**CORPORATE INSOLVENCY AND GOVERNANCE BILL**
**ECHR MEMORANDUM FOR THE BILL AS INTRODUCED IN THE HOUSE OF COMMONS**

1. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act).

2. Alok Sharma, Secretary of State for Business, Energy and Industrial Strategy, has made the following statement:

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

**The Bill**

3. The Corporate Insolvency and Governance Bill ("the Bill") is a piece of emergency legislation which contains provisions to help businesses deal with the serious economic consequences resulting from the Covid-19 pandemic. It contains a package of insolvency measures as well as a package of company measures.

4. A number of the insolvency measures in the Bill are the result of a Government consultation in 2016, after which the Government committed to bring forward legislation when time allowed. These measures are now being introduced urgently to assist businesses during this time of economic uncertainty. In addition, the Bill makes provision for certain temporary modifications to insolvency law specifically to address the economic consequences of the Covid-19 pandemic. These temporary modifications are concerned with, in particular, the grounds upon which creditors may seek to have companies wound-up, the liabilities directors face for continuing to trade when a company is insolvent, and certain technical modifications intended to facilitate company's access to insolvency processes. The legislation also provides for a power for the Secretary of State to modify aspects of insolvency legislation to remedy or mitigate the economic consequences of Covid-19.

5. This Bill also includes temporary provisions to address difficulties faced by companies, mutual societies (including registered branches of friendly societies) and charitable incorporated organisations as a result of the effects of Covid-19 and restrictions placed by

legislation which aim to prevent the spread of the disease. In particular, these restrictions prohibit anyone leaving the place where they live without reasonable excuse, and ban public gatherings of more than two people, during an "emergency period". A failure to comply is subject to criminal penalties.

6. The measures in the Bill will enable these bodies to hold meetings which they are required to do by legislation and their constitutional documents, or to extend the time within which those meetings are required to be held. In addition, the measures also ease burdens on businesses affected by Covid-19, by allowing certain filing periods to be extended.

7. The Bill can broadly be divided into 7 different policy measures.

8. Clauses 1-6 and Schedules 1-8 establish a new moratorium ("the moratorium"). This is a time-limited breathing-space in which certain legal steps are unable to be taken against a company in financial difficulty. The aim is to give that company a window of opportunity in which to remedy its position. Clauses 1-3 and Schedules 1-4 make provision for Great Britain. Clauses 4-6 and Schedules 5-8 make provision for Northern Ireland. The moratorium is an evolution of pre-existing insolvency processes.[1] This legislation inserts new provision into the Insolvency Act 1986 ("IA 86"), it also repeals existing moratorium provision in Schedule A1 to that Act.

9. Clause 7 and Schedule 9 establish a restructuring plan ("the restructuring plan"). This is a mechanism under which financially-distressed companies can enter into binding-arrangements with creditors. The restructuring plan is an evolution of "schemes of arrangement" provided for under Part 26 of the Companies Act 2006. This legislation retains Part 26 of the Companies Act 2006 and inserts a new Part 26A.

10. Clauses 8 and Schedule 10 (and, for Northern Ireland, clause 9 and Schedule 11) ("winding-up") temporarily prevents a company being wound-up on the grounds of an unpaid statutory-demand and imposes a new requirement to prevent companies being wound-up where their inability to pay their debts is the result of Covid-19 . The legislation modifies provision in IA 86 Part IV, Chapter VI which concern company winding-up.

11. Clauses 10 (and, for Northern Ireland, clause 11) ("wrongful-trading suspension") temporarily suspends liability for wrongful-trading provisions under which company

[1] See Insolvency Act 1986 section 1A and Schedule A1 and Schedule B1, paragraphs 42 and 42

directors may be liable to make a financial contribution where the company continues to trade after the time when directors should have known that insolvent liquidation or administration could not be avoided. The legislation modifies provision in IA 86, Part IV, Chapter X and Part VI concerning penalisation of directors.

12. Clauses 12-13 and Schedule 12 (and, for Northern Ireland, clauses 14-17) ("termination clause measures") disapply any term in a contract for the supply of goods or services that would cause or allow termination of the contract, or any other thing, because the customer enters an insolvency procedure or because of a past termination event. It also prevents suppliers from making payment of outstanding sums a condition of supply. The intention is to prevent a situation where suppliers cease trading with a company as soon as it enters insolvency, since the consequence of doing so could be to make a rescue impossible. The legislation inserts a new section 233B and 233C and Schedule 4ZZA into IA 86.

13. Clauses 18-25 (and, for Northern Ireland, clauses 26-34) give a power to the Secretary of State to make regulations modifying or disapplying provisions of insolvency law, including provisions in existing Acts, in order to respond to the economic effects of coronavirus. Clause 20 (and, for Northern Ireland, clause 28) places limitations on the exercise of that power and clauses 21 and 22 (and, for Northern Ireland, clauses 29 and 30) provide that the power is to be time-limited. Clause 24 (and, for Northern Ireland, clauses 32 and 33) specifies the procedure by which regulations are to be made. Clause 23 (and, for Northern Ireland, clause 31) gives the Secretary of State power to make any consequential provision following the making of regulations under these clauses.

14. Clauses 35, 36, 37, 38 and Schedule 14 introduce temporary flexibilities on meetings and filings as summarised below.

    a) *Clause 35 and paragraph 3 of Schedule 14* make temporary provision to enable companies and other bodies ("qualifying bodies") to overcome requirements in legislation or their constitution or rules which prevent qualifying meetings being held in a way that is consistent with the need to limit the spread of Covid-19 and the social distancing restrictions which have been put in place.[2] It provides that meetings need

[2] The following Regulations were made by each jurisdiction of the UK and came into force on 26 March 2020: the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (S.I. 2020/350); the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (S.I. 2020 No. 353 (W. 80)); the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 (S.R. 2020/55); and the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (S.S.I 2020/103).

not be held at a particular place, that meetings may be held and votes may be cast by electronic or other means, and that the meeting may be held without there having to be a quorum of persons being together in person in the same place. During the temporary period members do not have a right to attend the meeting in person, to participate in the meeting other than by voting, or to vote by particular means (though they cannot be prevented from voting entirely).

*Paragraph 4 of Schedule 14* enables further provision to be made in relation to such meetings and for provision to be made about notices or other documents relating to these meetings. For example, provision could be made to allow a company or other body to give notice of a meeting by electronic means in order to address difficulties in providing notice by hard copy within the required time.

The provisions in paragraphs 3 and 4 will apply in relation to meetings held during the "relevant period", being 26 March to 30 September 2020. There is a power to change this period by reducing it or extending it by three months at a time (with a longstop date of 5 April 2021).

b) *Paragraph 5 of Schedule 14* applies to qualifying bodies which were or are required to hold an AGM by the end of a period expiring between 26 March and 30 September 2020. They are given until the 30 September 2020 to hold their AGM (unless that period is further extended by paragraph 6). *Paragraph 6 of Schedule 14* applies to a qualifying body which has a duty to hold an AGM in a period which overlaps with the relevant period (26 March to 30 September 2020 (unless extended)). The power can be used to extend by up to 8 months the period during which the company or other body is required to hold its AGM. In the case of a company or other body to which paragraph 5 applies, regulations made under paragraph 6 have effect to further extend the period during which the body is required to hold their AGM.

c) Clause 36 provides a temporary extension for a public company to file its annual accounts and reports.[3] A company whose filing deadline falls between 26 March 2020 and before the end of the relevant day will be able to file on a later date. The relevant day is either 30 September 2020 or the last date of the period of 12 months beginning

[3] In addition to public companies these provisions apply to Limited Partnerships, Limited Liability partnerships, Societas Europaea and Scottish qualifying partnerships.

with the end of a company's relevant accounting reference period, whichever date comes first.

d) Clause 37 provides a temporary power (expiring on 5 April 2021) to make Regulations to extend the filing periods for providing information to the registrar at Companies House. The provisions that may be extended are specified in clause 38.

15. Clauses 44-47 make general provision for the purposes of the Bill. This includes a power to make provision in consequence of the Bill coming into force and provision concerning commencement and territorial extent.

**Human Rights Issues**

16. A number of provisions of the Bill engage, or might be considered to engage, Convention Rights.

17. The Department notes that certain of the provision of the Bill are retrospective; specifically, the winding-up petitions, wrongful trading, and company meetings measures. The Department does not however consider that this retrospectivity gives rise to additional issues under the Convention. Accordingly, the retrospectivity of those measures is noted here for completeness but is not discussed further in the analysis below.

**Article 6: Right to a fair trial**

Restructuring arrangements (clause 7 and Schedule 9)
Winding-up (clauses 8 and 9 and Schedules 10 and 11)
Termination clauses (clauses 12-17 and Schedule 12)

18. Clause 7 and Schedule 9 insert a new Part 26A and Schedule 1BA into the Companies Act 2006. The new Part 26A creates a new arrangement for reconstructions of companies. This is a forum/statutory mechanism in which companies can negotiate compromise arrangements with creditors or shareholders. Under the umbrella of the scheme parties are free to negotiate any arrangements they wish.

19. These arrangements help to reach agreement where a company has a number of creditors. If the company's position is such that creditors will have to accept some form of comprise there are obvious difficulties in trying to broker the necessary agreement by negotiating with each creditor individually. The restructuring plan creates a statutory

mechanism where if a proposed arrangement is approved by a specified number of creditors then the plan is deemed to be legally binding on all of them. This prevents a minority of hold-out creditors from blocking a plan which has the support of the majority.

20. Restructuring arrangements already exist under UK law. They are provided for in Part 26 of the Companies Act 2006. The new restructuring plan will sit alongside the existing scheme as a new Part 26A. There are two main differences between Part 26 and the new arrangements. Firstly, the new arrangements are only available for the purpose of rescuing a company that is in financial difficulty; secondly, the voting threshold for a plan to be approved is, in effect, lower; albeit that the plan must still have majority approval.

21. The intention behind the new arrangements is to increase the likelihood that restructuring arrangements will be approved but with the quid-pro-quo that there is a more limited range of situations in which the lowered threshold will apply. In effect it seeks to encourage business rescue by preventing a minority of “hold-out” creditors taking action to block a proposed restructuring which has majority approval and may otherwise assist in the rescue of the company.

22. A restructuring arrangement is initiated by a creditor, insolvency practitioner, company member, or the company submitting an application to court. The conditions for proposing an arrangement are that the company is (or is likely to be) in financial difficulty affecting its viability as a going concern and the proposed arrangement will reduce or eliminate that difficulty.

23. Where the application is approved, the court orders a meeting of creditors. A statement is required to be sent to creditors in advance of that meeting explaining the proposed arrangements.

24. If the proposal is approved by the required threshold there is a further court hearing at which the court will decide whether to authorise the proposed arrangements.

25. If the court authorises the arrangements they are binding upon the company, its members, and creditors.

26. The winding-up provisions (clauses 8 and 9 and Schedule 10 and 11) suspend existing legislation which deems a company to be unable to pay its debts (and consequently liable to being wound-up) on the basis of an unpaid statutory demand. These clauses also

introduce a new condition that, where a company is unable to pay its debts, that company can only be wound-up by a court if the court is satisfied that a debt is not attributable to the effect of the Covid-19 emergency.

27. The termination clause provisions (clauses 12-17 and Schedule 12) disapply any term in a contract between a supplier and a customer that would terminate (or could be relied upon to terminate) the contract if the customer enters an insolvency procedure. The intention is to prevent a situation where suppliers cease trading with a company as soon as it enters insolvency, since the consequence of doing so could be to make a rescue impossible. There are already provisions in UK law preventing companies from relying upon certain contract terms in an insolvency.

28. The clauses expand the scope of the existing protections. In particular, they apply to a greater range of insolvency procedures the existing protection only applies to administration or voluntary arrangements. Also, they cover all contracts for supplies; the existing protection only covers "essential supplies".

29. A contract falling within the scope of this measure may be terminated either with the consent of the customer, with the consent of the insolvency-practitioner, or, upon an application to the court, if the court is satisfied that continuation of the contract would cause the supplier undue hardship. The right to apply to the court mirrors protection in the existing provision dealing with termination clauses.[4]

*Interaction with Article 6*

*Manner in which article 6 is engaged*

30. The Department's assessment is that these clauses are within the scope of article 6 but there is no violation of that article.

31. Article 6(1) provides that "*in the determination of his civil rights and obligations…everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law."* The concept of a "civil right or obligation" has an autonomous meaning under the Convention. It requires there to be a substantive civil right having a legal basis in the State

[4] Ibid section 233(4)(b).

concerned,[5] and the result of the proceedings must be directly decisive for the civil right in question.[6]

32. The restructuring arrangements operate to determine the extent to which a debt is enforceable. The winding-up provisions impose a new condition that will apply when a creditor petitions the court for the winding-up of a company, if that condition is not met then the company cannot be wound-up. The termination clause provision provides that certain rights that could otherwise arise under the terms of a contract cannot be relied upon. The effect of these provisions is to determine the extent to which a civil right (in this case the right to enforce a contact) may be relied upon. These clauses therefore engage article 6. The Department also notes that the ECtHR has previously held that the resolution of a creditor's claim in insolvency proceedings engages article 6.[7]

33. Where article 6 is engaged it requires that a person should have access to an effective judicial remedy enabling them to assert their civil rights.[8] The Department's assessment is that this requirement is clearly satisfied. Our analysis of the reasons why each of these measures is compatible with article 6 is set out in the paragraphs below.

*Analysis of the clauses' compatibility with article 6*

34. So far as the restructuring arrangements are concerned, the judicial protections are extensive with two court hearings and resultant orders required before any proposed scheme may take effect. Anyone affected by a proposed arrangement is entitled to attend a hearing and make representations. The most obvious basis for legal challenge is to assert that one of the conditions either for ordering an initial creditor's meeting, or, subsequently, for authorising the arrangements has not been satisfied. These conditions are extensive and detailed; for example, one of the conditions for an arrangement to be authorised is that any dissenting class of creditor would not be worse off under the proposed arrangements than they would be under specified alternative insolvency processes if this proposed arrangement does not go ahead.

35. Additionally, the court has an unfettered discretion both in terms of whether to order the initial meeting or subsequently to authorise the arrangement. These new arrangements

[5] Károly Nagy v. Hungary (application 56665/09), §§ 60-61; Roche v. the United Kingdom (application 32555/96), § 119; Boulois v. Luxembourg (application 37575/04), § 91).
[6] Denisov v. Ukraine (application 76639/11), Guide on Article 6 of the Convention – Right to a fair trial (civil limb) European Court of Human Rights 7/100 Last update: 31.08.2019 § 44;
[7] Cipolletta v. Italy (application 38259/09)
[8] Běleš and Others v. the Czech Republic (application 47273/99), § 49; Naït-Liman v. Switzerland (application 47273/99), § 112

are based upon existing provision in Part 26 of the Companies Act 2006. There is an extensive body of case-law governing the operation of Part 26 and we expect that courts will have regard to that in exercising their discretion under these new arrangements. For example, matters to which the court will have regard are:

a. Whether the scheme has sufficient general support to have a prospect of success.[9]
b. Whether the proposed division of the members and/or creditors into one or more voting classes appears to be correct.
c. Jurisdictional issues[10] including issues that fundamentally go to the legitimacy of the scheme.[11]
d. Case-law prescribes 6 general criteria to which a court should have regard when considering whether to give final authorisation for a proposal; this includes a broad "reasonableness" criterion.[12]

36. So far as the winding-up provisions are concerned the clauses introduce a new condition for the winding-up of companies. They do not alter the substantive nature or degree of judicial oversight to which a petition for the winding-up of a company is subject. That level of judicial oversight is extensive. Depending upon the amount of a company's paid-up share capital winding-up is under the jurisdiction of either the High Court or County Court (or, in Scotland, the Court of Session or sheriff court[13]). The Insolvency (England and Wales) Rules 2016,[14] or, in Scotland, the Insolvency (Scotland) (Receivership and Winding-up) Rules 2018[15] impose requirements concerning the filing, notification, and service of petitions, and the substantive grounds upon which a petition may be presented are specified in primary legislation, as modified by these clauses.[16]

37. Upon presentation of a petition a court has a broad discretion to make orders in favour of either the petitioner, the respondent to the application, or such other order as it sees fit.[17] In addition to creditors' interests the making of a winding-up order has the potential to engage the rights of the company, its shareholders and employees. An extensive body of case-law has developed which the court will apply when considering how to exercise its

[9] Re Savoy Hotel Ltd [1981] Ch 351
[10] Re Van Gansewinkel Groep BV and others [2015] EWHC 2151 (Ch)
[11] Re Stronghold Insurance Company Ltd [2018] EWHC 2909
[12] Re Anglo Continental Supply Co Ltd [1922] 2 Ch 723
[13] Insolvency Act 1986 section 117 and 120
[14] SI 2016/1024
[15] SI 2018/347
[16] Insolvency Act 1986 section 122
[17] Insolvency Act 1986 section 125

discretion so as to take account of the various competing interests. For example, case-law has established that a petition is a measure of last resort and specifies when it is appropriate to present one.[18] A winding-up order will not be made on the basis of a debt which is genuinely disputed.[19] A company cannot however defeat a petition purely on the basis of an assertion that the debt is in dispute; any dispute must be founded on substantial grounds.[20] Where, however, the petitioner is aware that the debt is disputed then it is an abuse of process to present a petition; the court may restrain this by injunction and the threat of indemnity costs.[21] In addition, a person bringing insolvency proceedings for an improper purpose and without reasonable cause can be liable under the tort of malicious prosecution.[22]

38. So far as the termination clause provisions are concerned, the nature and effectiveness of the judicial remedy can be stated simply. A contractual term which has been disapplied by virtue of these clauses can nevertheless be resurrected by a court order. The court can simply order that these clauses be disapplied entirely. A court may make such an order where it is satisfied that their effect is causing hardship to a party. A person has an unconditional right to apply to court for an order on this basis.

39. Having regard to the above, the Department considers that while article 6 is engaged those affected by this legislation clearly have access to an effective judicial remedy.

40. For the sake of completeness, the Department notes that, as well as conferring the initial right to access a court, article 6 also confers certain procedural rights relating to the manner in which proceedings are subsequently to be conducted. The court having jurisdiction over insolvency proceedings is either the High Court (Bankruptcy and Property Court), the County Court, or, in Scotland, the Court of Session or sheriff court. The normal domestic rules of court concerning the conduct of civil proceedings applies to insolvency proceedings before those courts. While there are certain rules of court procedure that apply specifically to insolvency proceedings that is no different to other areas of civil law. The Department considers that (absent some specific modification, which is not the case here) the normal conduct of civil litigation in the England and Wales, or Scottish, court systems can be taken to satisfy the standard of procedural rights required by article 6.

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[18] Ebbvale Ltd v Hosking (Bahamas) [2013] UKPC 1
[19] Re LHF Wools Ltd [1970] Ch. 27
[20] Re a Company (No.006685 of 1996) [1997] B.C.C. 830
[21] Re a Company (No.0012209 of 1991) [1992] 1 W.L.R. 351
[22] Willers (Appellant) v Joyce and another (in substitution for and in their capacity as executors of Albert Gubay (deceased)) (Respondent) [2016] UKSC 43 & 44

**Article 1, Protocol 1: Right to peaceful enjoyment of property**

Restructuring arrangements (clause 7 and Schedule 9)

Company meetings (clause 35 and Schedule 14)

1) Restructuring arrangements are described in paragraphs 18 to 25 above. The company meeting provisions area described in paragraph 14.

Interference

41. The effect of the restructuring arrangement is that, providing the relevant voting threshold is met, a company's creditors will be required to submit to compromise arrangements under which they may receive less than the full amount of the debt due. That is the case even for those creditors that voted against the proposal. A legally enforceable debt is a possession for the purposes of A1P1. This is because "possession" has an autonomous meaning under the Convention; that meaning has been refined by ECtHR case-law and it is clear that an enforceable debt constitutes a possession for the purposes of A1P1.[23] In that respect, the Convention mirrors the position in UK domestic law where the right to recover a debt is also considered to be a species of property right.

42. So far as the company meetings provision is concerned, this allows qualifying bodies to prevent shareholders from attending meetings in person and from participating other than by voting. As stated, "possession" has an autonomous meaning for A1P1 purposes. ECtHR case-law has established that a company-share with an economic value, together with various rights attaching to it allowing the shareholder to exert influence on a company, can be considered a "possession".[24]

43. The Department considers that while the measures may have the effect of modifying the rights which can be exercised by members as to their participation in AGMs and other meetings, which may in turn amount to a control of use or broader interference with the general right to the peaceful enjoyment of property,[25] any such interference is justified for the reasons set out below.

Justification

[23] Agneessens v Belgium (Application 12164/86) (admissibility decision, 12 October 1988), EComH
[24] Olczak v. Poland (application 30417/96) (admissibility decision, 7 October 2002)
[25] Olczak v Poland (application 30417/96) § 72 & 84

44. The Department considers that both the A1P1 interferences resulting from the restructuring arrangements, and from the meeting provisions for qualifying bodies are justified.

45. A1P1 is a qualified right. A1P1 paragraph (1) establishes that an interference will be justified if it is subject to conditions provided by law ("the lawfulness condition"), in the public interest, and proportionate. These terms also have autonomous meanings for the purpose of A1P1 which has also been confirmed by ECtHR and domestic case law.

46. The lawfulness condition requires that the interference must have a legal basis in domestic law[26] and that it is law itself cannot be arbitrary.[27] The Department's assessment is that both the restructuring plan and company meeting provisions satisfy these criteria.

47. The Government's view is that it is clear that following enactment of the legislation containing these measures any interference will have a legal basis in domestic law and meet the lawfulness condition.

48. So far as the restructuring arrangements are concerned while it is correct that the legislation does not specify a single outcome for any given creditor (but is instead a framework within which parties are free to propose any arrangement they see fit) that does not mean that it is arbitrary. Case-law has confirmed that a deprivation of property will not be arbitrary where it is accompanied by appropriate procedural guarantees to enable the affected entity to challenge the application of the measures to them in a specific instance.

49. The procedural guarantees provided under the restructuring arrangements are extensive. The nature of those procedural guarantees is set out in paragraphs 34 and 35 above and are therefore not repeated here.

50. As to the public interest and proportionality criteria, there is no prescribed definition of what is meant by the "public interest". Case-law, both from the ECtHR and domestic courts has confirmed that this is an area where States have a significant margin of appreciation. A line of case-law indicates that where a measure is justified as a matter of socio-economic policy then the measure will only be found to be unjustified where it is "manifestly without

[26] Špaček, s.r.o., v. the Czech Republic (application 26449/95)
[27] East West Alliance Limited v. Ukraine (application 19446/04), § 167; Ünsped Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria (application 3503/08), § 37

reasonable foundation".[28] The ECtHR has previously concluded that insolvency processes which adjust the value of a creditor's debt in order to provide relief to the debtor are in the public interest.[29]

51. The Supreme Court has endorsed a 4-part test for assessing proportionality[30]-

- *whether the objective of the measure is sufficiently important to justify the limitation of a protected right,*
- *whether the measure is rationally connected to the objective,*
- *whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and*
- *whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.*

52. So far as the restructuring arrangements are concerned the Department's assessment is that these measures (intended, as they are, to facilitate the rescue of companies as going concerns) fall within the field of socio-economic policy. ECtHR case law has, as stated, established that matters of socio-economic policy are areas of legitimate public interest and that, when acting in this area, States have a wide margin of appreciation.[31]

53. As to the proportionality requirement the measure is clearly rationality connected to the objective. It seeks to balance the rights of creditors against the overall policy objective of ensuring that a minority cannot assert their interest in a manner which is contrary to the wider interests of creditors and the company itself. The various procedural and judicial protections provided attempt to strike a fair balance between those competing interests. The Department considers however that it would not have been possible to increase the degree of protection given to dissenting creditors without unacceptably compromising the achievement of the underlying objective which is to facilitate compromise agreements which are broadly acceptable to the wider constituency of creditors. Accordingly, having regard, in particular, to the significant importance of the socio-economic objective the measure seeks to pursue, the Department considers that the applicable test for proportionality is satisfied.

54. So far as the meetings provisions are concerned the purpose of the legislation is to enable companies and other bodies to hold meetings in a way which is compatible with the need

[28] R (SG) v Secretary of State for Work and Pensions [2015] UKSC 16
[29]Back v Finland (Application no. 37598/97) [2005] BPIR 1.
[30] Bank Mellat v Her Majesty's Treasury [2013] UKSC 39
[31] Bah v United Kingdom (application 56328/07)

to limit the spread of the pandemic and the health protection legislation which has been introduced as a result. We consider that the measures clearly strike a fair balance between the interests of the public and the private interests of individual members. The interference is limited in various respects. In particular, the interference is temporary in nature as the measures only apply to meetings held during a set period which cannot be extended beyond the end of the financial year. Members will for a temporary period no longer have the right to attend meetings in person, to participate in meetings other than by voting (because it may be impracticable for them be able to do so if the meeting is held electronically), and to vote by particular means. However, members must still be given some means of exercising their right to vote at those meetings. There is at the same time a very significant public interest in ensuring that companies are not subject to obligations to hold meetings in a way that could present a risk to the health of its directors, members and the wider public.

55. For these reasons the Department considers that there is no violation of A1P1.

Department for Business, Energy and Industrial Strategy
15 May 2020