

# CORPORATE INSOLVENCY AND GOVERNANCE BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

### What these notes do

These Explanatory Notes relate to the Lords Amendments to the Corporate Insolvency and Governance Bill, as brought from the House of Lords on 24 June 2020.

These Explanatory Notes have been prepared by the Department for Business, Energy and Industrial Strategy in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.

These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 113, the Bill as first printed for the Lords.

These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.

Lords Amendments 1 to 116 were tabled in the name of the Minister.

There are no Lords Amendments that were tabled by Peers, and opposed by the Government.

There are no Amendments that were tabled by Peers, and supported by the Government.

There are no Amendments that were tabled by Peers, and the Government was neutral.

In the following Commentary, an asterisk(\*) appears in the heading of any paragraph that deals with a non-Government amendment.

### Commentary on Lords amendments

#### Lords Amendments to Clause 1: Moratoriums in Great Britain

##### Lords Amendment 1

This Amendment would narrow the Secretary of State's power in new section A6(4) to change a list of documents, so that it is confined to adding to the list. The power could subsequently be re-exercised so as to remove anything added.

##### Lords Amendment 2

This Amendment would extend the monitor's duty to give notice that a moratorium has come into force to the Pensions Regulator (where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme) and the Board of the Pensions Protection Fund (where the company is an employer in respect of an

eligible scheme eligible under section 126 of the Pensions Act 2004).

### Lords Amendment 3

This Amendment would remove the ability for the Secretary of State to use regulations to amend the documents that must be filed at court when directors wish to extend a moratorium without seeking the consent of creditors.

### Lords Amendment 4

This Amendment would remove the power for the Secretary of State to make regulations to amend the documents that must be filed at court when directors wish to extend a moratorium following consent by creditors.

### Lords Amendment 5

This Amendment would remove the power for the Secretary of State to make regulations to amend the documents that must accompany an application to court to extend a moratorium.

### Lords Amendment 6

This Amendment would extend the monitor's duties to give notice where a moratorium is extended or comes to an end in the same circumstances as those set out in Lords Amendments 2.

### Lords Amendment 7

This Amendment would, in addition to Amendments 11, 21, and 26, deal with the application of effects of the moratorium to a collateral security market charge, security financial collateral arrangement or system charge.

Lords Amendment 7 would provide that section A22 does not apply to a collateral security, market charge, security financial collateral arrangement or system charge. This fulfils the Government's intent to exclude certain financial services contracts from the effects of the moratorium. Financial collateral arrangements, charges and securities are already exempt from the moratorium provisions related to the disposal of charged property free from charges in section A31. However, these arrangements are also affected by the provisions in the Bill that prevent floating charges of the imposition of property disposal restrictions arising during the moratorium. Applying these provisions could lead to legal uncertainty for financial market participants, which in turn carries financial market stability risks. These amendments therefore mitigate these risks and fulfil the original policy intent.

### Lords Amendment 8

This Amendment would extend the duty to give notice that the monitor has changed in the same circumstances as Amendment 2.

### Lords Amendment 9

This Amendment would insert a new section into Part A1 of the Insolvency Act 1986 (moratoriums), which gives the Board of the Pension Protection Fund the same rights to challenge the monitor or the company directors that the trustees or managers of eligible pensions schemes have as creditors, in relevant specified situations.

### Lords Amendment 10

This Amendment would introduce a regulation-making power that enables the Secretary of State to provide for the pension scheme trustees' or managers' rights as a creditor (to participate in a qualifying decision procedure) to be exercisable by the Board of the Pension Protection Fund. This applies in relevant specified situations where the moratorium concerns a company

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that is an employer in relation to a PPF eligible scheme and where the trustees or managers of the scheme are a creditor. Regulations may provide for the creditor rights to be exercisable for a specified period and set conditions that apply before the PPF exercises any rights.

#### Lords Amendment 11

This amendment would ensure that section A50 does not apply to a collateral security, market charge, security financial collateral arrangement or system charge. Please refer to paragraphs 16 and 17 for more details.

#### Lords Amendment 12

This amendment would define “employer” in relation to a pension scheme for the purposes Part A1 of the Insolvency Act 1986 and for the purpose of the Minister’s other amendments to clause 1 which use that term.

#### Lords Amendment 13

This amendment would define “money purchase scheme” for the purposes of Part A1 of the Insolvency Act 1986 and for the purposes of the other amendments to clause 1 which use that term.

#### Lords Amendment 14

This amendment would define “occupational pension scheme” and “pension scheme” for the purposes of Part A1 of the Insolvency Act 1986 and for the purposes of the Minister’s other amendments to clause 1 which use those terms.

### Lords Amendments to Clause 4: Moratoriums in Northern Ireland

#### Lords Amendment 15

This Amendment would narrow the power to change a list of documents, so that it is confined to adding to the list. The power could subsequently be re-exercised so as to remove anything added.

#### Lords Amendment 16

This Amendment would be the same as those set out in Lords Amendment 2 (paragraph 11), but for Northern Ireland.

#### Lords Amendment 17

This Amendment would remove the power for the Northern Ireland Executive to make regulations to amend the documents that must be filed at court when directors wish to extend a moratorium without seeking the consent of creditors.

#### Lords amendment 18

This Amendment would remove the power for the Northern Ireland Executive to make regulations to amend the documents that must be filed at court when directors wish to extend a moratorium following the consent of creditors.

#### Lords Amendment 19

This Amendment would remove the power for the Northern Ireland Executive to make regulations to amend the documents that must accompany an application to court to extend a moratorium.

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### Lords Amendment 20

This Amendment would be the same as Lords Amendment 6 (paragraph 15), but for Northern Ireland.

### Lords Amendment 21

This Amendment would ensure that Article 13DD does not apply to a collateral security, market charge, security financial collateral arrangement or system-charge. Please refer to paragraphs 16 and 17 for more details.

### Lords Amendment 22

This Amendment would be the same as Lords Amendment 8 (paragraph 18), but for Northern Ireland.

### Lords Amendment 23

This Amendment would be the same as Lords Amendment 9 (paragraph 19), but would insert a new article into Part 1A of the Insolvency (Northern Ireland) Order 1989.

### Lords Amendment 24

This Amendment would remove the temporary modification to the parliamentary procedure for regulations. See also the proposed new clause in the Minister's name to be inserted after Clause 43 by Lords Amendment 61.

### Lords Amendment 25

This Amendment is the same as Lords Amendment 10 (paragraph 20), but for Northern Ireland.

### Lords Amendment 26

This Amendment would ensure that Article 13HB does not apply to a collateral security, market charge, security financial collateral arrangement or system charge. Please refer to paragraph 16 and 17 for more detail.

### Lords Amendment 27

This Amendment would define "employer" for the purposes of the other Lords Amendments to Clause 4 which use that term.

### Lords Amendment 28

This Amendment would define "money purchase scheme" for the purposes of Part 1A of the Insolvency (Northern Ireland) Order 1989 and for the purposes of the Minister's other amendments to Clause 4 which use that term.

### Lords Amendment 29

This Amendment would define "occupational pension scheme" and "pension scheme" for the purposes of Part 1A of the Insolvency (Northern Ireland) Order 1989 and for the purposes of the Minister's other amendments to Clause 4 which use those terms.

## **Lords Amendments to Clause 7: Arrangements and reconstructions for companies in financial difficulty**

### Lords Amendment 30

This Amendment would revive paragraph 60A of Schedule B1 to the Insolvency Act 1986, which contains a power to make regulations in relation to sales to connected persons in the context

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of an administration and which expired in May 2020 by virtue of the sunset provision in subparagraph (10) of that paragraph. The revised power will enable the Secretary of State to make regulations to prohibit or impose requirements or conditions in relation to the disposal, hiring out or sale of property of a company by the administrator to a person connected with the company in circumstances specified in the regulations, provided the power is used before end of June 2021.

### Lords Amendment 31

This Amendment would confer a new power for the Department of Economy in Northern Ireland to make provision under the law of Northern Ireland about sales to connected persons in the context of an administration. It is similar to the corresponding power in Great Britain (paragraph 60A of Schedule B1 of the Insolvency Act 1986, which is revived by Amendment 30 (paragraph 40)). A connected person in relation to a company is defined as a director, or other officer or shadow director, or an associate of that person or the company, providing that they are not an employee. As in Great Britain, the power in Northern Ireland will expire at the end of June 2021, unless it has already been exercised.

## Lords Amendments to Clause 10: Suspension of liability for wrongful trading: Great Britain

### Lords Amendment 32

This Amendment would alter the definition of the “relevant period” that applies for the purposes of Clause 10 so that the period ends on 30 September 2020. It would extend the expiry of the suspension of personal liability for wrongful trading in Great Britain from one month after Royal Assent to 30 September 2020. It forms part of a package of amendments (along with Amendments 33, 34, 35, 75, 90, 101, 102, 103 & 104), to extend the temporary insolvency measures to account for the continued impact of COVID-19.

### Lords Amendment 33

This Amendment would alter the definition of the “relevant period” that applies for the purposes of Clause 11 so that the period ends with 30 September 2020. It is the Northern Ireland equivalent of Lords Amendment 32 (paragraph 42).

### Lords Amendment 34

This Amendment would alter the definition of the “relevant period” that applies for the purposes of subsection (1)(a) of Clause 13 so that the period ends with 30 September 2020. It would extend the expiry of the temporary exclusion for small suppliers from the termination clause measures in Great Britain from one month after Royal Assent to 30 September 2020. See Amendment 32 (paragraph 42) for more detail.

## Lords Amendments to Clause 17: Temporary exclusion for small suppliers: Northern Ireland

### Lords Amendment 35

This Amendment would alter the definition of the “relevant period” that applies for the purposes of subsection (1)(a) of Clause 17 so that the period ends with 30 September 2020. It is the Northern Ireland equivalent of Amendment 34 (see paragraph 44).

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## **Lords Amendments to Clause 20: Restrictions**

### **Lords Amendment 36**

This Amendment would add a further restriction on the use of the power in Clause 18 so that the Secretary of State may only make regulations to temporarily amend insolvency or related legislation if satisfied that the need is urgent.

## **Lords Amendments to Clause 22: Expiry**

### **Lords Amendment 37**

This Amendment would prevent the expiry date for the power in Clause 18, i.e. the date after which regulations to temporarily amend insolvency or related legislation may not be made, from being extended to a date which is more than two years after Royal Assent. This will not prevent the temporary amendments already in place as a result of regulations made under Clause 18 from being extended beyond that date.

## **Lords Amendments to Clause 24: Procedure for regulations**

### **Lords Amendment 38**

This Amendment and Amendment 40 to Clause 24 would provide for regulations made under Clause 23, which provides for consequential, incidental or supplementary provisions, or transitional provision or savings, in respect of temporary amendments to insolvency or related legislation made by regulations under Clause 18, and which amend an Act or an Act of the Scottish Parliament, to be subject to the made affirmative procedure. Regulations containing these provisions may also be made in the same statutory instrument as the temporary amendments to insolvency and related legislation made using the power in Clause 18, which is also subject to the made affirmative procedure.

### **Lords Amendment 39**

This Amendment would clarify that if ‘made affirmative’ regulations laid under Clause 24(2) cease to have effect because they have not been approved by both Houses of Parliament within the required period of 40 days, that does not affect anything previously done under or by virtue of the regulations, for example by invalidating any procedures. Also it does not prevent the making of new regulations.

### **Lords Amendment 40**

See paragraph 48 for more detail.

## **Lords Amendments to Clause 28: Restrictions**

### **Lords Amendment 41**

This Amendment would add a further restriction on the use of the power in Clause 26 in that the relevant authority using the power (whether that is the Department for the Economy in Northern Ireland or the Secretary of State) may only make regulations to temporarily amend insolvency or related legislation if satisfied that the need is urgent.

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## **Lords Amendments to Clause 30: Expiry**

### **Lords Amendment 42**

This Amendment would prevent the expiry date for the power in Clause 26, i.e. the date after which regulations to temporarily amend insolvency or related legislation may not be made, from being extended to a date which is more than two years after Royal Assent. This will not prevent the temporary amendments already in place as a result of regulations made under Clause 26 from being extended beyond that date.

## **Lords Amendments to Clause 32: Procedure for regulations made by the Department**

### **Lords Amendment 43**

This Amendment and Amendment 45 to Clause 32 would provide for regulations made under Clause 31 by the Department for the Economy in Northern Ireland, which provide for consequential, incidental or supplementary provisions, or transitional provision or savings, in respect of temporary amendments to insolvency or related legislation made by regulations under Clause 26, and which amend an Act or Northern Ireland legislation, to be subject to the made affirmative procedure in the Northern Ireland Assembly. Regulations containing these provisions may also be made in the same statutory instrument as the temporary amendments to insolvency and related legislation made using the power in Clause 26, which is also subject to the made affirmative procedure

### **Lords Amendment 44**

This Amendment would clarify that if 'made affirmative' regulations made by the Department for the Economy in Northern Ireland and laid under Clause 32(2) cease to have effect because they have not been approved by the Northern Ireland Assembly within the required period of 40 days, that does not affect anything previously done under or by virtue of the regulations, for example by invalidating any procedures. Also, it does not prevent the making of new regulations.

### **Lords Amendment 45**

See paragraph 53 for more detail.

## **Lords Amendments to Clause 33: Procedure for regulations made by the Secretary of State**

### **Lords Amendment 46**

This Amendment and Amendment 48 to Clause 33 would provide for regulations made under Clause 31 by the Secretary of State, which provide for consequential, incidental or supplementary provisions, or transitional provision or savings, in respect of temporary amendments to insolvency or related legislation made by regulations under Clause 26, and which amend an Act, to be subject to the made affirmative procedure. Regulations containing these provisions may also be made in the same statutory instrument as the temporary amendments to insolvency and related legislation made using the power in Clause 26, which is also subject to made affirmative procedure.

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### Lords Amendment 47

This Amendment would clarify that if 'made affirmative' regulations made by the Secretary of State and laid under Clause 33(2) cease to have effect because they have not been approved by both Houses of Parliament within the required period of 40 days, that does not affect anything previously done under or by virtue of the regulations, for example by invalidating any procedures. Also, it does not prevent the making of new regulations.

### Lords Amendment 48

See paragraph 56 for more detail.

## Lords Amendments to Clause 39: Power to change duration of temporary provisions: Great Britain

### Lords Amendment 49

This Amendment would mean that the power to make regulations under Clause 39(1)(b) could be exercised only if the Secretary of State considered it reasonable to exercise the power to mitigate an effect of Coronavirus. Regulations made under Clause 39 can either extend or curtail the period that temporary insolvency measures contained in the Bill are in force. This amendment would create a condition on the use of the power to extend the temporary measures, the condition being that the duration of any temporary measure can only be extended where the Secretary of State is satisfied that there is a requirement to do so to deal with an effect of Coronavirus.

### Lords Amendment 50

This Amendment would be consequential on Amendment 49 (paragraph 59). It would provide the definition of "Coronavirus" necessary to apply the condition contained in Amendment 49.

## Lords Amendments to Clause 40: Power to change duration of temporary provisions: Northern Ireland

### Lords Amendment 51

This Amendment would mean that the power to make regulations under Clause 40(1)(b) could be exercised only if the Department for the Economy in Northern Ireland considered it reasonable to exercise the power to mitigate an effect of Coronavirus. It is the Northern Ireland equivalent of Amendment 49 (paragraph 59).

### Lords Amendment 52

This Amendment would be consequential on Amendment 51 (paragraph 61). It is the Northern Ireland equivalent of Lords Amendment 50 (paragraph 60).

## Lords Amendments to Clause 41: Modified procedure for regulations of the Secretary of State

### Lords Amendment 53

This Amendment would change the modified procedure for regulations at Clause 41 so that *These Explanatory Notes relate to the Lords Amendments to the Corporate Insolvency and Governance Bill as brought from the House of Lords on 24 June 202 (Bill 146-EN)*

regulations that, for a six month period following Royal Assent, would have been subject to the negative resolution procedure will now be subject to the made affirmative procedure. After the six month period ends the affirmative procedure will apply to the regulations mentioned in Clause 41.

### Lords Amendment 54

This Amendment would apply the modified procedure for regulations (as amended by Lords Amendments 53 and 55) to the regulations that give the Pension Protection Fund creditor rights (the power to make such regulations having been inserted by Lords Amendment 10, see paragraph 20 for details). Normally such regulations would require the affirmative procedure; however, for the first six months following Royal Assent, this amendment would mean they may be made using the made affirmative procedure.

### Lords Amendment 55

This Amendment would define “made affirmative procedure” for the purposes of the Lords Amendment 53 (see paragraph 63) to Clause 41. That is: the regulations must be laid in Parliament as soon as possible after being made and they will cease to have effect if, within 40 days of being made, they are not approved by a resolution in both Houses. Any time during which Parliament is dissolved or prorogued or both Houses are in recess for longer than 4 days does not count towards the 40 days. Where made affirmative regulations cease to have effect this does not affect anything previously done under those regulations or prevent the making of new regulations.

## Lords Amendments to Clause 42: Modified procedure for regulations of the Welsh Ministers

### Lords Amendment 56

This Amendment would change the modified procedure for regulations mentioned in Clause 42 so that regulations that for a six month period following Royal Assent would have been subject to the negative resolution procedure will now be subject to the made affirmative procedure. Such regulations will be subject to the affirmative procedure when the six month period ends.

### Lords Amendment 57

This Amendment would define “made affirmative procedure” for the purposes of the Lords Amendment 56 (see paragraph 66) to Clause 42. That is: the regulations must be laid before the Welsh Assembly as soon as possible after being made and they will cease to have effect if within 40 days of being made they are not approved by a resolution of the Welsh Assembly. Any time during which the Welsh Assembly is dissolved or in recess for longer than 4 days does not count towards the 40 days. Where made affirmative regulations cease to have effect this does not affect anything previously done under those regulations or prevent the making of new regulations.

## Lords Amendments to Clause 43: Modified procedure for regulations of the Scottish Ministers

### Lords Amendment 58

This Amendment would be needed in light of the Minister's other amendment to Clause 43(1). *These Explanatory Notes relate to the Lords Amendments to the Corporate Insolvency and Governance Bill as brought from the House of Lords on 24 June 2022 (Bill 146-EN)*

### Lords Amendment 59

This Amendment would change the modified procedure for regulations mentioned in clause 43 so that regulations that for a six month period following Royal Assent would have been subject to the negative procedure are now subject to the made affirmative procedure. Such regulations will be subject to the affirmative procedure when the six month period ends.

### Lords Amendment 60

This Amendment would define "made affirmative procedure" for the purposes of the Lords Amendment 58 (see paragraph 68 for more detail).

## **Lords Amendments after Clause 43: Modified procedure for regulations of the Scottish Ministers**

### Lords Amendment 61

This Amendment would insert a new clause into the Bill to enable a modified procedure for regulations made by Northern Ireland Departments, available for six months following Royal Assent. Regulations under this clause will be subject to the 'made affirmative' procedure, which means the regulations must be laid before the Assembly as soon as possible after being made and they will cease to have effect if within 40 days of being made they are not approved by a resolution of the Assembly. Any time during which the Assembly is dissolved, in recess for longer than 4 days, or adjourned for more than 6 days does not count towards the 40 days. Where made affirmative regulations cease to have effect this does not affect anything previously done under the regulations or prevent the making of new regulations.

## **Lords Amendments to Schedule 1: Moratoriums in Great Britain: eligible companies**

### Lords Amendment 62

This amendment would limit the Secretary of State's power to amend new Schedule ZA1 so that it cannot be used to amend paragraph 2 (exclusion from eligibility for companies subject to moratorium or insolvency procedure etc.) of that Schedule.

## **Lords Amendments to Schedule 2: Moratoriums in Great Britain: contracts involving financial services**

### Lords Amendment 63

The following Amendments deal with exclusions of master agreements for certain financial services contracts from the effects of the moratorium and prohibition of termination clauses: Amendments 63, 64, 65, 77, 78, 79, 105, 106, 107, 110, 111, 112.

This amendment would provide for a master agreement for securities financing transactions to be a "contract or other instrument involving financial services" for the purposes of new section A18 of the Insolvency Act 1986. This ensures that master agreements for these contracts are also excluded in addition to the underlying agreements that might form part of a master agreement. This fulfils the Government's policy intent to exclude certain financial services contracts from the effects of the moratorium and prohibition of termination clauses.

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### Lords Amendment 64

This Amendment would provide for a master agreement for derivatives to be a “contract or other instrument involving financial services” for the purposes of new section A18 of the Insolvency Act 1986. Please refer to paragraph Lords Amendment 63 (paragraph 74)] for more details.

### Lords Amendment 65

This Amendment would provide for a master agreement for spot contracts to be a “contract or other instrument involving financial services” for the purposes of new Section A18 of the Insolvency Act 1986. Please refer to paragraph Lords Amendment 63 (paragraph 74) for more details.

### Lords Amendment 66

The following amendments deal with the exclusion of capital market arrangements from the effects of the moratorium and prohibition of termination clauses: Amendments 66, 80, 108, 113

This amendment would provide for an agreement relating to the issues of capital market investments to be a “contract or other instrument involving financial services” for the purposes of new section A18 of the Insolvency Act 1986. It expands the Bill’s definition of excluded capital market arrangements, so that it excludes all capital market investments, including for example secured and unsecured bonds. This will ensure that the Government fulfils its original intent to exclude certain financial services contracts from the effects of the moratorium and prohibition of termination clauses.

## Lords Amendments to Schedule 3: Moratoriums in Great Britain: further amendments

### Lords Amendment 67

This Amendment would ensure that priority pre-moratorium debts (as set out in new section 174A to the Insolvency Act 1986, inserted by paragraph 13 of Schedule 3 to this Bill) cannot be compromised by a company voluntary arrangement proposal without the consent of the creditor.

### Lords Amendment 68

This Amendment would leave out definitions that are no longer needed because of Lords Amendment 67 (paragraph 79).

### Lords Amendment 69

This Amendment would clarify which pre-moratorium debts receive super priority in a liquidation entered into within 12 weeks of the end of a moratorium. In particular it excludes accelerated financial services debts from receiving such priority status and creates a definition of ‘priority pre-moratorium debt’.

### Lords Amendment 70

This Amendment would confer power on the Secretary of State to make regulations which change the definitions of “moratorium debt” and “priority pre-moratorium debt” for the purposes of new section 174A(2) of the Insolvency Act 1986.

### Lords Amendment 71

This Amendment would define expressions used in Lords Amendment 67 (paragraph 79).

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### Lords Amendment 72

This Amendment would reflect the changes made by the Minister's amendments to new section 174A of the Insolvency Act 1986 (on page 109 of the Bill).

### Lords Amendment 73

This Amendment would make a consequential change to the rule-making power in new paragraph 64A of Schedule B1 to the Insolvency Act 1986 given the change in definition from 'pre-moratorium debt' to 'priority pre-moratorium debt' in amendment 82.

### Lords Amendment 74

This Amendment would leave out definitions that are no longer needed because of Lords Amendment 73 (paragraph 85).

## **Lords Amendments to Schedule 4: Moratoriums in Great Britain: temporary provision**

### Lords Amendment 75

This Amendment would alter the definition of the "relevant period" that applies for the purposes of Schedule 4 so that the period ends with 30 September 2020. It would extend the expiry of the temporary modifications for moratoriums and temporary moratorium rules in Great Britain from one month after Royal Assent to 30 September 2020. It forms part of a package of amendments (along with Amendments 32, 33, 34, 35, 90, 101, 102, 103 & 104), to extend the temporary insolvency measures to account for the continued impact of COVID-19.

## **Lords Amendments to Schedule 5: Moratoriums in Northern Ireland: eligible companies**

### Lords Amendment 76

This Amendment would limit the Department's power to amend new Schedule ZA1 so that it cannot be used to amend paragraph 2 (exclusion from eligibility for companies subject to moratorium or insolvency procedure etc.) of that Schedule.

## **Lords Amendments to Schedule 6: Moratoriums in Northern Ireland: contracts involving financial services**

### Lords Amendment 77

This Amendment would provide for a master agreement for securities financing transactions to be a "contract or other instrument involving financial services" for the purposes of new Article 13D of the Insolvency (Northern Ireland) Order 1989. Please refer to Lords Amendment 63 (paragraph 74) for more details.

### Lords Amendment 78

This Amendment would provide for a master agreement for derivatives to be a "contract or other instrument involving financial services" for the purposes of new Article 13D of the Insolvency (Northern Ireland) Order 1989. Please refer to Lords Amendment 63 (paragraph 74) for more details.

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### Lords Amendment 79

This Amendment would provide for a master agreement for spot contracts to be a “contract or other instrument involving financial services” for the purposes of new Article 13D of the Insolvency (Northern Ireland) Order 1989. Please refer to Lords Amendment 63 (paragraph 74) for more details.

### Lords Amendment 80

This Amendment would provide for an agreement relating to the issue of capital market investments to be a “contract or other instrument involving financial services” for the purposes of new Article 13D of the Insolvency (Northern Ireland) Order 1989. Please refer to Lords Amendment 66 (paragraph 78) for more details.

## Lords Amendments to Schedule 7: Moratoriums in Northern Ireland: further amendments

### Lords Amendment 81

This Amendment would pave the way for the Minister’s amendments to new Article 148A of the Insolvency (Northern Ireland) Order 1989 (on page 160 of the Bill).

### Lords Amendment 82

This Amendment would ensure that ‘priority pre-moratorium debts’ cannot be compromised by a company voluntary arrangement proposal without the consent of the creditor.

### Lords Amendment 83

This Amendment would leave out definitions that are no longer needed because of Lords Amendment 82 (paragraph 94).

### Lords Amendment 84

This Amendment would clarify which pre-moratorium debts get priority for the purposes of new Article 148A(2) of the Insolvency (Northern Ireland) Order 1989. Among other things, it excludes certain debts that fall due during the moratorium because they are accelerated (for example, because the creditor exercises a contractual right to require immediate payment in full).

### Lords Amendment 85

This Amendment would confer power on the Department for the Economy in Northern Ireland to make regulations to change the definitions of “moratorium debt” and “priority pre-moratorium debt” for the purposes of new Article 148A(2) of the Insolvency (Northern Ireland) Order 1989.

### Lords Amendment 86

This Amendment would define expressions used in Article 148A of the Insolvency (Northern Ireland) Order 1989, as inserted by paragraph 17 of Schedule 7.

### Lords Amendment 87

This Amendment would reflect the changes made by the Minister’s amendments to new Article 148A of the Insolvency (Northern Ireland) Order 1989 (on page 160 of the Bill).

### Lords Amendment 88

This Amendment would make consequential change to the rule-making power in new paragraph

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65A(5) of Schedule B1 to the Insolvency (Northern Ireland) Order 1989 given the change in definition from ‘pre-moratorium debt’ to ‘priority pre-moratorium debt’ in Lords Amendment 87 (paragraph 99).

### Lords Amendment 89

This Amendment would leave out definitions that are no longer needed because Lords Amendment 87 (paragraph 99).

## Lords Amendments to Schedule 8: Moratoriums in Northern Ireland: temporary provision

### Lords Amendment 90

This Amendment would alter the definition of the “relevant period” that applies for the purposes of Schedule 8 so that the period ends with 30 September 2020. It is the Northern Ireland equivalent of Lords Amendment 75.

## Lords Amendments to Schedule 9: Arrangements and reconstructions for companies in financial difficulty

### Lords Amendment 91

This Amendment would give protection for priority pre-moratorium debts in a Part 26A restructuring plan under the Companies Act 2006. It amends section 901H to reflect the new definition of ‘priority pre-moratorium debt’ in section 174A of the Insolvency Act 1986 and article 148A of the Insolvency (Northern Ireland) Order 1989 (see Lords Amendments 69 and 84 respectively).

### Lords Amendment 92

This Amendment would amend section 901H of the Companies Act 2006 to refer to the definitions of ‘moratorium debt’ and ‘priority pre-moratorium debt’ as used in section 174A of the Insolvency Act 1986 and article 148A of the Insolvency (Northern Ireland) Order 1989 (see Lords Amendments 69 and 84 respectively).

### Lords Amendment 93

This Amendment would in certain circumstances require information provided to creditors under Part 26A of the Companies Act 2006 also to be provided to the Pensions Regulator and the Board of the Pension Protection Fund. It provides a regulation-making power for the Secretary of State to make regulations that enable the Board to be given the power to exercise rights which could be exercised by the trustees or managers of a pension scheme where they are creditors in proceedings under that Part, such as the right to vote on the proposed compromise or arrangement.

### Lords Amendment 94

The following Amendments deal with consequential amendments related to the enforcement powers of the financial services regulators in relation to the restructuring proposals in the Bill: amendments: 94, 95, 96, 97, 100.

This Amendment would make a consequential drafting change as a result of the insertion of a second amendment to paragraph 24 of Schedule 17A to the Financial Services and Markets

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Act 2000. The fulfils the Government’s intent to give the Bank of England, Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) to include a formal role for them when a regulated financial services firm proposed a restructuring plan. The amendment ensure the regulators are able to enforce the obligations imposed on financial services firms under the Bill effectively, by giving them enforcement powers to take action for breach of the notice and consent requirement placed on firms proposing a restructuring plan. In this way, the regulators will be able to undertake their regulatory duties in respect of these firms effectively.

### Lords Amendment 95

This Amendment would provide that the powers conferred by new section 355B of the Financial Services and Markets Act 2000 will be available to the Bank of England in relation to certain types of institution regulated by the Bank of England. Please refer to Lords Amendment 94 (paragraph 107) for more details.

### Lords Amendment 96

This Amendment would ensure that the application of new section 355B of the Financial Services and Markets Act 2000 in relation to the Bank of England works as intended. Please refer to Lords Amendment 94 (paragraph 107) for more details.

### Lords Amendment 97

This Amendment would provide that the powers of the FCA and PRA to publish a statement about a regulatory breach or to impose a financial penalty are exercisable in relation to a contravention by a company of the requirements imposed by new section 355A(2) and (3) of the Financial Services and Markets Act 2000. Please refer to Lords Amendment 94 (paragraph 107) for more details.

### Lords Amendment 98

This Amendment would make provision for priority pre-moratorium debts in a scheme of arrangement under Part 26 of the Companies Act 2006.

### Lords Amendment 99

This Amendment would mean the Minister’s amendments on page 198 of the Bill provide that the creditors to whom new section 899A of the Companies Act 2006 applies are those in respect of “moratorium debts” and “priority pre-moratorium debts” within the meaning of section 174A of the Insolvency Act 1986 or Article 148A of the Insolvency (Northern Ireland) Order 1989 (which provide for those kinds of debt to have priority in a winding-up).

### Lords Amendment 100

This Amendment would provide that the powers of the Bank of England to publish a statement about a regulatory breach, to impose a financial penalty or to seek an injunction are exercisable in relation to a contravention by an infrastructure company of the requirements imposed by new section 124A(2) and (3) of the Financial Services (Banking Reform) Act 2013. Please refer to Lords Amendment 94 (paragraph 107) for more details.

## Lords Amendments to Schedule 10: Winding up petitions: Great Britain

### Lords Amendment 101

This Amendment would alter the definition of the “relevant period” that applies for the purposes

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of Part 1 of Schedule 10 so that the period ends with 30 September 2020. It would extend the expiry of the suspension of the use of statutory demands in Great Britain from one month after Royal Assent to 30 September 2020. It forms part of a package of amendments (along with Amendments 32, 33, 34, 35, 75, 90, 102,103 & 104), to extend the temporary insolvency measures to account for the continued impact of COVID-19.

### Lords Amendment 102

This Amendment would alter the definition of the “relevant period” that applies for the purposes of Part 2 of Schedule 10 so that the period ends with 30 September 2020. It would extend the expiry of the restrictions placed on the use of winding-up petitions in Great Britain from one month after Royal Assent to 30 September 2020. It forms part of a package of amendments (along with Amendments 32, 33, 34, 35, 75, 90, 102,103 & 104), to extend the temporary insolvency measures to account for the continued impact of COVID-19.

## Lords Amendments to Schedule 11: Winding up petitions: Northern Ireland

### Lords Amendment 103

This Amendment would alter the definition of the “relevant period” that applies for the purposes of Part 1 of Schedule 11 so that the period ends with 30 September 2020. It is the Northern Ireland equivalent of Lords Amendment 101 (paragraph 114).

### Lords Amendment 104

This Amendment would alter the definition of the “relevant period” that applies for the purposes of Part 2 of Schedule 11 so that the period ends with 30 September 2020. It is the Northern Ireland equivalent of Lords Amendment 102 (paragraph 115).

## Lords Amendments to Schedule 12: Protections of supplies of goods and services

### Lords Amendment 105

This Amendment would provide for master agreements for securities financing transactions to be excluded from the operation of new section 233B of the Insolvency Act 1986. Please refer to Lords Amendment 63 (paragraph 74) for more details.

### Lords Amendment 106

This Amendment would provide for master agreements for securities financing transactions to be excluded from the operation of new section 233B of the Insolvency Act 1986. Please refer to Lords Amendment 63 (paragraph 74) for more details.

### Lords Amendment 107

This Amendment would provide for master agreements for spot contracts to be excluded from the operation of new section 233B of the Insolvency Act 1986. Please refer to Lords Amendment 63 (paragraph 74) for more details.

### Lords Amendment 108

This Amendment would provide for agreements relating to the issue of capital market investments to be excluded from the operation of new section 233B of the Insolvency Act

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1986. Please refer to Lords Amendment 66 (paragraph 78) for more details.

### Lords Amendment 109

This Amendment would clarify the relationship between the proposed new section 233B of the Insolvency Act 1986 and the International Interests in Aircraft Equipment (Cape Town Conventions) Regulations 2015.

## **Lords Amendments to Schedule 13: Protections of supplies of goods and services: Northern Ireland**

### Lords Amendment 110

This Amendment would provide for master agreements for securities financing transactions to be excluded from the operation of new Article 197B of the Insolvency (Northern Ireland) Order 1989. Please refer to Lords Amendment 63 (paragraph 74) for more details.

### Lords Amendment 111

This Amendment would provide for master agreements for derivatives to be excluded from the operation of new Article 197B of the Insolvency (Northern Ireland) Order 1989. Please refer to Lords Amendment 63 (paragraph 74) for more details.

### Lords Amendment 112

This Amendment would provide for master agreements for spot contracts to be excluded from the operation of new Article 197B of the Insolvency (Northern Ireland) Order 1989. Please refer to Lords Amendment 63 (paragraph 74) for more details.

### Lords Amendment 113

This Amendment would provide for agreements relating to the issue of capital market investments to be excluded from the operation of new Article 197B of the Insolvency (Northern Ireland) Order 1989. Please refer to Lords Amendment 66 (paragraph 78) for more details.

### Lords Amendment 114

This Amendment would clarify the relationship between the proposed new Article 197B of the Insolvency (Northern Ireland) Order 1989 and the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015.

## **Lords Amendments to Schedule 14: Meetings of companies and other bodies**

### Lords Amendment 115

This Amendment would be consequential to Amendment 116 below.

### Lords Amendment 116

This Amendment would change Schedule 14 so that regulations under paragraph 2(2)(b), 4 or 6 of the Schedule that could formerly have been made by a negative procedure will be subject to a made affirmative procedure (or an affirmative procedure).

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# **CORPORATE INSOLVENCY AND GOVERNANCE BILL**

## **EXPLANATORY NOTES ON LORDS AMENDMENTS**

These Explanatory Notes relate to the Lords Amendments to the Corporate Insolvency Bill as brought from the House of Lords on 24 June 2020 (Bill 146).

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