIII power, the government considers that departure from the usual affirmative procedure is justified in the case of these measures. The negative resolution procedure will enable the government to act quickly to give limited extensions to periods at a time when it may not be possible to obtain approval for an affirmative instrument. It will important to be able to act quickly given the immediate pressures that businesses are facing as a result of the pandemic.

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

Power conferred on: the Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative resolution procedure (if the power is exercised to shorten the period)/ Affirmative resolution procedure/ made affirmative procedure (if the power is exercised to extend the period)

Context and purpose
The powers in clause 30 enable the Secretary of State to make regulations in respect of the periods set out in the Bill during which temporary provisions operate. These are—

a) clause 10 (suspension of wrongful trading: Great Britain);
b) clause 13 (temporary exclusion for small suppliers);
c) paragraph 1 of Schedule 4 (GB moratoriums: temporary provisions in light of Covid-19);
d) paragraph 1(3) or paragraph 20(1) of Schedule 10 (which determined the relevant periods for the prohibition of petitions on basis of statutory demands and restriction on petitions where company affected by Covid-19).

The intention is that the periods in which these temporary provisions apply should be no longer than is necessary in the light of the effects of the Covid-19 pandemic. Therefore, there are powers to extend or to end the periods early if that is justified.

Clause 10: suspension of wrongful trading
Under sections 214 and 246ZB of the Insolvency Act 1986 a director can be held personally liable for a company's wrongful trading. Clause 10(1) provides that in considering a director's liability the court must assume that the director is not responsible for a worsening financial situation between 1 March 2020 and 30 June 2020. The purpose is to remove a disincentive for directors to allow a company to continue to trade during the Covid-19 crisis, namely the threat of being held personally liable for losses. If the period of uncertainty continues past that date, it will be possible to extend the period by up to six months and possibly on more than one occasion, as necessary. Conversely, if the uncertainty is lifted, directors should be subject to normal risks of trading and the exemption ended.

Clause 13: Temporary exclusion for small suppliers
Clause 12 inserts a new section 233B into the Insolvency Act 1986. This restricts a supplier terminating a contract for the supply of goods or services to a company subject to specific insolvency procedures. Clause 13 temporarily excludes suppliers from the effect section 233B where the suppliers are small businesses (being businesses that satisfy the tests in subsections (4) to (10) of that clause).

Paragraph 1 of Schedule 4 (GB moratoriums: temporary provisions in light of Covid-19).
Schedule 4 Part 2 contains temporary modifications to the primary legislation contained in Part A1 (Chapter 1 to 8) of this Bill, these modifications are intended to ease access to a moratorium for companies suffering as a result of the crisis caused by Covid-19. Schedule 4 Part 3 and 4 makes temporary provision to enable the moratorium to be made operational pending the making of procedural rules concerning the moratorium. The general power contained in section 39(1) enables the Secretary of State to change the "relevant period" (which is defined in paragraph 1 of Part 1 of Schedule 4) by regulations. The relevant period expires on 30 June 2020 or one calendar month days after Royal assent, whichever is the later.

Paragraphs 1(3) and 20(1) of Schedule 10 (prohibition of petitions on basis of statutory demands and restriction on petitions where company affected by Covid-19)
This Schedule temporarily prohibits winding up petitions being presented under section 124 of the Insolvency Act 1986 on or after 27 April on the grounds set out in section 123(1)(a) of the Act (statutory demand) where the demand was made during the relevant period. IT also temporarily prohibits the presentation of a winding up petition on the grounds stated in section 123(1) (a) to (d) of the Insolvency Act 1986 unless the petitioner has reasonable grounds for believing that Covid-19 has not had a financial effect on the company or that the grounds for the petition would have been satisfied even if Covid-19 had not had an effect on the company. In both cases the relevant period begins with 1 March 2020 and ends with 30 June 2020 or one month after the coming into force of the Act, whichever is the later.

Justification for taking the power
This power enables the period in which temporary alterations to the law in relation to insolvency are to apply. If it is possible to end the period early then a power will

allow that to happen (and the regulations will be subject to negative procedure). Equally if the situation requires the extension of the adaptations to insolvency law designed to help companies survive then a power will be necessary (but the exercise of this power will be subject to the affirmative procedure or the made affirmative procedure).

Justification for the procedure
We consider that where a temporary state of the law is to be brought to an end early the negative resolution procedure, which will enable quick action to be taken, is appropriate. On the other hand, extending the period should (in line with the usual practice for Henry the VIII powers) be subject to affirmative resolution procedure. However, the made affirmative procedure may be required, particularly where it is necessary to avoid a gap in provision.

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

Power conferred on: Department for the Economy in Northern Ireland

Power exercisable by: Regulations

Parliamentary procedure: Negative resolution procedure (if the power is exercised to shorten the period)/ Affirmative resolution procedure/ made affirmative procedure (if the power is exercised to extend the period)

Context and purpose
The powers for Northern Ireland in clause 40 to shorten or extend the period in which temporary changes to insolvency law mirror those for the rest of the U.K. in clause 39.

Justification for taking the power
This power enables the period in which temporary alterations to the law in relation to insolvency are to apply. If it is possible to end the period early, then a power will allow that to happen (and the regulations will be subject to negative procedure). Equally if the situation requires the extension of the adaptations to insolvency law designed to help companies survive then a power will be necessary (but the exercise of this power will be subject to the affirmative procedure or the made affirmative procedure).

Justification for the procedure
We consider that where a temporary state of the law is to be brought to an end early the negative resolution procedure, which will enable quick action to be taken, is appropriate. On the other hand, extending the period should (in line with the usual practice for Henry the VIII powers) be subject to affirmative resolution procedure. However, the made affirmative procedure may be required, particularly where it is necessary to avoid a gap in provision.

Clause 41: Modified procedure for regulations of the Secretary of State

Clause 41 provides that certain types of power to make regulations, which would ordinarily be subject to the affirmative procedure, may be subject to the negative

procedure for a temporary period of six months beginning with the day on which this clause comes into force (which is the day after Royal Assent).
The types of power to which clause 41 applies are:

- the powers under the new section A49(1) and (4) of the Insolvency Act 1986 (inserted by Clause 1) to modify Part A1 (moratoriums) in relation to certain companies;
- the power under paragraph 20 of Schedule ZA1 to the Insolvency Act 1986 to exclude private registered providers of social housing from being eligible companies to which Part A1 (moratorium) applies;
- the powers under sections 14 and 16 of the Limited Liability Partnerships Act 2000 to apply (with modifications) insolvency legislation to LLPs and to make consequential amendments but only to the extent that provision is being made in connection with the application of Part A1 (moratorium) to LLPs that are registered providers of social housing;
- the power under section 245 of the Charities Act 2011 to make provision about the insolvency etc.of charitable incorporated organisations but only to the extent that the provision applies or is made in connection with "the new insolvency measures" (which is defined as those relating to the moratorium or termination clauses in supply contracts)

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.

This clause does not itself create a delegated power but temporarily changes the procedure for other powers in the Bill and powers in other legislation to apply insolvency legislation to LLPs and CIOs.

Justification:
The provisions in this Bill on moratoriums create an entirely new insolvency procedure which is designed to give companies in financial difficulties breathing space to explore their options for rescue so that they can have a maximum chance of survival. It is necessary to ensure that these provisions (and, in relation to CIOs, the provisions on termination clauses in supply contracts) can appropriately be extended to other entities or disapplied if they cause conflict with existing insolvency procedures. Given the current impact of coronavirus, it will be necessary to enact the necessary secondary legislation quickly to ensure they are protected. In some cases it will be necessary to have this legislation in force very soon after the Bill receives Royal Assent to ensure bodies receive the same level of protection and from the same time. Retaining affirmative procedure would be a much lengthier process, so the clause provides temporarily for negative procedure instead, which will enable the necessary regulations to be made quickly and help to avoid an adverse impact on other entities. In relation to CIOs temporarily removing the consultation duty ensures the necessary regulations can be made without delay.

Clause 42: Modified procedure for regulations of the Welsh Ministers
Clause 42 provides that certain types of power to make regulations (exercisable by the Welsh Ministers), which would ordinarily be subject to the affirmative procedure in the Senedd Cymru, may be subject to the negative procedure for a temporary period of six months beginning with the day on which this clause comes into force (which is the day after Royal Assent).

The types of power to which clause 42 applies are:

- the power under the new section A49(2) of the Insolvency Act 1986 (inserted by Clause 1) to modify Part A1 (moratoriums) in relation to certain companies;
- the power under paragraph 21 of Schedule ZA1 to the Insolvency Act 1986 to exclude private registered providers of social housing from being eligible companies to which Part A1 (moratorium) applies;
- the power under section 247A of the Charities Act 2011 (which is inserted by paragraph 45 of Schedule 3 to this Bill) to modify Part A1 (moratoriums) for charitable incorporated organisations that are registered social landlords.

For the same temporary period, the clause also disapplies the consultation duty contained in section 247A(6) of the Charities Act 2011 in relation to any such regulations concerning CIOs.

This clause does not itself create a delegated power but temporarily changes the procedure for other powers in the Bill and powers in other legislation to apply insolvency legislation to CIOs.

Justification:
The provisions in this Bill on moratoriums create an entirely new insolvency procedure which is designed to give companies in financial difficulties breathing space to explore their options for rescue so that they can have a maximum chance of survival. It is necessary to ensure that these provisions can appropriately be extended to other entities Given the current impact of coronavirus, it will be necessary to enact the necessary secondary legislation quickly to ensure they are protected. In some cases, it will be necessary to have this legislation in force very soon after the Bill receives Royal Assent to bodies receive the same level of protection and from the same time. Retaining affirmative procedure would be a much lengthier process, so the clause provides temporarily for negative procedure instead, which will enable the necessary regulations to be made quickly and help to avoid an adverse impact on other entities. In relation to CIOs temporarily removing the consultation duty ensures the necessary regulations can be made without delay.

Clause 43: Modified procedure for regulations of the Scottish Ministers
Clause 43 provides that certain types of power exercisable by the Scottish Ministers to make regulations, which would ordinarily be subject to the affirmative procedure in the Scottish Parliament, may be subject to the negative procedure for a temporary period of six months beginning with the day on which this clause comes into force (which is the day after Royal Assent).
The types of power to which clause 43 applies are:

- the power under the new section A49(3) of the Insolvency Act 1986 (inserted by Clause 1) to modify Part A1 (moratoriums) in relation to certain companies;
- the power under paragraph 22 of Schedule ZA1 to the Insolvency Act 1986 to exclude private registered providers of social housing from being eligible companies to which Part A1 (moratorium) applies;

This clause does not itself create a delegated power but temporarily changes the procedure for other powers in the Bill.

Justification:
The provisions in this Bill on moratoriums create an entirely new insolvency procedure which is designed to give companies in financial difficulties breathing space to explore their options for rescue so that they can have a maximum chance of survival. It is necessary to ensure that these provisions can appropriately be extended to other entities Given the current impact of coronavirus, it will be necessary to enact the necessary secondary legislation quickly to ensure they are protected. In some cases, it will be necessary to have this legislation in force very soon after the Bill receives Royal Assent to ensure bodies receive the same level of protection and from the same time. Retaining affirmative procedure would be a much lengthier process, so the clause provides temporarily for negative procedure instead, which will enable the necessary regulations to be made quickly and help to avoid an adverse impact on other entities.

Clause 44(1): Power to make consequential provision

Power conferred on: The Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative resolution procedure if the regulations amend or repeal primary legislation otherwise negative resolution procedure

Context and Purpose
This clause gives the power to amend, repeal, revoke or modify any existing legislation made before the Bill becomes an Act or in the same session (including the Act itself).

Justification for taking the power
This power is needed because of the complexity of company law and insolvency law with their multiple regimes for companies (different procedures with variations for regulated companies) and different forms of businesses such as partnerships and limited partnerships. The concern is that in legislating at speed for such complex areas of the law there may be consequential changes that have been missed that are needed to make the legislation work properly in the interests of businesses, creditors and regulators. That complexity is compounded by legislating for both a permanent change and for short lived temporary provisions at the same time. We may need to fix these issues by amending the Bill itself. These could include missed cross references and oversight of another legislative provision that needs amending where there is no other power.

Justification for the procedure
This power enables the Secretary of State to make consequential amendments to primary and secondary legislation by secondary legislation. In respect of primary legislation, it is therefore a Henry VIII power. In line with the usual practice the

Regulations are subject to affirmative procedure if they contain any amendments to primary legislation. If regulations only contain amendments to secondary legislation, then they are subject to negative resolution procedure.

Clause 46: Commencement

Power conferred on: The Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: None

Context and purpose
Clause 46 enables the Secretary of State to make transitional and savings provisions in connection with the coming into force of any provisions of the Bill.

Schedule 1: Moratoriums in Great Britain: eligible companies: Schedule ZA1: paragraph 20: eligible companies)

Power conferred on: The Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative resolution procedure

Context and purpose
Schedule 1 to the Bill inserts Schedule ZA1 into the Insolvency Act 1986. This Schedule contains the provisions for determining whether a company is eligible to obtain a moratorium under the new Part A1 of the Insolvency Act. Paragraph 20 of the Schedule enables the Secretary of State by Regulations to alter the circumstances in which a company is eligible for a moratorium.

Justification for taking the power
As this procedure is new in our insolvency framework, we will want to monitor how effective the moratorium procedure is at helping companies in financial trouble and the impact on other businesses affected by the moratorium. From time to time, we may want to review the criteria for a company to be eligible to enter a moratorium in order to ensure that they remain fit for purpose.

Under Schedule ZA1, a company could be excluded from entering a moratorium in two different ways. Firstly, a company could be excluded because it is already in a moratorium or subject to another insolvency procedure, or it has been in the past 12 months. Secondly, a company may be excluded because of the type of company it is, or the type of contracts it has entered into. The power could therefore be used to change the circumstances in which being or having been in a moratorium or other insolvency procedure will affect a company's ability to enter a moratorium. The power could also be used to amend the type of company that is excluded from entering a moratorium or amend the type of contract that would render a company ineligible.

Before using the power we would consult stakeholders on what changes might be needed. The power will allow for amendment, if required, without further primary legislation, and enable changes to be made more rapidly, therefore avoiding any potential long-term adverse impact on businesses. We would provide information to businesses and industry professionals to make them aware of the changes.

Justification for the procedure
This power enables the Secretary of State to amend the Insolvency Act 1986 by secondary legislation (a Henry VIII power). As a change to the description of what it means for a company to be "eligible" to enter a moratorium would be a material change in the availability of the moratorium, it is right that Parliament should have the opportunity to debate it and so, in line with the usual practice, the Regulations are subject to affirmative procedure.

However, where regulations are made for the purpose of removing a company from eligibility and that company is of a type that may be subject to a special administration regime, the negative resolution procedure is used during a period of 6 months after Royal Assent. This is because such companies have their own special insolvency procedures, available to be used by the Secretary of State or regulators for particular purposes (for example the continuation of supply of energy to customers) and for particular objectives with which the moratorium may conflict. These include the appointment of a special administrator, or a manager, or, in the case of a registered landlord of social housing, a moratorium on the disposal of land. Therefore, unless the Secretary of State considers it appropriate for other powers to be used to modify the application of Part A1 to such companies, their eligibility for the moratorium may need to be removed without delay. The negative resolution procedure is provided for at clause 41(2)(b).

Schedule 1: GB moratoriums: eligible Companies: Schedule ZA1: paragraph 21: eligible companies)

Power conferred on: Welsh Ministers

Power exercised by: Regulations

Parliamentary Procedure: Affirmative resolution procedure

Context and purpose
Schedule 1 to the Bill inserts Schedule ZA1 into the Insolvency Act 1986. This Schedule contains provisions for determining whether a company is eligible to obtain a moratorium under the new Part A1 of the Insolvency Act. Paragraph 21 of the Schedule enables the Welsh Ministers, by regulations, to exclude registered social landlords from eligibility for the moratorium or, once eligibility is removed for registered social landlords, provide for eligibility again, for example in circumstances where provision has been made under other powers for the interaction of the Part A1 moratorium with the Housing Act 1996 provisions, in a way that does not conflict or damage the objectives of the housing legislation.

Justification for taking the power
Under the Housing Act 1996, there are special requirements which relate to registered social landlords. Further, there is a moratorium on the disposal of land and an ability to appoint a manager over a landlord's affairs. The new moratorium

and the appointment of a monitor under Part A1 will interact and potentially conflict with the housing moratorium and the appointment of a manager. There are notice provisions in the Housing Act 1996 to ensure that Welsh Ministers become aware that a registered social landlord is subject to an insolvency procedure but no provision for this will have been made, in the housing legislation, for the new Part A1 moratorium. Welsh Ministers will need to be able to remove social landlords, registered under the Housing Act 1996, from eligibility for a Part A1 moratorium, if it is considered that the existing procedures relating to social landlords provide sufficient protection. If other powers to make regulations (under the new section A49(2) of the Insolvency Act 1986, inserted by clause 1), that alter the effect of the Part A1 moratorium as it applies to registered social landlords that are companies are used instead, in the event that eligibility has been removed, it may be reinstated under this power.

Justification for the procedure
This power enables the Welsh Ministers to amend the Insolvency Act 1986 by secondary legislation (a Henry VIII power). In line with usual practice, regulations will be subject to the affirmative resolution procedure.

However, it may be appropriate to remove eligibility for registered social landlords that are companies quickly after Royal Assent of the Bill (unless other powers to make regulations that would alter the effect of the Part A1 moratorium are used instead) to avoid a registered social landlords being able to obtain a moratorium in circumstances where the Housing Act 1996 already makes provision for steps to be taken by Welsh Ministers to protect social housing and the interests of social landlords in those circumstances. The negative resolution procedure is therefore available for 6 months after Royal Assent, under clause 42(2)(b), for the removal of registered social landlords' eligibility for the Part A1 moratorium.

Schedule 1: GB moratoriums: eligible Companies: Schedule ZA1: paragraph 22: eligible companies)

Power conferred on: Scottish Ministers

Power exercised by: Regulations

Parliamentary Procedure: Affirmative procedure (Scottish Parliament)

Context and purpose
Schedule 1 to the Bill inserts Schedule ZA1 into the Insolvency Act 1986. This Schedule contains provisions for determining whether a company is eligible to obtain a moratorium under the new Part A1 of the Insolvency Act. Paragraph 22 of the Schedule enables the Scottish Ministers, by regulations, to exclude registered social landlords from eligibility for the moratorium or, once eligibility is removed for registered social landlords, provide for eligibility again, for example in circumstances where provision has been made under other powers for the interaction of the Part A1 moratorium with the Housing (Scotland) Act 2010 provisions, in a way that does not conflict or damage the objectives of the housing legislation. The power is, therefore, relevant to a specific sector and not relevant to all businesses that the moratorium is available for.

Justification for taking the power

Under the Housing (Scotland) Act 2010, there are special requirements which relate to registered social landlords. Further, there is a moratorium on the disposal of land and an ability to appoint a manager over a landlord's affairs. The new moratorium and the appointment of a monitor under Part A1 will interact and potentially conflict with the housing moratorium and the appointment of a manager. There are notice provisions in the Housing (Scotland) Act 2010 to ensure that the regulator becomes aware that a registered social landlord is subject to an insolvency procedure but no provision for this will have been made, in the housing legislation, for the new Part A1 moratorium. Scottish Ministers will need to be able to remove social landlords, registered under the Housing (Scotland) Act 2010, from eligibility for a Part A1 moratorium, if it is considered that the existing procedures relating to social landlords provide sufficient protection. If other powers to make regulations (the new section A49(3) of the Insolvency Act 1986, inserted by clause 1), that alter the effect of the Part A1 moratorium as it applies to registered social landlords that are companies are used instead, in the event that eligibility has been removed, it may be reinstated under this power.

Justification for the procedure
This power enables the Scottish Ministers to amend the Insolvency Act 1986 by secondary legislation (a Henry VIII power). In line with usual practice, regulations will be subject to the affirmative resolution procedure.

However, it may be appropriate to remove eligibility for registered social landlords that are companies quickly after Royal Assent of the Bill (unless other powers to make regulations that would alter the effect of the Part A1 moratorium are used instead) to avoid a registered social landlord being able to obtain a moratorium in circumstances where the Housing (Scotland) Act 2010 already makes provision for steps to be taken which would protect social housing and registered social housing in those circumstances. The negative procedure in Scottish Parliament is therefore available for 6 months after Royal Assent under clause 43(2)(b) for the removal of registered social landlords' eligibility for the Part A1 moratorium.

Schedule 2: Moratoriums in Great Britain: contracts involving financial services: Schedule ZA2: paragraph 13: power to amend Schedule)

Power conferred on: The Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative resolution procedure

Context and purpose
Schedule 2 to the Bill inserts Schedule ZA2 into the Insolvency Act 1986. This Schedule contains the definition of "contract or other instrument involving financial services" which is included in section A18 as one of the categories of pre-moratorium debt which will not fall within the definition of pre-moratorium debts for which the company has a payment holiday during a moratorium. Paragraph 13 of the Schedule enables the Secretary of State by Regulations to change the definition of "contract or other instrument involving financial services".

Justification for taking the power
The Bill lists all types of debt that should continue to be paid to enable the company to carry on trading while also balancing the interests of key creditors and workers. The list includes "contract or other instrument involving financial services" which is defined in Schedule ZA2. However, as this is a new procedure in our insolvency framework, we will want to monitor information and feedback from stakeholders and industry on how effective the moratorium is at helping companies in financial trouble and the impact on other businesses affected by the moratorium. This will include keeping the definition of "contract or other instrument involving financial services" under review to ensure it remains fit for purpose. The power will allow for amendment, if required, without further primary legislation, enabling the change to be made more rapidly thereby avoiding any potential long-term impact on businesses.

Justification for the procedure
This power enables the Secretary of State to amend the Act by secondary legislation (a Henry VIII power). As a change in the types of debts that need to be paid by the company during a moratorium would be a material change in the operation of the moratorium, it is right that Parliament should have the opportunity to debate it and so, in line with the usual practice, the Regulations are subject to affirmative procedure.

Schedule 3: Moratoriums in Great Britain: further amendments: paragraph 13: section 174A(2)(a) and (3) (rules)

Power conferred on: England and Wales: the Lord Chancellor with the concurrence of the Secretary of State and for rules which affect court procedure with the Lord Chief Justice; and Scotland: the Secretary of State (see section 411 of the Insolvency Act 1986)

Power exercised by: statutory instrument (rules)

Parliamentary procedure: negative resolution procedure

Context and purpose
Paragraph 13 of Schedule 3 to the Bill inserts a new section 174A into the Insolvency Act 1986. This section applies where proceedings for winding up of a company are begun before or within 12 weeks of the end of a moratorium and sets the order of priority for the payment of prescribed fees or expenses of the official receiver and moratorium debts and pre-moratorium debts for which the company did not have a payment holiday. The inserted section 174A provides for "prescribed fees or expenses of the official receiver" to have priority. "Prescribed" in the Insolvency Act means *prescribed by the rules.* (see section 251). The new section also provides (subsection (3)) that the rules may make provision as to the order in which moratorium and pre-moratorium debts which did not have a payment holiday are to rank between themselves.

Justification for taking the powers
These are technical provisions which do not need to be on the face of the Bill, consistent with existing Insolvency Rules relating to the order of priority of payments of expenses in liquidation. Making rules is permitted by the standard power under

section 411 of the Insolvency Act 1986 to make rules for the operation of that Act. The provisions made by rules are very detailed and are subject to periodic change. The level of detail would not be suitable for primary legislation.

Justification for the procedure
The Insolvency Rules contain very detailed provisions about the operation of insolvency procedures under the Insolvency Act 1986. The current Rules for England and Wales are around 440 pages long. The Lord Chancellor is required to consult the Insolvency Rules Committee before making rules for England and Wales (section 413 of the Insolvency Act 1986). The Committee includes relevant members of the judiciary and practitioners from the legal, and accountancy professions. They provide their services on a voluntary and unremunerated basis. Secretariat support to the Committee is provided by the Insolvency Service. The Committee will consider amendments to the rules and give their recommendations to the Lord Chancellor. The corresponding rules for Scotland are made by the Secretary of State, following consultation with Scottish stakeholders, and largely mirror the rules for England and Wales. Rules are made by statutory instrument and are subject to the negative procedure (section 411(6)). The negative procedure is sufficient scrutiny when the rules are made given the requirements for prior consultation.

Schedule 3: Moratoriums in Great Britain: further amendments: paragraph 18: amendment to existing section 246B (rules)

Power conferred on: England and Wales: the Lord Chancellor with the concurrence of the Secretary of State and for rules which affect court procedure with the concurrence of the Lord Chief Justice; and Scotland: the Secretary of State (see section 411 of the Insolvency Act 1986)

Power exercised by: statutory instrument (rules)

Parliamentary procedure: negative resolution procedure

Context and purpose
Paragraph 18 amends section 246B of the Insolvency Act 1986 so that it also applies to the monitor in relation to a moratorium. Section 246B provides that a requirement under the Insolvency Act 1986 or Insolvency Rules to give a notice, document or other information can be satisfied by making that notice, document or information available on a website. This can be done in accordance with the Insolvency Rules and in such circumstances as may be prescribed. “Prescribed” in the Insolvency Act means prescribed by the rules. (see section 251). Section 246B already applies to notices etc given by office-holders in other insolvency proceedings under the Insolvency Act 1986 such as administration, liquidation and voluntary arrangements.

Justification for power
The details around how and in what circumstances notices, documents and other information can be made available on a website, rather than being sent, are technical provisions which do not need to be on the face of the Bill. This approach is

consistent with the application of this section 246B of the Insolvency Act 1986 in relation to other insolvency procedures such as administration and liquidation. Making rules is permitted by the standard power under section 411 of the Insolvency Act 1986 to make rules for the operation of that Act. The provisions made by rules are very detailed and are subject to periodic change. The level of detail would not be suitable for primary legislation.

Justification for procedure
The Insolvency Rules contain very detailed provisions about the operation of insolvency procedures under the Insolvency Act 1986. The current Rules for England and Wales are around 440 pages long. The Lord Chancellor is required to consult the Insolvency Rules Committee before making rules for England and Wales (section 413 of the Insolvency Act 1986). The Committee includes relevant members of the judiciary and professional practitioners. The corresponding rules for Scotland are made by the Secretary of State, following consultation with Scottish stakeholders, and largely mirror the rules for England and Wales. Rules are made by statutory instrument and are subject to the negative procedure (section 411(6)). The negative procedure is sufficient scrutiny when the rules are made given the requirements for prior consultation.

Schedule 3: Moratoriums in Great Britain: further amendments: paragraph 22: amendment to existing section 411 (rules)

Power conferred on: England and Wales: the Lord Chancellor with the concurrence of the Secretary of State and for rules which affect court procedure with the concurrence of the Lord Chief Justice; and Scotland: the Secretary of State (see section 411 of the Insolvency Act 1986)

Power exercised by: statutory instrument (rules)

Parliamentary procedure: negative resolution procedure

Context and purpose
Paragraph 22 amends section 411 of the Insolvency Act 1986 so that it also applies to the new moratorium provisions contained in Part A1 to the Insolvency Act 1986. Section 411 gives a general power to make company insolvency rules for the purpose of giving effect to the Insolvency Act 1986. It already applies to Parts 1 to 7 of the Act (which contain the existing corporate insolvency measures). Section 411 is supplemented by Schedule 8 and individual sections of the Insolvency Act 1986, which provide more detail on provisions that can be included in company insolvency rules.

Justification for power
Detail around procedural and technical matters in the Insolvency Act 1986 is generally made by rules in order that there is flexibility to change them from time to time when there are developments in insolvency practice or in other legislation which might impinge on insolvency procedures. The provisions made by rules are very detailed and are subject to periodic change. The level of detail would not be suitable for primary legislation.

Justification for procedure

The Insolvency Rules contain very detailed provisions about the operation of insolvency procedures under the Insolvency Act 1986. The current Rules for England and Wales are around 440 pages long. The Lord Chancellor is required to consult the Insolvency Rules Committee before making rules for England and Wales (section 413 of the Insolvency Act 1986). The Committee includes relevant members of the judiciary and professional practitioners. The corresponding rules for Scotland are made by the Secretary of State, following consultation with Scottish stakeholders, and largely mirror the rules for England and Wales. Rules are made by statutory instrument and are subject to the negative procedure (section 411(6)). The negative procedure is sufficient scrutiny when the rules are made given the requirements for prior consultation.

Schedule 3: Moratoriums in Great Britain: further amendments: paragraph 23: amendment to existing section 414

Power conferred on: England and Wales: the Lord Chancellor with the sanction of the Treasury; and Scotland: the Secretary of State with the sanction of the Treasury

Power exercised by: order

Parliamentary procedure: None, but the order must be laid before Parliament
Context and purpose

Paragraph 23 amends section 414 of the Insolvency Act 1986 so that it also applies to the new moratorium provisions contained in Part A1 to the Insolvency Act 1986. Section 414 gives a general power to direct that fees be paid in respect of proceedings under the Insolvency Act 1986. It already applies to Parts 1 to 7 of the Act (which contain the existing corporate insolvency measures).

Justification for power
The fees payable in respect of insolvency proceedings under the Insolvency Act 1986 need to be set and amended from time to time (and this is consistent with existing sections of Insolvency Act 1986). The power enables this to be done by secondary legislation.

Justification for procedure
Fees orders are customarily made by a no procedure order, as is laid down in section 414(6) of the Insolvency Act 1986.

Schedule 3: Moratoriums in Great Britain: further amendments: paragraph 24: section 415B

Power conferred on: the Secretary of State

Power exercised by: Regulations

Parliamentary procedure: negative resolution procedure

Context and purpose
Paragraph 25 inserts a new section 415B into the Insolvency Act 1986. This section contains powers for the Secretary of State by regulations to increase or reduce the sums set out in sections A25(1), A28(2) and A45(2) of the Act. These sections are inserted by clause 1 of the Bill and set out limits on the amount of credit the company may obtain without disclosing the moratorium; the maximum amount for certain payments unless the monitor has consented; and the minimum value of the company's property fraudulently removed or concealed affecting criminal liability of a company officer. The power also enables the Secretary of State to make transitional provisions.

Justification for power
Monetary amounts in legislation need to be amended from time to time (and this is consistent with existing sections of Insolvency Act 1986). The power enables this to be done by secondary legislation.

Justification for procedure
These are detailed matters on the operation of the moratorium. Although the initial limits are on the face of the Bill it is appropriate for their amendment to be made by regulations subject to negative resolution procedure.

Schedule 3: Moratoriums in Great Britain: further amendments: paragraph 31: paragraph 64A(5) (rules)

Power conferred on: England and Wales: the Lord Chancellor with the concurrence of the Secretary of State and for rules which affect court procedure with the Lord Chief Justice; and Scotland: the Secretary of State (see section 411 of the Insolvency Act 1986)

Power exercised by: statutory instrument (rules)

Parliamentary procedure: negative resolution procedure

Context and purpose
Paragraph 31 of Schedule 3 to the Bill inserts a new paragraph 64A into Schedule B1 of the Insolvency Act 1986. This section applies where the company enters administration upon or within 12 weeks of the end of a moratorium and sets the order of priority for the payment of moratorium debts and pre-moratorium debts for which the company did not have a payment holiday. The inserted paragraph 64A provides (subsection (5)) that the rules may make provision as to the order in which moratorium and pre-moratorium debts which did not have a payment holiday are to rank between themselves.

Justification for taking the powers
These are technical provisions which do not need to be on the face of the Bill, consistent with existing Insolvency Rules relating to the order of priority of payments of expenses in administration. Making rules is permitted by the standard power under section 411 of the Insolvency Act 1986 to make rules for the operation of that

Act. The provisions made by rules are very detailed and are subject to periodic change. The level of detail would not be suitable for primary legislation.

Justification for the procedure
The Insolvency Rules contain very detailed provisions about the operation of insolvency procedures under the Insolvency Act 1986. The current Rules for England and Wales are around 440 pages long. The Lord Chancellor is required to consult the Insolvency Rules Committee before making rules for England and Wales (section 413 of the Insolvency Act 1986). The Committee includes relevant members of the judiciary and practitioners from the legal, and accountancy professions. They provide their services on a voluntary and unremunerated basis. Secretariat support to the Committee is provided by the Insolvency Service. The Committee will consider amendments to the rules and give their recommendations to the Lord Chancellor. The corresponding rules for Scotland are made by the Secretary of State, following consultation with Scottish stakeholders, and largely mirror the rules for England and Wales. Rules are made by statutory instrument and are subject to the negative procedure (section 411(6)). The negative procedure is sufficient scrutiny when the rules are made given the requirements for prior consultation.

Schedule 3: Moratoriums in Great Britain: further amendments: paragraph 32: amendment to existing Schedule 8 (provisions capable of inclusion in company insolvency rules) (rules)

Power conferred on: England and Wales: the Lord Chancellor with the concurrence of the Secretary of State and for rules which affect court procedure with the concurrence of the Lord Chief Justice; and Scotland: the Secretary of State (see section 411 of the Insolvency Act 1986)

Power exercised by: statutory instrument (rules)

Parliamentary procedure: negative resolution procedure

Context and purpose
Paragraph 32 amends Schedule 8 of the Insolvency Act 1986 so that it also applies to the new moratorium provisions contained in Part A1 to the Insolvency Act 1986. Schedule 8 of the Insolvency Act 1986 supplements section 411 (the general power to make company insolvency rules) by providing a list of what can be included in company insolvency rules. This includes detail on, for example, court procedure, notices and creditor decision making procedure. Further content for rules is set out in individual sections of the Insolvency Act 1986.

Justification for power
Detail around procedural and technical matters in the Insolvency Act 1986 is generally made by rules in order that there is flexibility to change them from time to time when there are developments in insolvency practice or in other legislation which might impinge on insolvency procedures. The provisions made by rules are very detailed and are subject to periodic change. The level of detail would not be suitable for primary legislation.

Justification for procedure
The Insolvency Rules contain very detailed provisions about the operation of insolvency procedures under the Insolvency Act 1986. The current Rules for England and Wales are around 440 pages long. The Lord Chancellor is required to consult the Insolvency Rules Committee before making rules for England and Wales (section 413 of the Insolvency Act 1986). The Committee includes relevant members of the judiciary and professional practitioners. The corresponding rules for Scotland are made by the Secretary of State, following consultation with Scottish stakeholders, and largely mirror the rules for England and Wales. Rules are made by statutory instrument and are subject to the negative procedure (section 411(6)). The negative procedure is sufficient scrutiny when the rules are made given the requirements for prior consultation.

Schedule 3: moratoriums in Great Britain: further amendments: paragraph 36: The Limited Liability Partnerships Act 2000

Power conferred on: The Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative resolution

Context and purpose
Section 14 of the Limited Liability Partnerships Act 2000 provides a power for regulations to make provision about the insolvency and winding up of limited liability partnerships, including Parts 1 to 4 of the Insolvency Act 1986, incorporating such modifications as appear appropriate. The amendment at paragraph 36 extends the scope of this power to Parts A1 to 4 of the Insolvency Act 1986.

Justification for taking the power
Section 14 of the Limited Liability Partnerships Act 2000 provides a power which ensures that insolvency procedures applicable to companies can be applied to limited liability partnerships. The amendment to the power ensures that this power can be used to apply the Part A1 moratorium to limited liability partnerships. Application by regulations ensures that necessary modifications can be made to reflect the differences between companies and limited liability partnerships as legal entities.

Where regulations apply Part A1 to limited liability partnerships, paragraph 37 provides that provisions made under section 16(1) of the Limited Liability Partnerships Act 2000 (consequential amendments) are consequential upon such application.

Justification for procedure
The procedure is already provided for at section 17(4) of the Limited Liability Partnerships Act 2000 and allows for affirmative resolution procedure to be used in certain circumstances, but for the negative procedure to be used where those circumstances do not apply. The procedure to be used for the application of Part A1 to limited liability partnerships will depend on the way in which the power is used.

Clause 41(2)(c) provides for the negative resolution procedure to be used, for the period of 6 months after Royal Assent, where it is being used in connection with the application of the Part A1 moratorium to limited liability partnerships that are registered providers of social housing under sections 14 and 16 of the Limited Liability Partnerships Act 2000. This is because, where Part A1 is applied to limited liability partnerships by regulations (under schedule 3 paragraph 38 of the Bill), it will be necessary for the application to be modified by regulations to make provision for the manner in which Part A1 interacts with insolvency procedures applicable to such registered provider which include a moratorium on the disposal of land, the appointment of a manager of the affairs of a landlord and a special administration regime, all of which could conflict unless such provision is made. It may be necessary to make such provision soon after regulations apply the Part A1 moratorium otherwise a limited liability partnership that is a registered provider of social housing that is a limited liability partnership could obtain a moratorium before provision has been made for its application to such landlords. In addition to the conflict between different procedures, notice provisions that apply to notify the regulator when a registered provider is subject to an insolvency procedure and a moratorium on the disposal of land that would ordinarily be triggered, would not apply.

Schedule 3: moratoriums in Great Britain: further amendments: paragraph 44: Charities Act 2011

Power conferred on: The Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative resolution procedure

Context and purpose
An amendment is made to the Charities Act 2011, which applies to Charitable Incorporated Organisations (CIOs) in England and Wales and already provides for regulations to be made that make provision for the insolvency of CIOs. The amendment inserts a new subsection (3A) into section 245 and provides a power in relation to the Housing and Regeneration Act 2008 and Housing and Planning Act 2016. These two Acts relate to private registered providers of social housing. The new subsection extends the existing power in section 245 by adding a regulation making power to amend, disapply or modify a provision made by parts of the of Housing and Regeneration Act 2008 and Housing and Planning Act 2016 in ways specified in the regulations.

Under the housing legislation there are special requirements on social landlords and procedures available that include allowing the regulator to appoint a special administrator for the purpose of keeping social housing in the regulated sector, the ability to appoint a manager over the affairs of a landlord and a moratorium on the disposal of land. The power is to allow for necessary changes to be made to the housing legislation to take account of new insolvency measures in the Bill. Where regulations made under the Charities Act 2011 make Part A1 moratorium procedure available to CIOs, changes may need to be made, for example, to modify the registration and deregistration process, make provision for the disposal of land in an optimal way, make provision for the interaction between other insolvency

procedures and persons appointed under different legislation for different purposes (a monitor of the moratorium and a manager of the landlord's affairs).

Justification for taking the power
The power allows for the application of insolvency law to CIOs that are private registered providers in a way that may differ from the application of such law to other CIOs and for existing housing legislation to adapted as necessary. The power relates to a specific type of charity operating in a specific sector and not to insolvency law as a whole. The power allows for provision for insolvency law, and its interaction with procedures that are particular to the housing sector, to be made in regulations rather than on the face of the Bill.

Justification for the procedure
Under section 348(1)(c) of the Charities Act 2011, the power to make provision for the insolvency of CIOs under section 245, which is a Henry VIII power, is under the affirmative resolution procedure and this will apply to the inserted subsection (3A) which extends this power. However, under clause 41(2)(d) the negative resolution procedure will apply for 6 months after Royal Assent to the extent that the provision relates to the new insolvency measures (the Part A1 moratorium and protection of supplies under clause 12). This is so that regulations can be made quickly to provide for the way in which the Part A1 moratorium should apply to CIOs that are private registered providers and to ensure that there is consistency in the social housing sector across types of legal entity that are private registered providers. For this period of 6 months, a consultation duty in section 384(4) of the Charities Act 2011, that would ordinarily apply to regulations under section 245, will not apply to ensure that regulations can be made on an urgent basis.

Schedule 3: moratoriums in Great Britain: further amendments: paragraph 45: Charities Act 2011

Power conferred on: Welsh Ministers

Power exercised by: Regulations

Parliamentary Procedure: Affirmative resolution procedure

Context and purpose
An amendment is made to the Charities Act 2011, which applies to Charitable Incorporated Organisations (CIOs) in England and Wales and already provides for regulations to be made that make provision for the insolvency of CIOs. The amendment inserts a new subsection 247A into the Act which provides a power to apply the Part A1 moratorium (with modifications) to registered social landlords registered under the Housing Act 1996 (subsection 1) and to make provision for the interaction between the Part A1 moratorium as applied by regulations and other insolvency procedures applicable to registered social landlords (subsection 2). Other insolvency procedures include the provision set out in sections 39 to 50 of the Housing Act 1996, which include a moratorium under the Housing Act 1996. Different provision may be made for different purposes and supplemental, incidental, consequential, transitory and transitional provisions or savings may be made by the regulations (subsection 3). Regulations may amend, disapply or modify a provision made by legislation (subsection 4).

Justification for taking the power
Under the Housing Act 1996 there are special requirements which relate to registered social landlords and procedures available that include the regulator being able to appoint a manager over the affairs of a registered social landlord and for the creation of a moratorium on the disposal of land. The power is to apply the Part A1 moratorium to social landlords registered under the Housing Act 1996 and will allow for necessary changes to be made to the housing legislation to take into account the availability of the moratorium, for example, to deal with the effect of the moratorium on registration as a social landlord, make provision for the interaction between other insolvency procedures available (including a housing moratorium on the disposal of land) and provide for the interaction between persons appointed under different legislation for different purposes (a monitor of the moratorium and a manager of the landlord's affairs).

There is precedent for such a power already in the Charities Act 2011, being a power for the Secretary of State, under sections 245 and 347 of the Act.

Justification for the procedure
The power under section 247A, inserted into the Charities Act 2011, is subject to the affirmative resolution procedure which is appropriate for this Henry VIII power.

However, under clause 42(2)(d) the negative resolution procedure will apply for 6 months after Royal Assent to the extent that the provision relates to the new insolvency measures (the Part A1 moratorium and protection of supplies under clause 12). This is so that regulations can be made quickly to provide for the way in which the Part A1 moratorium should apply to CIOs that are registered social landlords and to ensure that there is consistency in the social housing sector across types of legal entity that are registered social landlords.

Schedule 3: moratoriums in Great Britain: further amendments: paragraph 52(3): Co-operative and Community Benefit Societies Act 2014

Power conferred on: The Treasury with the concurrence of the Secretary of State

Power exercised by: Order

Parliamentary Procedure: Negative resolution procedure

Context and purpose
Section 118 of the Co-operative and Community Benefit Societies Act 2014 already provides for delegated powers to apply provisions about company arrangements and administration to registered societies in Great Britain, to which such procedures would not otherwise apply. Clause 52(3) of the Bill inserts a power into section 118 as subsection (1)(a), to extend its application to the Part A1 moratorium.

Under the existing section 118(4) the power may be used to make provision generally or for specified purposes, make different provision for different purposes and make transitional, consequential or incidental provision as well as apply or amend an enactment.

Justification for taking the power
This power allows for the application of Part A1 to registered societies that are private registered providers of social housing (save where provision can be made by the Welsh and Scottish Ministers under new powers to be inserted into the 2014 Act as section 118(3B) and (3C)). It allows for modifications to the new Part A1 moratorium to ensure that it interacts with the legislative framework that already governs the insolvency or registered societies that are providers of social housing and provide for the consistent application of the new moratorium across different corporate structures for such providers. The power relates to a specific type of legal entity operating in a specific sector. It allows for provision to be made, in this particular case, by regulations rather than on the face of the Bill in circumstances where the provision only apply to a limited number of businesses in a particular sector.

Justification for the procedure
Section 118(5) of the Co-operative and Community Benefits Act 2014 allows for the amendment of enactments, to apply provisions about company arrangements and administrations, and so the new power is also a Henry VIII power. Section 147(3) of that Act already provides for a negative resolution procedure to be used and this is retained for the new subsection (1)(a). This will allow for amendments to be made to legislation quickly to take account of the new Part A1.

Schedule 3: moratoriums in Great Britain: further amendments: paragraph 52(4): Co-operative and Community Benefit Societies Act 2014

Power conferred on: Welsh Ministers

Power exercised by: Regulations

Parliamentary Procedure: Negative resolution procedures

Context and purpose
Section 118 of the Co-operative and Community Benefit Societies Act 2014 already provides for delegated powers for the Treasury, with concurrence of the Secretary of State, to apply provisions about company arrangements and administration to registered societies, to which such procedures would not otherwise apply and amendment is made by the Bill (at paragraph 52(4) of schedule 3 of the Bill) for this to extend to the Part A1 moratorium. However, these orders may not provide such provisions or arrangements to apply in relation to a registered society that is a registered social landlord. A new power is inserted into this Act as section 118(3B) to provide for Welsh Ministers to make regulations applying (with or without modifications) Part A1 to registered societies that are registered social landlords under the Housing Act 1996.

Under the existing section 118(4) the power may be used to make provision generally or for specified purposes, make different provision for different purposes and make transitional, consequential or incidental provision as well as apply or amend an enactment.

Justification for taking the power

The power allows for the application of Part A1 to registered societies that are registered social landlords registered under the Housing Act 1996. It allows for modifications to the new Part A1 moratorium to ensure that it interacts with the legislative framework that already governs the insolvency or registered societies that are registered social landlords and provide for the consistent application of the new moratorium across different corporate structures for such landlords. The power relates to a specific type of legal entity operating in a specific sector. It allows for provision to be made, in this particular case, by regulations rather than on the face of the Bill in circumstances where the provisions only apply to a limited number of businesses in a particular sector.

Justification for the procedure
Section 118 of the Co-operative and Community Benefits Act 2014 already provides for a negative resolution procedure to be used (section 147(3) of that Act) to apply provisions about company arrangements and administrations and this is applied for the new subsection (3B) of section 118 of the Act by paragraph 52(6) of schedule 3 of the Bill which inserts subsection (5A) into section 118 of the Act (specifying negative procedure). This will allow for the law relating to registered societies that are registered social landlords to be modified quickly to take into account the new Part A1 and to extend provisions of Part A1 to such entities where and in the manner appropriate in responses to challenges those entities might face in the current economic climate.

Schedule 3: moratoriums in Great Britain: further amendments: paragraph 52(4): Co-operative and Community Benefit Societies Act 2014

Power conferred on: Scottish Ministers

Power exercised by: Regulations

Parliamentary Procedure: Negative procedure (Scottish Parliament)

Context and purpose

Section 118 of the Co-operative and Community Benefit Societies Act 2014 already provides for delegated powers for the Treasury, with concurrence of the Secretary of State, to apply provisions about company arrangements and administration to registered societies, to which such procedures would not otherwise apply and amendment is made by the Bill (at paragraph 52(4) of schedule 3 of the Bill) for this to extend to the Part A1 moratorium. However, these orders may not provide such provisions or arrangements to apply in relation to a registered society that is a registered social landlord. A new power is inserted into this Act as section 118(3C) to provide for Scottish Ministers to make regulations applying (with or without modifications) Part A1 to registered societies that are social landlords registered under the Housing (Scotland) Act 2010.

Under the existing section 118(4) the power may be used to make provision generally or for specified purposes, make different provision for different purposes and make transitional, consequential or incidental provision as well as apply or amend an enactment.

Justification for taking the power
The power allows for the application of Part A1 to registered societies that are registered social landlords under the Housing (Scotland) Act 2010. It allows for modifications to the new Part A1 moratorium to ensure that it interacts with the legislative framework that already governs the insolvency or registered societies that are registered social landlords and provide for the consistent application of the new moratorium across different corporate structures for such landlords. The power relates to a specific type of legal entity operating in a specific sector. It allows for provision to be made, in this case, by regulations rather than on the face of the Bill in circumstances where the provisions only apply to a limited number of businesses in a particular sector.

Justification for the procedure
Section 118 of the Co-operative and Community Benefits Act 2014 already provides for a negative resolution procedure to apply (section 147(3) of that Act) provisions about company arrangements and administrations and this is applied for the new subsection (3C) of section 118 of the Act by paragraph 52(6) of schedule 3 of the Bill which inserts subsection (5B) into section 118 of the Act (specifying negative procedure). This will allow for the law relating to registered societies that are registered social landlords to be modified quickly to take into account the new Part A1 and to extend provisions of Part A1 to such entities where and in the manner appropriate in responses to challenges those entities might face in the current economic climate.

Schedule 4: moratoriums in Great Britain: temporary provisions in the light of Covid-19: paragraph 2: Power to turn off particular provisions of Part 2 of this Schedule early

Power conferred on: The Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative resolution

Context and purpose
Part 2 Schedule 4 contains temporary provisions relaxing the conditions for obtaining and extending a moratorium. The power in paragraph 2 enables the Secretary of State to make regulations providing for any provision in Part 2 to cease to have effect before the end of the relevant period. The regulations may include transitional and savings provisions (paragraph 2(2)) and are subject to negative resolution procedure (paragraph 2(3)).

Justification for taking the power
If one (or more) temporary measures are no longer required as a response to Covid-19, this power enables us to bring them to an end early. The power is therefore very limited in its use.

Justification for the procedure
As the power turns off modifications which are temporary (albeit to primary legislation) we consider that the negative procedure is sufficient. As there will be insufficient time for Parliamentary debate ahead of the statutory instrument coming

into force, affirmative procedure was not considered to be appropriate. If the made affirmative procedure were to be used, any absence of approval could have the effect of bringing the exemption period to an end and then reinstating it at the end of the approval period.

Schedule 4: moratoriums in Northern Ireland: temporary provisions in the light of Covid-19: paragraph 3: Power to turn off provisions of Part 3 and 4 of this Schedule early etc

Power conferred on: England and Wales: the Lord Chancellor with the concurrence of the Secretary of State and, for rules which affect court procedure, with the concurrence of the Lord Chief Justice; Scotland: the Secretary of State (see section 411 of the Insolvency Act 1986)

Power exercised by: Statutory Instrument (Rules)

Parliamentary Procedure: Negative resolution

Context and purpose
The power in paragraph 3 extends the existing power in s.411 of the Insolvency Act 1986 to make rules providing for any provision in paragraphs 13 to 51 and 53 to 90 to cease to have effect before the end of the relevant period. The regulations may include transitional and savings provisions (paragraph 4).

Justification for taking the power:
If one (or more) temporary measures are no longer required as a response to Covid-19, this power enables us to bring them to an end early. The power is therefore very limited in its use.

Jus*tification for the procedures:*
The Insolvency Rules contain very detailed provisions about the operation of insolvency procedures under the Insolvency Act 1986. The current Rules for England and Wales are around 440 pages long. The Lord Chancellor is required to consult the Insolvency Rules Committee before making rules for England and Wales (section 413 of the Insolvency Act 1986). The Committee includes relevant members of the judiciary and practitioners from the legal, and accountancy professions. They provide their services on a voluntary and unremunerated basis. Secretariat support to the Committee is provided by the Insolvency Service. The Committee will consider amendments to the rules and give their recommendations to the Lord Chancellor. The corresponding rules for Scotland are made by the Secretary of State, following consultation with Scottish stakeholders, and largely mirror the rules for England and Wales. Rules are made by statutory instrument and are subject to the negative procedure (section 411(6)). The negative procedure is sufficient scrutiny when the rules are made given the requirements for prior consultation.

Schedule 5: Moratoriums in Northern Ireland: eligible companies

Schedule 5 inserts Schedule ZA1 into the Insolvency (Northern Ireland) Order 1989. Paragraph 20 of Schedule ZA1 confers the same power to make regulations in Northern Ireland so as to change the circumstances in which a company is “eligible” for a moratorium, as paragraph 20 of Schedule ZA1 of the Insolvency Act 1986 confers for Great Britain. The same justification for the power and procedure applies as for Great Britain.

Schedule 6: Moratoriums in Northern Ireland: Contracts involving financial services

Schedule 6 inserts Schedule ZA2 into the Insolvency (Northern Ireland) Order 1989. Paragraph 13 of Schedule 6 confers the same power to make regulations in Northern Ireland so as to change the meaning of “contract of other instrument involving financial services”, as paragraph 13 of Schedule ZA2 of the Insolvency Act 1986 confers for Great Britain. The same justification for the power and procedure applies as for Great Britain.

Schedule 7: Moratoriums in Northern Ireland: further amendments

The Bill makes equivalent provision for moratoriums in Northern Ireland by making amendments to Northern Ireland insolvency legislation and confers similar delegated powers to make regulations and rules in Northern Ireland. The justifications for the procedure and the power mirror those for the equivalent provisions for Great Britain and therefore have not been repeated.

Article 361 (fees orders) of the Insolvency (Northern Ireland) Order 1989 will extend to the moratorium, and confers the same power to make fees orders in Northern Ireland as paragraph 23 of Schedule 3 (amendment to section 414 Insolvency Act 1986).

Paragraph 2: the change to Article 366 confers the same power to provide, by order, that specific provisions of the moratorium shall apply to any person who has a liability in respect of a deposit accepted in accordance with the Banking Act 1979 or 1987 as the power in section 422 of the Insolvency Act 1986 in Great Britain (which will extend to the moratorium by virtue of the new Part A1 being included in the first Group of Parts to the Insolvency Act 1986).

Paragraph 17 (new Article 148A(2)(a) and (3)) confers the same power to make rules in Northern Ireland for the purpose of prescribing the fees of the official receiver and order of priority of payment of certain moratorium debts in a subsequent liquidation as paragraph 13 of Schedule 3 (new section 174A(2)(a) and (3)) in Great Britain.

Paragraph 21 (amendment to Article 208ZB) confers the same power to make rules in Northern Ireland for the purpose of prescribing the circumstances and procedure for making documents available on a website as paragraph 18 of Schedule 3 (amendment to section 246B) in Great Britain.

Paragraph 23 (amendment to Article 362) confers the same power by order in Northern Ireland to increase or reduce any of the money sums specified in new Part 1A as paragraph 24 of Schedule 3 (new section 415B) in Great Britain.

Paragraph 27 (new paragraph 65A(5) to Schedule B1) confers the same power to make rules in Northern Ireland for the purpose of prescribing the order of priority of payment of certain moratorium debts in a subsequent administration as paragraph 31 of Schedule 3 (new paragraph 64A(5) to Schedule B1) in Great Britain.

Paragraph 28 (amendment to Schedule 5) confers the same power to make rules in Northern Ireland as paragraph 32 of Schedule 3 (amendment to Schedule 8) in Great Britain.

Paragraph 31 (amendment to the Limited Liability Partnerships Act 2000) confers the same power to make regulations in Northern Ireland to make provision about the application of the Part 1A moratorium to limited liability partnerships as paragraph 36 of Schedule 3 (amendment to the Limited Liability Partnerships Act 2000) in Great Britain.

Paragraph 36 (amendment to the Insolvency (Northern Ireland) Order 2005) confers the same power by order in Northern Ireland to provide for the application of the Part 1A moratorium to registered societies and credit unions as paragraph 52 of Schedule 3 (amendment to the Co-operative and Community Benefit Societies Act 2014) in Great Britain.

Schedule 8: moratoriums in Northern Ireland: temporary provisions in the light of Covid-19: paragraph 2: Power to turn off particular provisions of Part 2 of this Schedule early

Power conferred on: The Department of the Economy in Northern Ireland

Power exercised by: Regulations

Parliamentary Procedure: Negative resolution

Context and purpose
Part 2 of Schedule 8 contains temporary provisions relaxing the conditions for obtaining and extending a moratorium. The power in paragraph 2 enables the Department of the Economy in Northern Ireland to make regulations providing for any provision in Part 2 to cease to have effect before the end of the relevant period. The regulations may include transitional and savings provisions (paragraph 2(2)) and are subject to negative resolution procedure (paragraph 2(4)). This is the same power as paragraph 2 of Schedule 4 confers for Great Britain. The same justification for the power and procedure applies as for Great Britain.

Schedule 8: moratoriums in Northern Ireland: temporary provisions in the light of Covid-19: paragraph 3: Power to turn off provisions of Part 3 of this Schedule early etc

Power conferred on: The Department of the Economy in Northern Ireland

Power exercised by: Statutory Instrument (Rules)

Parliamentary Procedure: Negative resolution

Context and purpose
The power in paragraph 3 enables the Department of the Economy in Northern Ireland to make rules providing for any provision in paragraphs 13 to 53 to cease to have effect before the end of the relevant period. The regulations may include transitional and savings provisions (paragraph 4). This is the same power as paragraph 3 of Schedule 4 confers for Great Britain. The same justification for the power and procedure applies as for Great Britain.

Schedule 9: Arrangements and reconstructions for companies in financial difficulties: Part 26A section 901B - power to exclude companies providing financial services etc

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative resolution procedure

Context and purpose
Schedule 9 to the Bill inserts into the Companies Act 2006 a new Part 26A dealing with arrangements and reconstructions of companies in financial difficulty. Section 901B gives the Secretary of State power by regulations to provide that the new Part does not apply to regulated persons or to companies or persons specified by the regulations. Regulations under section 901B are subject to affirmative resolution procedure.

Justification for taking the power
This power will provide the flexibility needed to deal with developments and new emergences of companies and markets the financial services sector. This flexibility provides an important safeguard for financial services consumers, particularly given the new provisions enabling cross-class cram down. Without safeguards, the use of the new restructuring plan by financial services companies could negatively affect financial services consumers, such as depositors, policyholders, or investors on a larger scale than other available financial restructuring options. While the Bill does include other safeguards, such as a role for the financial services regulators where a financial services company proposes to use a restructuring plan, it is appropriate to retain this power to address future developments in the financial services sector, including the emergence of new types of firms and markets.

Justification for the procedure
Affirmative procedure is provided for as the power affects the scope of primary legislation

Schedule 9: Arrangements and reconstructions for companies in financial difficulties: Part 26A, section 901G(6)- Sanction for compromise or arrangements where one or more classes dissent

Power conferred on: The Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative resolution procedure

Context and purpose
The new section 901G sets out the conditions which must be satisfied before the court sanctions a compromise or arrangement where one or more classes of creditors dissent. The power in subsection (6) enables the Secretary of State by regulations to add to, remove or vary the conditions.

Justification for taking the power
The section provides for a cross-class cramdown which is a new feature in our law of reconstruction, within what is already a very flexible restructuring procedure. It will be necessary to monitor the effectiveness of the new provision in restoring business viability and whether the conditions of cross-class cramdown are operating as intended. It may prove necessary, as cases emerge in practice, to swiftly add to or remove from the conditions of cross-class cramdown in section 901G in order to ensure that the new provisions produce the correct balance between facilitating successful company rescue and providing adequate protection to dissenting creditors and members.

Justification for the procedure
This power enables the Secretary of State to amend the Act by secondary legislation (a Henry VIII power). In line with the usual practice the Regulations are subject to affirmative procedure.

Schedule 9: Arrangements and reconstructions for companies in financial difficulties: Part 26A section 901L- Power to amend Act

Power conferred on: The Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative resolution procedure

Context and purpose
The purpose of this power is to allow the Secretary of State to specify by regulations for certain other provisions of the Companies Act not to apply to Part 26A, or to apply in an amended form.

Justification for taking the power
The provisions of the Companies Act 2006 regulating aspects of a company's relationship with its members and others are designed to apply to a company whose continued existence is not in doubt and, therefore, may act as a barrier to achieving the rescue of a company in financial difficulty. We need to monitor the effectiveness

of Part 26A, and the new cross-class cramdown feature, in facilitating restructure and restoring business viability. In so doing we will need to assess whether or not any provisions of the Act that seek to regulate a company's operation in normal circumstances continue to serve during an attempted rescue of the company, or whether they render rescue unachievable.
We will engage with practitioners who are making use of the new provisions, the judiciary and wider stakeholders to assess whether Part 26A is operating as intended. If we do not have the ability amend how the remainder of the Act applies to the new provisions, it could have the effect of rendering Part 26A ineffective for the purpose for which it was introduced.

Justification for the procedure
This power enables the Secretary of State to amend the Act by secondary legislation (a Henry VIII power). In line with the usual practice the Regulations are subject to affirmative procedure.

Schedule 9: Arrangements and reconstructions for companies in financial difficulties: Part 26A Part 2 paragraph 21- amendment to the Limited Liability Partnerships Act 2000

Power conferred on: The Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative resolution

Context and purpose
Section 15 of the Limited Liability Partnerships Act 2000 provides a power for regulations to make provision for the application of company law, which would include the new Part 26A of the Companies Act 2006. Section 17(5)(b) of the 2000 Act provides for certain powers to be exercised using the negative resolution procedure where they consist entirely of the application of certain named provisions. The amendment at paragraph 21 has the effect of including Part 26A within the list of named provisions, meaning the negative resolution procedure can be used where regulations under section 15 consist entirely of the application or incorporation of provisions contained in Parts 26A.

Justification for taking the power
This is not a new power, as regulations could be made applying or incorporating Part 26A under section 15 of the Limited Liability Partnerships Act 2000.

Justification for procedure
The procedure is already provided for at section 17(5) of the Limited Liability Partnerships Act 2000 and the use of the negative resolution procedure is consistent with the current use of powers relating to other companies legislation, including an analogous provision contained in Part 26 Companies Act 2006. It is imperative that the new provisions apply to limited liability partnerships on commencement and if the amendments at paragraph 21 of Schedule 9 were not made, it would be necessary to make the regulations using the affirmative resolution procedure, which given the urgent nature of this Bill, there is insufficient time to do so.

Schedule 14: paragraph 2: Meaning of "relevant period"

Power conferred on (depending on the type of body concerned): the Secretary of State, Scottish Ministers and the Department for the Economy in Northern Ireland. (see paragraph 2(4))

Power exercised by: Regulations

Parliamentary Procedure: Negative resolution procedure for regulations made by the Secretary of State, the negative procedure for regulations made by Scottish Ministers, and negative resolution procedure for regulations made by the Department for the Economy in Northern Ireland.

Context and purpose
Schedule 14 makes provision about general meetings (and certain other meetings) which are held by a company or other body ("a qualifying body") during the "relevant period".

A qualifying body may be required by legislation, or their constitution or rules, to hold an annual general meeting or other meeting at a particular time and in a particular manner (for example, in person or at a particular venue). The emergency restrictions which have been introduced in response to the pandemic mean that it may not be possible for relevant entities to hold AGMs when they are required to do so or in a manner which is consistent with their constitution or rules.

Schedule 14 gives qualifying bodies greater flexibility as to the time within which, and the manner in which, AGMs and other meetings may be held. Those flexibilities are designed to only have effect in relation to meetings which are held during, or are required to be held during a period which overlaps with, the relevant period. The relevant period ends on 30 September 2020 ("the expiry date") which is the date by which we expect most qualifying bodies will need to have held their AGM during the current calendar year.

However, the Schedule contains a Henry VIII power for the appropriate national authority to amend the expiry date to specify either an earlier date, or a date which is up to three months later than the one for the time being specified. The expiry date cannot however be replaced with a date that is later than 5 April 2021. The purpose is to give the government a limited power to shorten or prolong the lifespan of the flexibilities which are introduced by this Schedule so that they are only kept in place for so long as is needed in response to the pandemic. The power is to be exercised by way of negative instrument.

Justification for taking this power
This power is aimed at providing a mechanism to ensure that the temporary flexibilities which are introduced by this Schedule only continue for so long as is needed to address the exceptional circumstances which have arisen as a consequence of the pandemic. It is not possible to predict with certainty the course which the pandemic will take and the period during which these temporary flexibilities will be needed. The government therefore requires the power to shorten or lengthen the period in response to changing circumstances.

The power is limited in that it can only be used to extend the relevant period by up to three months and may not be used to extend the period beyond 5 April 2021. The Government considers that this strikes the appropriate balance between being able to respond quickly to changing circumstances based on the path of the pandemic, while ensuring that any extension of the duration of these measures receives an appropriate degree of parliamentary scrutiny.

Justification for the procedure
While this is a Henry VIII power, the government considers that departure from the usual affirmative procedure is justified in the case of these measures. The negative resolution procedure will safeguard against an inability to act when Parliament is in recess or unable to make effective provision at an appropriate pace. It is important that the government is able to act quickly to make any further provision that is needed to enable relevant entities to hold meetings, and give related notices, in a manner that is consistent with the need to limit the spread of the pandemic.

The power is limited in that it can only be used to extend the relevant period by up to three months at a time and may not be used to extend the period beyond 5 April 2021.

Schedule 14: paragraph 4: Qualifying meetings held during the relevant period: power to make further provision

Power conferred on (depending on the type of body concerned): the Secretary of State, the Treasury, the Scottish Ministers and the Department for the Economy in Northern Ireland (see paragraph 4(4)).

Power exercised by: Regulations

Parliamentary procedure: Negative resolution procedure for regulations made by the Secretary of State or the Treasury, the negative procedure for regulations made by Scottish Ministers, and negative resolution procedure for regulations made by the Department for the Economy in Northern Ireland.

Context and purpose
Paragraph 4 enables the appropriate national authority to make regulations which make provision for the purposes of, or in connection with, paragraph 3, or to make provision about the means by which, the form in which, and the period within which, any notice or other document relating to a meeting may be given or made available.

The power may be used to disapply any provision of a qualifying body's constitution or rules, to disapply or modify any provision of any enactment relation to the meetings of a qualifying body, to make different provision for different purposes, and to make consequential, supplementary, incidental, transitional provision and savings. The power is to be exercised by way of negative instrument.

Justification for taking the power
This power is needed so that further temporary provision may be made in relation to meetings of qualifying bodies in response to the pandemic. Further provision may be needed to address any additional obstacles which prevent businesses from holding meetings in accordance with legislative requirements, their constitution or

rules while social distancing restrictions remain substantially in place. The power is also needed to address requirements for notices and other documents relating to meetings which may prove difficult for businesses to comply with as a result of the pandemic.

The constitutions and rules of qualifying bodies are likely to differ significantly as between individual bodies. It is therefore difficult to anticipate with certainty what further provision may be needed to address obstacles preventing bodies from holding meetings in accordance with their constitution or rules, or relevant legislative requirements. Requirements relating to notices and other documents are many and varied and it will be necessary to give further consideration as to which of these are presenting difficulty for qualifying bodies.

The power is temporary in effect. It can only be exercised in relation to meetings held during the relevant period. That period will expire on 30 September 2020, unless the period is extended by regulations made under paragraph 2. Those regulations cannot extend the period by more than three months at a time and may not be used to extend the period beyond 5 April 2021.

Justification for the procedure
This is a Henry VIII power insofar as it may be used to make provision to disapply or modify a provision of any enactment relating to general meetings or other meetings of a qualifying body. The government considers that departure from the usual affirmative procedure is however justified in this case. The negative resolution procedure will safeguard against an inability to act when Parliament is in recess or unable to make effective provision at an appropriate pace. It is important that the government is able to act quickly to make any further provision that is needed to enable qualifying bodies to hold meetings, and give related notices or documents, in a manner that is consistent with the need to limit the spread of the pandemic and reasonably practicable in the current circumstances.

The power can only be used to make further provision in relation to meetings held during the relevant period. That period will expire on 30 September 2020, unless the period is extended by regulations (though it is only possible to extend by up to three months at a time and it is not possible to extend the period beyond 5 April 2021). The Government considers that this strikes an appropriate balance between being able to respond quickly to introduce further flexibilities relating to meetings and related notices if they are required, while ensuring that any further provision which is made receives an appropriate degree of parliamentary scrutiny.

Schedule 14: Paragraph 6: Power to extend period for holding AGMs

Power conferred on (depending on the type of body): the Secretary of State, the Treasury, the Scottish Ministers and the Department for the Economy in Northern Ireland (see paragraph 6(7))

Power exercised by: Regulations

Parliamentary procedure: Negative resolution procedure for regulations made by the Secretary of State, the negative procedure for regulations made by Scottish

Ministers, and negative resolution procedure for regulations made by the Department for the Economy in Northern Ireland.

Context and purpose
Qualifying bodies may be required to hold an Annual General Meeting ("AGM") at a particular time by legislation, or by their constitution or rules. For example, a public company is required to hold an AGM within 6 months of its accounting reference date (section 336 of the Companies Act 2006) and building societies must hold an AGM in the first four months of each financial year (paragraph 20(1) of Schedule 2 to the Building Societies Act 1986)

Paragraph 6 gives the appropriate national authority a power to extend the period within which qualifying bodies must hold an AGM. The regulations may be used to specify a period which is then added to the period within which the body would otherwise have been required to hold its AGM. The period specified by regulations must not exceed 8 months.

The power is temporary in effect because it is only exercisable in respect of qualifying bodies who are required to hold an AGM within a period that overlaps with the relevant period. The relevant period is the period beginning with 26 March 2020 and ending with 30 September 2020. While that period may be extended by regulations, it can only be extended by up to three months at a time and may not be extended beyond 5 April 2021.

The power may also be used to make provision generally or for specified cases only, to make different provision for different cases, and to make provision that applies subject to exceptions.

Justification for taking the power
This power is needed to make provision to give qualifying bodies additional time to hold an AGM in circumstances where they are unable to hold one because of social distancing restrictions which have been introduced in response to the pandemic. Qualifying bodies may need additional time to put in place the arrangements necessary to take advantage of the flexibilities which are introduced by the Schedule as to the manner in which meetings may be held (for example, putting in place video conferencing facilities to enable their AGM to be held electronically).

The requirements which apply in relation to the holding of AGMs vary across qualifying bodies, deriving from a combination of statutory provision and their constitutional arrangements. The power will enable different lengths of extension to be given to different types of body. It is difficult at this stage to predict the course of the pandemic and so it is important that the Government has the ability to reduce or increase the length of the extensions which are given in response to the changing needs of businesses.

The power is limited. It can only be used to extend the period for holding an AGM by up to 8 months and it can only be exercised in relation to the meeting which is required to be held during a period which overlaps with the relevant period.

Justification for the procedure
This is a Henry VIII power insofar as it may be used to modify a requirement within an enactment that a relevant entity hold an AGM within a prescribed period. The

government considers that departure from the usual affirmative procedure is justified in this case. The negative resolution procedure will safeguard against an inability to act when Parliament is in recess or unable to make effective provision at an appropriate pace. It is important that the Government is able to legislate to provide additional breathing space to companies and other bodies who are under pressure as a consequence of the pandemic and who may be unable to hold a meeting in accordance with their constitutional arrangements because of the social distancing restrictions which are currently in place.

The power is limited in that the combined period as specified by the regulations must not exceed 8 months. The power is time-limited because it may only be used to extend the period within which an AGM must be held if that period overlaps with the relevant period. The Government considers that this strikes the appropriate balance between being able to respond quickly to changing circumstances based on the path of the pandemic, while ensuring that any extension of the duration of these measures