Title: The Ratings (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill **IA No:** BEIS024(F)-21-INSS **RPC Reference No: RPC-BEIS-IS-5065(2)** **Lead department or agency:** Insolvency Service (Exec agency of BEIS)	**Impact Assessment (IA)** **Date:** 19/04/2020 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Primary legislation **Contact for enquiries:** Hamish Hore: Hamish.Hore@insolvency.gov.uk Faisal Samih: Faisal.Samih@insolvency.gov.uk

Summary: Intervention and Options

RPC Opinion: GREEN

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	**Business Net Present Value**	**Net cost to business per year**	**Business Impact Target Status**
£-43.0m	£-43.0m	£5.0m	Qualifying provision

What is the problem under consideration? Why is government action or intervention necessary?

The Government receives complaints about abuse of the limited liability regime, including the ability to dissolve companies without paying debts or going through a formal insolvency process. This is prone to abuse by rogue directors at the expense of creditors and individual consumers. However, there is currently no power for the Insolvency Service to investigate and address abuse of the dissolution procedure by directors without restoration of the company to the register, a cumbersome and costly process which involves court proceedings. Therefore, rogue directors know that they can avoid scrutiny (and potential enforcement action) by dissolving their company. Therefore, it is necessary for the Government to legislate to expand the investigatory powers of the Insolvency Service to include directors of dissolved companies to address this regulatory loophole. The measure will be a part of the Government's approach to help combat Bounce Back Loan fraud, the recoveries of which would be susceptible without this power.

What are the policy objectives of the action or intervention and the intended effects?

The policy objective is to plug the legal loophole that exists in the insolvency enforcement landscape to address two major concerns. To ensure public concerns that rogue directors who abuse the company and insolvency law regimes can be investigated and held accountable, and to provide a deterrent against a likely and urgent scenario that company directors may use the dissolution of a company to evade their responsibility to repay Bounce Back Loans. This objective can only be achieved through primary legislation to expand the investigatory powers of the Insolvency Service to include former directors of dissolved companies. This will also further enhance the UK's corporate governance framework helping to maintain the UKs international reputation, with improved outcomes for stakeholders affected by wrongful dissolution and improved trust amongst businesses and supply-chains, encouraging economic activity.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Do Nothing. This would maintain the status quo and would not address the misconduct occurring from certain rogue directors or address the regulatory loophole. It would also not deliver on the Budget 2021 announcement that Government will enforce and address Bounce Back loan fraud. This option will not meet the policy objective.

Option 2: Non-regulatory option. The undesirable behaviour of rogue directors could be tackled using interventions such as education and coercion. However, without the threat of investigation and enforcement this approach would produce limited benefits and therefore would not meet the policy objective.

Option 3: Preferred option. The preferred option is for the Government to legislate via primary legislation, amending the existing regime to include a power for the Secretary of State to investigate and, where appropriate, take action against the directors of dissolved companies. During consultation on this measure in 2018, the majority of respondents were supportive of the proposal to widen existing powers to investigate the conduct of directors of dissolved companies. This is the only option that will achieve the policy objective.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 05/2026

Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	**Micro** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		**Traded:** n/a	**Non-traded:** n/a	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY:  Date: 25/04/21

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2020	PV Base Year 2021	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -60.4	**High:** -32.9	**Best Estimate:** -47.1

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.2	1	3.8	**32.9**
High	0.2		7.0	**60.4**
Best Estimate	0.2		5.5	**47.1**

Description and scale of key monetised costs by 'main affected groups'

- Ongoing familiarisation costs for directors to familiarise themselves with the changes; **£5.45m**
- One-off familiarisation costs for Insolvency Practitioners to familiarise themselves with the changes; **£0.2m**
- One-off familiarisation cost for investigations and enforcements teams at Insolvency Service; **£0.003m**

Other key non-monetised costs by 'main affected groups'

None

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0	0	0.0	**0.0**
High	0.0		0.0	**0.0**
Best Estimate	0.0		0.0	**0.0**

Description and scale of key monetised benefits by 'main affected groups'

None

Other key non-monetised benefits by 'main affected groups'

- Increasing confidence of banks and other lenders to extend credit to smaller companies as they can be confident that director conduct is more likely to be trustworthy, and where found not to be can be enforced against.
- Increased trust amongst businesses and supply-chains encouraging economic activity.
- Widespread knowledge that The Insolvency Service has the relevant powers will also act as a deterrent to undesirable behaviour by rogue directors.
- Promoting a level playing field and fair competition.
- Court cost savings to the Insolvency Service and creditors who in the counterfactual would need to apply to court to restore the company to the register.
- The non-monetised benefits will improve the net present value and could be sufficient to turn the present value positive.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5%

Assumptions

- The number of investigations performed by the Insolvency Service remains the same and the resources required for investigations into director conduct in dissolved companies are similar to existing investigations.
- Investigations into director conduct in dissolved companies will yield similar outcomes to the Insolvency Service's existing investigations.

Risks

- There is a risk that changing the limited liability regime alters the relationship between limited liability and director duties in unintended ways and could affect the incentives to become a director. This risk has been mitigated by targeting rogue directors, and so will not affect the majority of directors conducting their duties in good faith.
- The expected increase in insolvencies due to the economic impacts of the Covid-19 pandemic could result in a larger demand for investigations into failed companies. The resources required for these could displace investigations into directors of dissolved companies leading to few investigations of this kind, which might be insufficient to act as a deterrence against rogue director behaviour involving dissolved companies. This risk is short term and will be mitigated by targeting those cases where investigation is most strongly in the public interest, this public interest may increase in misconduct relating to directors of dissolved companies due to the Government's aim to combat Bounce Back Loan fraud.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 5.5	**Benefits: 0.0**	**Net: 5.5**	**25.0**

Problem under consideration and rationale for intervention

Background

1. Under current legislation, the Insolvency Service[1] has the power to investigate and take enforcement action (including disqualification) against directors of live (under the Companies Act 1985) and insolvent companies (under the Company Director Disqualification Act 1986) where there is evidence of misconduct. Disqualification plays an important part in making the UK a safe business environment and maintaining confidence in the market and the limited liability framework.

2. The Insolvency Service's investigation and enforcement activity is fundamental to giving individuals and businesses the confidence to conduct business, and that those who break the rules and damage the interests of others may be identified and held to account.

3. Disqualification of a director is a civil enforcement action providing an important role in the wider Government Counter-Fraud landscape. It protects the public from the actions of those directors whose behaviour has shown them unfit to be concerned in the management of a limited company. Disqualification actions are brought by the Insolvency Service, which also prosecutes where there is evidence of criminal offences having been committed (or, as appropriate, makes referrals to other prosecuting authorities such as the Crown Prosecution Service or Serious Fraud Office). Disqualification is not in most cases an alternative to criminal prosecution proceedings because it may deal with misconduct which does not constitute evidence of criminality, for example where creditors such as HMRC have been treated differently to the advantage of the company, or the situation where one company ceases trading without paying its creditors and a new company starts in the same line of business with the same directors. Criminal charges could not in most cases be brought in such situations, and so protection of the public is achieved through civil enforcement leading to disqualification. Allowing former directors of dissolved companies to be targeted for these civil proceedings will afford greater opportunities for protection of the public.

4. A **dissolved company** is one that has been struck off the register of companies and has ceased to exist. An application for striking off may be made by the directors of a company under specific circumstances. Alternatively, the registrar of companies may strike the company from the register if they have reasonable grounds to believe that it is no longer trading. A company must be struck off before it is dissolved, and it becomes dissolved three months after the Gazette notice announcing the striking off.

5. Complaints have been made about phoenix companies[2], where the same business continues to trade through a series of companies where each becomes insolvent or

[1] Investigations and enforcement is undertaken by the Insolvency Service, on behalf of the Secretary of State. Under the existing insolvent companies' regime, the Secretary of State has the power to investigate alleged cases of misconduct. All future references to the investigation and enforcement activity by the Insolvency Service are to work undertaken by the Insolvency Service on behalf of the Secretary of State, the holder of the power.

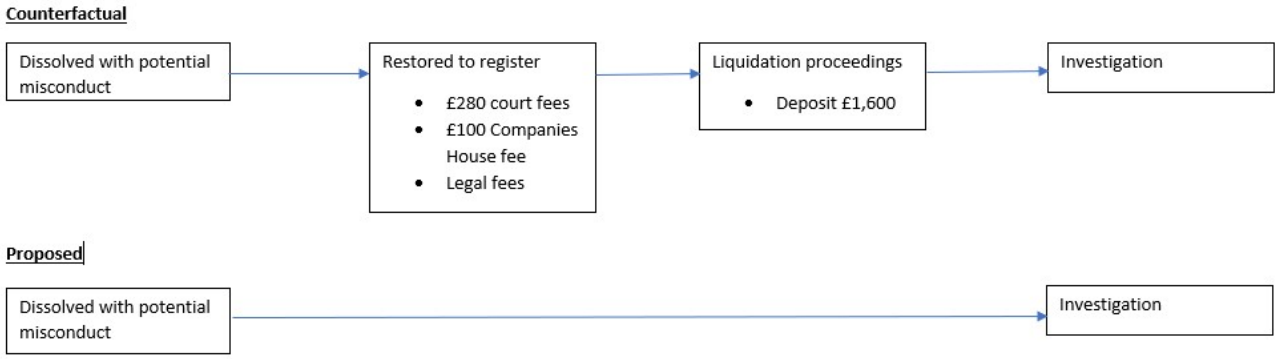
[2] The practice of "Phoenixing" is where a company is dissolved and another created, the director in many cases continues running the same business using the new company which can often have a very similar name to the previous company This practice is often used to avoid liabilities.

dissolved. The Insolvency Service received around 92 complaints about director conduct regarding dissolution or phoenix companies between February 2018 and December 2020. Though for the reasons given below we think this is a significant under-estimate of the scale of the problem. The Government previously consulted in 2018 on the measure to investigate the conduct of directors of dissolved companies and evidence points to a low-level but recurring theme of directors using dissolution to avoid debts[3].

6. The current legislation does not permit investigation and subsequent sanctioning of directors whose companies have been dissolved and removed from the company register unless the company entered an insolvency procedure prior to dissolution, or the company has been restored to the register.

7. At present where a company is dissolved, the Insolvency Service or a creditor would need to apply to court to restore the company to the register which would then allow for existing investigative powers to be engaged. However, the costs of court restoration and then taking liquidation proceedings can be prohibitive, court restoration incurs £280 in court fees, £100 payable to Companies House[4] and legal fees and petitioning to liquidate incurs a deposit of £1,600[5]. Figure 1 outlines the process currently and how the proposed changes would simplify the initiation of investigations.

Figure 1: The process to initiate investigations into the conduct of former directors of dissolved companies



8. The current process is impractical where the Secretary of State does not already have strong evidence of director misconduct and could undermine the integrity of the register if companies which have ceased operations are routinely resurrected to the register.

9. Consequently, there is concern that rogue directors are allowing, or actively causing, their companies to be dissolved, instead of paying their debts or complying with their duties under the Companies Act[6] to put the company into a formal insolvency process, to avoid scrutiny (and potential enforcement action) that would accompany formal insolvency

[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691857/Condoc_-_Insolvency_and_Corporate_Governance_FINAL_.pdf

[4] https://www.gov.uk/restore-dissolved-company

[5] https://www.gov.uk/wind-up-a-company-that-owes-you-money

[6] https://www.gov.uk/government/publications/company-strike-off-dissolution-and-restoration/strike-off-dissolution-and-restoration

proceedings.

Rationale for intervention

10. The rationales for intervention are:

    a. There is a **moral hazard**[7] problem generated by perverse incentives created by limited liability[8]. That is, directors are more likely to engage in unfit conduct or take more risks if they are not personally responsible for the consequences of their actions. Therefore, in the case of directors of dissolved companies there is currently a regulatory loophole, a source of **regulatory failure**.

    b. Creditors may be unwilling to incur further time and expense in objecting to dissolution or restoring when it is not in their interest and there is no guarantee of recovering any of their debt. This measure addresses a potential "coordination problem" where there can be many creditors who have lost out because a company has been, for example, phoenixed. Yet individually the costs of court action would be large compared to their expected return. By creating a simpler route to addressing bad behaviour we will reduce the extent of **coordination failures**.

    c. There is also an issue of **fairness** of the regime as some creditors may not have the resources to object to a dissolution and initiate insolvency proceedings, as shown in Figure 2. This is especially true for small creditors where the small amounts owed often do not warrant the expense. Indeed, this is reflected in the currently low level of company restorations: between 1st January to 31st December 2019 in England and Wales, there were a total of 33 restored companies and Limited Liability Partnerships (LLPs) for the purpose of compulsory winding up via the court order process.

11. Even individual cases, if not addressed, can undermine trust in local economies and at the margins increase business risk and raise the cost of doing business. It can reduce confidence from banks to extend credit to smaller companies, reducing trust and discouraging economic activity. For example, there is a well-established link between levels of trust and economic growth[9].

12. Finally, the UK is recognised as having a leading international reputation for corporate governance and Government seeks to retain this position by continuing to innovate and raise standards. The proposed change will seek to do that by improving corporate governance in businesses, improving outcomes for stakeholders affected by wrongful dissolution and improving trust between businesses. However, allowing directors to avoid investigation and enforcement by dissolving their company damages the UK's international reputation for corporate governance. The proposed legislation would address a gap which prevents investigating director misconduct in dissolved companies and consequently

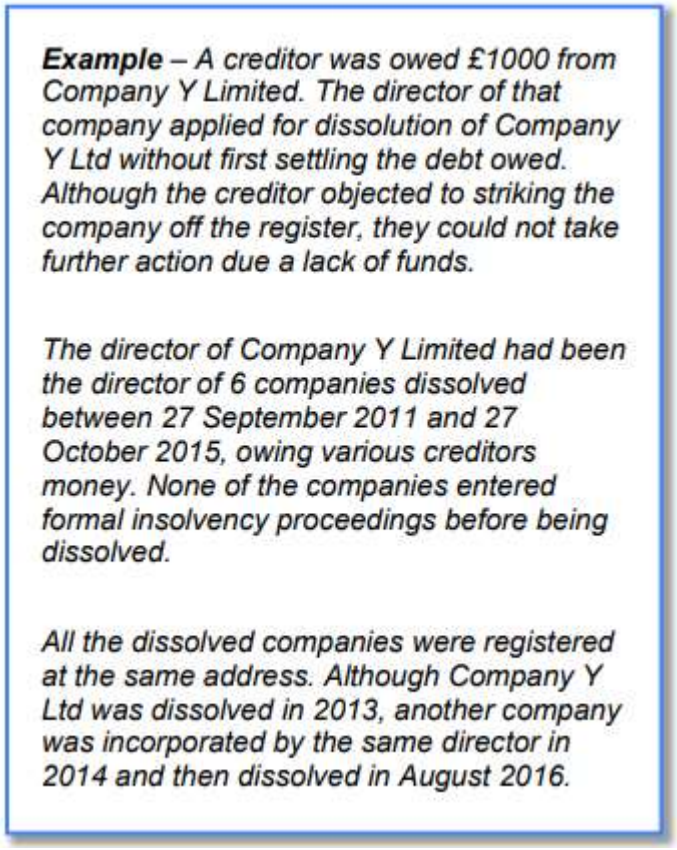
[7] In economic theory, a moral hazard is a situation where a party will have a tendency to take risks because the costs that could incur will not be felt by the party taking the risk.

[8] Halpern et al. (1980) Limited Liability in corporate law

[9] https://www2.deloitte.com/uk/en/insights/economy/connecting-trust-and-economic-growth.html

ensure that directors of those companies are held to account.

Figure 2: Case study example[10]



Scale of the problem - cases

13. The abuse by rogue directors comes at the expense of creditors and individual consumers, who will not have their debt repaid or provided with a distribution following an insolvency. This is especially true for small business creditors where the small amounts owed often do not warrant the expense of objecting to a dissolution and initiating insolvency proceedings.

14. The extent of abuse is difficult to gauge as complaints received regarding dissolution are likely to be an under-estimate as not all creditors will restore the company for the purposes of winding up given the costs involved. The evidence shows 529,680 companies were dissolved in the UK during 2019[11] but a number of complaints were received (92 between February 2018 and December 2020) and just 33 were restored in England and Wales for the purposes of winding up via court order. Therefore, an estimate on the extent of abuse can be calculated as the number of complaints per year[12] divided by the number of dissolutions per year (32/529,680) which is 0.01% of dissolved companies. Evidence from the consultation[13] suggests that misconduct in relation to dissolution is a problem, but it is likely that if it was very prevalent there would have been much greater stakeholder

[10] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691857/Condoc_-_Insolvency_and_Corporate_Governance_FINAL_.pdf

[11] https://www.gov.uk/government/statistics/incorporated-companies-in-the-uk-january-to-march-2021

[12] 92 complaints between February 2018 and December 2020 this is equivalent to 32 complaints per year

[13] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/736163/ICG_-_Government_response_doc_-_24_Aug_clean_version__with_Minister_s_photo_and_signature__AC.pdf

pressure to reform company dissolution immediately. Consequently, we judge that misconduct might occur in at most 1% of dissolutions, or around 5,000 per year.

15. There is a concern that misconduct will increase as the number of insolvencies is expected to rise as a result of the Covid-19 pandemic[14][15]. The measure will also be one aspect of the Government's approach to help combat Bounce Back Loan fraud[16], following the Bounce Back Loans Scheme[17]. This was introduced to provide smaller businesses access to finance during the Covid-19 pandemic and this measure will help ensure the recovery of loans obtained through fraud.

16. The extent of Bounce Back Loan fraud is highly uncertain, fraud losses[18] are likely to be significantly above the general estimates of public sector fraud levels of 0.5% to 5% and up to 2.3% of approved applications were estimated to be duplicates. However, the Government agrees that different types of fraud will require different approaches in terms of recovery and prosecution[19]. This measure will provide two approaches within the Government's wider strategy:

    a. Enabling more straightforward investigation of potential Bounce Back Loan fraud where the company has dissolved without repaying the loan; and
    b. Acting as a deterrent to directors considering abusing the dissolution procedure to avoid repayment of Bounce Back Loans.

17. The proposed reforms will complement other approaches such as criminal prosecution via the Crown Prosecution Service or Serious Fraud Office, by providing a proportionate alternative under the civil enforcement framework, thus enabling the most proportionate action to be taken depending on the circumstances of the abuse.

Scale of the problem – impacts

18. Dissolution can have severe consequences for creditors, individual consumers and the public good. This can happen across a range of areas with detrimental impacts for Government, the public, consumers and creditors, this has been illustrated through the examples below:
    a. Labour Markets – The Small Business, Enterprise and Employment Act 2015[20] introduced the power to impose financial penalties against employers for failure to pay sums ordered by an employment tribunal. Between April and June 2016 there were 207 cases where an Employment award was made by the Tribunal but not paid by the employer and of these 7% (16) were not pursued by the penalties team as the company was dissolved.

[14] https://www.eulerhermes.com/en_global/news-insights/economic-insights/2021-22-vaccine-economics.html

[15] https://obr.uk/efo/economic-and-fiscal-outlook-march-2021/

[16] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962711/CCS207_CCS0221011208-001_CP_389_Government_responses_Web_accessible.pdf

[17] https://www.gov.uk/guidance/apply-for-a-coronavirus-bounce-back-loan

[18] https://www.nao.org.uk/wp-content/uploads/2020/10/Investigation-into-the-Bounce-Back-Loan-Scheme.pdf

[19] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962711/CCS207_CCS0221011208-001_CP_389_Government_responses_Web_accessible.pdf

[20] https://www.legislation.gov.uk/ukpga/2015/26/section/150/enacted

b. Home Office – dissolution is a significant issue for the Home Office ahead of enforcement visits to business premises for companies hiring illegal workers and secondly after a penalty fine has been issued. The Home Office have informed the Insolvency Service of 361 dissolved companies where debts of £5.7m were written off between February 2014 and October 2016, accounting for 45% of total debt write off (£11.8m).
c. Trading Standards have provided anecdotal evidence that voluntary strike-off is being used to avoid payment of business rates.
d. HMRC are able to object to the Gazette notice and prevent the company from being struck-off if tax is due, or is likely to be due. The decision to pursue debt and extent is made by HMRC considering a number of factors. Where they have an outstanding debt, but where the company is already dissolved they do not take action against the company and write-off their debts. Tax losses could be substantial. For example, the Australian Tax Office has estimated that Phoenix activity costs their exchequer around AUS$600m a year[21].

19. The Government has previously consulted on the proposed measure as part of a range of reforms to the insolvency framework. As part of this consultation a large majority of respondents agreed that there was a problem posed by the current gap in legislation which prevents the Secretary of State from investigating potential misconduct by former directors of dissolved companies[22]. Furthermore, respondents were also in favour of the Government taking action to prevent directors avoiding liabilities via company dissolution. Respondents thought the proposal for a new investigation power was in the main, logical and sensible because it is prohibitively costly and time-consuming to restore a company that is struck off the register. A response was published in August 2018[23] where Government announced that it would implement the measure when a suitable legislative vehicle became available.

Policy objective

20. The policy objective is to plug the legal loophole that exists in the insolvency enforcement landscape to address two major concerns. To ensure public concerns that rogue directors who abuse the company and insolvency law regimes can be investigated and held to account, and to provide a deterrent against a likely and urgent scenario that company directors may use the dissolution of a company to evade their responsibility to repay Bounce Back Loans. In doing so the Insolvency Service's investigation and enforcement activity will act as a deterrent against undesirable behaviour by rogue directors.

21. Figure 3 sets out a logic model for the policy.

[21] https://law.unimelb.edu.au/__data/assets/pdf_file/0003/1730703/Defining-and-Profiling-Phoenix-Activity_Melbourne-Law-School.pdf

[22] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691857/Condoc_-_Insolvency_and_Corporate_Governance_FINAL_.pdf

[23] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/736163/ICG_-_Government_response_doc_-_24_Aug_clean_version__with_Minister_s_photo_and_signature__AC.pdf

Figure 3: Logic model

Context	Inputs	Outputs	Outcomes	Impacts
There is concern that rogue directors are allowing, or actively causing, their companies to be dissolved, instead of putting the company into a formal insolvency process, to avoid scrutiny (and potential enforcement action). The policy objective is to plug the legal loophole that exists in the insolvency enforcement landscape.	Introduce power via primary legislation to allow the Secretary of State to investigate the conduct of former directors of dissolved companies.	The Insolvency Service will be able to investigate and, where appropriate, take action to disqualify the directors of dissolved companies.	The Insolvency Service will conduct investigations and, where appropriate, take action against the former directors of dissolved companies. The Insolvency Service's investigation and enforcement activity will also act as a deterrent to undesirable behaviour by rogue directors.	Public concerns about abuse of the company and insolvency law regime by rogue directors can be addressed. Furthermore, corporate governance will be improved helping to maintain the UK's international reputation, with improved outcomes for stakeholders affected by abuse of the dissolution process and improved trust amongst businesses and supply-chains, encouraging economic activity.

22. The policy will be successful if evidence shows that public concerns about abuse of the company and insolvency law regimes can be investigated and addressed. This can be evidenced using case studies and monitoring data documenting the Insolvency Service's enforcement activity.

Description of Options

Do Nothing

23. This would maintain the status quo and would not address the misconduct occurring from rogue directors or address the regulatory failure. The impact of this is that such rogue directors would not be held to account and would continue to damage the reputation of the UK's corporate governance framework, negatively impacting stakeholders and trust between businesses.

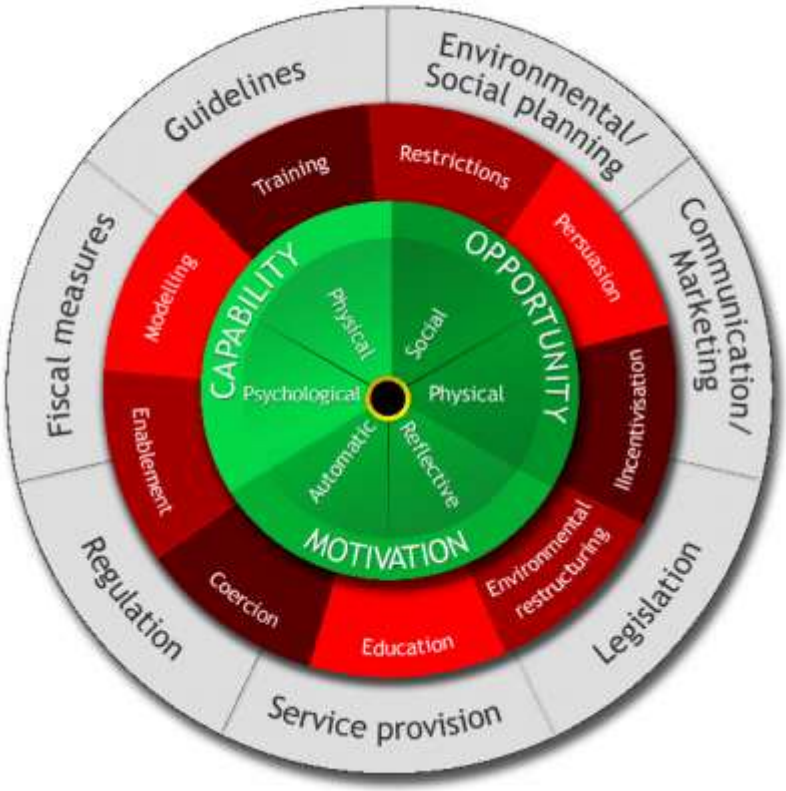
24. This option would not meet the policy objective to plug the legal loophole that exists in the insolvency enforcement landscape. It would also not deliver on the Budget 2021 announcement[24] that Government will enforce and address Bounce Back loan fraud.

[24] https://www.gov.uk/government/speeches/budget-speech-2021

Option 1: Non-regulatory option

25. One option would be to try and achieve behaviour change[25] using a framework such as the behaviour change wheel[26] as shown in Figure 4.

Figure 4. The behaviour change wheel



26. Using this framework, the undesirable behaviour of rogue directors allowing, or actively causing, their companies to be dissolved (instead of putting the company into a formal insolvency process) could be tackled using interventions such as education and coercion.

27. These interventions could be used to educate rogue directors to ensure they understand the impact of their actions, with the aim of causing cognitive dissonance[27], and to use coercion to prime the breaking of social norms, thereby discouraging the undesired behaviour. This approach would not involve changing the current culture as it assumes that the current social norm is that such behaviour would not be socially acceptable.

28. However, without the threat of investigation and enforcement, this approach may produce limited, if any, benefits and therefore would not meet the policy objective to plug the legal loophole that exists in the insolvency enforcement landscape.

[25] https://www.gov.uk/government/publications/behaviour-change-guide-for-local-government-and-partners

[26] Michie, S., Van Stralen, M. M., & West, R. (2011). The behaviour change wheel: a new method for characterising and designing behaviour change interventions. Implementation science, 6(1), 1-12.

[27] Cognitive dissonance refers to a situation involving conflicting attitudes, beliefs or behaviours. This produces a feeling of mental discomfort leading to an alteration in one of the attitudes, beliefs or behaviours to reduce the discomfort and restore balance. McLeod, S. A. (2018, February 05). Cognitive dissonance. Simply Psychology. https://www.simplypsychology.org/cognitive-dissonance.html

29. This approach also brings a risk where it could unintentionally promote engagement with the undesirable behaviour, by showing others how to engage in it and by making it more socially acceptable[28].

Option 2: Regulatory option (preferred)

30. The preferred option is for the Government to legislate to expand the investigatory powers of the Insolvency Service to include former directors of dissolved companies. This is the only option that will achieve the policy objective: to plug the legal loophole that exists in the insolvency enforcement landscape. This option requires primary legislation and is set to be introduced in May 2021.

31. Primary legislation would expand the investigatory powers of the Insolvency Service to include former directors of dissolved companies. This will:
    a. address current concerns about the abuse of the dissolution process, by providing a more streamlined process for investigating director conduct, removing existing barriers and providing assurance to businesses and consumers that action can be taken; and
    b. act as a deterrent against such abuse, by making directors aware that enforcement action is more straightforward.

32. The legislation would amend the existing regime to include a power for the Secretary of State to investigate and, where appropriate, act against the directors of dissolved companies. In particular, the Secretary of State is to have the power to:

    a) require information relating to a person's ("D's") conduct as a director of a company that has been dissolved;

    b) apply to the court for an order disqualifying D from being a director of any company;

    c) accept an undertaking that disqualifies D from being a director of any company;

    d) apply to the court for an order that D financially compensates creditor(s), where D's actions caused identifiable losses; and

    e) accept an undertaking from D to pay financial compensation to creditors where D's actions caused identifiable losses.

33. The Secretary of State would also be able to bring criminal proceedings or refer a case to another authority (such as the Crown Prosecution Service or Serious Fraud Office) where there is evidence of criminal conduct following an investigation of the conduct of directors of dissolved companies.

34. The legislation would cover the United Kingdom. The main group impacted by the legislation will be directors, however there will also be impacts on insolvency practitioners, the Insolvency Service and the wider economy. These impacts are explored in the costs and benefits section of this impact assessment.

35. On Bounce Back Loans the Government agrees that different types of fraud will require different approaches in terms of recovery and prosecution. Her Majesty's Treasury (HMT)

[28] Cialdini, R. B. (2003). Crafting normative messages to protect the environment. Current directions in psychological science, 12(4), 105-109.

is working constructively with lenders, other government departments and law enforcement colleagues on its counter fraud approach[29]. This measure will provide two approaches within the Government's wider strategy:

a. Enabling more straightforward investigation of potential Bounce Back Loan fraud where the company has dissolved without repaying the loan; and
b. Acting as a deterrent to directors considering abusing the dissolution procedure to avoid repayment.

36. This measure will complement other approaches such as criminal prosecution via the Crown Prosecution Service or Serious Fraud Office, by providing a proportionate alternative under the civil enforcement framework, thus enabling the most proportionate action to be taken depending on the circumstances of the abuse.

37. As noted, the Government has previously consulted on this measure in 2018[30]. Most respondents were supportive of the proposal to widen existing powers to investigate the conduct of directors of dissolved companies and act against those directors who are considered to have breached their legal obligations[31]. Due to the wide support for the measure, the Government announced in its response that it would implement the measure when a suitable legislative vehicle became available.

38. The investigations and enforcement brought in by the legislation will be undertaken by the Insolvency Service, as part of its current investigation and civil enforcement activity[32], on behalf of the Secretary of State. Under the existing insolvent companies' regime, the Secretary of State has the discretion to investigate alleged cases of misconduct of which he is notified. The Government will ensure that the best value for money is achieved in terms of targeting those cases where investigation is most strongly in the public interest. The Insolvency Service has a rigorous vetting process which prioritises cases for investigation to ensure quality outcomes for creditors and all stakeholders affected by directors seeking to abuse limited liability. It is expected that an investigation will be triggered via a complaint or through connection with an existing live or insolvent company investigation.

39. The Insolvency Service will need to prioritise investigation activity within an agreed funding envelope decided through Spending Review processes. As the outcome of these processes cannot be foreseen, this Impact Assessment assumes that the funding envelope for investigations is unchanged. Therefore, it assumes that with this additional power the number of Insolvency Service investigations will remain the same but will cover more areas of misconduct, namely among former directors of dissolved companies, and directors engaging in Bounce Back Loan fraud using dissolution.

Costs and benefits

[29] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962711/CCS207_CCS0221011208-001_CP_389_Government_responses_Web_accessible.pdf

[30] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691857/Condoc_-_Insolvency_and_Corporate_Governance_FINAL_.pdf

[31] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/736163/ICG_-_Government_response_doc_-_24_Aug_clean_version__with_Minister_s_photo_and_signature__AC.pdf

[32] The Insolvency Service will also be able to refer a case to another authority (such as the Crown Prosecution Service or Serious Fraud Office) where there is evidence of criminal conduct

40. We assume for the purposes of this impact assessment the proposals are enacted.

41. The costs and benefits have been outlined below drawing upon responses during consultation and Insolvency Service analysis of enforcement activity and outcomes.

Familiarisation costs

42. The measure ultimately does not affect directors' duties, but instead enables a more straightforward means of taking enforcement action against wrongdoing; it nonetheless will affect the limited liability protections for company directors, and they will need to update their knowledge of the law to carry out their duties which will incur familiarisation costs. The measure will impact only directors who go into, or consider, a dissolution who will need to familiarise themselves with the measure, which will lead to an ongoing cost each year to directors that dissolve companies[33]. A one-off familiarisation cost will be incurred by Insolvency Practitioners (IPs) as company directors can seek advice from IPs in the run up to insolvency or dissolution. Accountants and other business advisors would not need to familiarise themselves with the measure as they should only be advising directors to dissolve their companies when they are solvent, i.e. advising directors to act in accordance with their duties under the Companies Act[34].

43. Directors will need to familiarise themselves with the proposed changes through their existing channels of keeping up to date with regulations such as reading trade journals, but in particular through noting the official guidance and communication associated with dissolving their company which will be updated to take account of this new power. As the nature of the change is small and far less consequential than other changes, such as the Corporate Insolvency and Governance Act[35], an assumption has been made that directors and IPs will not need to attend any courses but will need to set aside twenty minutes as an average to familiarise themselves with the changes which will be an opportunity cost.

44. The FAME[36] database estimates there are 6,787,235 directors in the United Kingdom, whilst the Annual Survey of Hours and Earnings[37] show corporate managers and directors at an average hourly rate of £22.73. The hourly rate needs to be increased by 22%[38] to account for non-wage labour costs, giving a total hourly rate of £27.72, and a cost for twenty minutes of £9.24. We assume not all directors will familiarise themselves with the measure, but only those who go into, or consider, a dissolution. Therefore, an ongoing familiarisation cost can be estimated based on the number of dissolutions per year, ranging from 288,794 and 529,680 companies between 2011 and 2019[39]. With 6.8m directors in the UK and 4.7m companies on the total company register[40] we can estimate there are 1.44 directors per company, meaning between 415,863 and 762,739 directors in scope. The lower and upper bound costs are therefore £3.8m and £7.0m respectively. Assuming

[33] We grant that it is relatively unusual to have familiarisation costs that arise over the course of 10 years rather than being frontloaded in year one. However, we feel that it is more reasonable to assume that directors will familiarise themselves with dissolution requirements at the point of dissolution rather than when they are successfully running businesses. Given the nature of their business a one-off familiarisation cost for IPs seems much more reasonable.

[34] https://www.gov.uk/government/publications/company-strike-off-dissolution-and-restoration/strike-off-dissolution-and-restoration

[35] https://publications.parliament.uk/pa/bills/cbill/58-01/0146/SIGNED%20-%20IA%20Insolvency%20and%20Corporate%20Governance%20Enactment%20Stage.pdf

[36] https://www.bvdinfo.com/en-gb/our-products/data/national/fame

[37] https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation2digitsocashetable2

[38] https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Hourly_labour_costs_in_euro_in_2019.png

[39] https://www.gov.uk/government/statistics/incorporated-companies-in-the-uk-january-to-march-2021

[40] ics/incorporated-companies-in-the-uk-january-to-march-2021/incorporated-companies-in-the-uk-january-to-march-2021

the best estimate lies between these two ranges results an ongoing cost of **£5.45m** can be estimated. This estimate is likely to be an overestimate given that there will be some duplicate directors both within and between years, who would not need to familiarise themselves more than once.

45. As of January 2021, there were 1,288 appointment taking IPs[41]. We estimate the opportunity cost assuming each of these will spend twenty minutes on familiarisation. The hourly rates of pay for Insolvency Practitioners were estimated in a 2013 report on IP fees published by Elaine Kempson[42]. In this impact assessment the hourly rates of pay have been uprated using GDP deflators, this approach is consistent with the Impact Assessment for the Corporate Insolvency and Governance Act[43].

46. The opportunity cost is calculated by multiplying the updated hourly rate (£431) by the number of appointment taking IPs requiring familiarisation. This results in an opportunity cost estimate of £0.2m, this is low compared to director familiarisation which is the main cost.

47. This gives a total ongoing cost of familiarisation of **£5.45m** and a one-off familiarisation cost on business of £0.2m.

Other costs and benefits

48. The **assumptions** underpinning this section are as follows:

    a. The Insolvency Service operates within a constant funding envelope for investigation and enforcement activity;

    b. Investigations under this new power will consume the same Insolvency Service resources (on average) as existing investigations;

    c. The profile of investigated directors of dissolved companies is the same as that of investigated directors in existing investigations, and the opportunity cost of engaging with the Insolvency Service (on average) will also be the same;

    d. The economic benefit of enforcement action taken under this new power is the same (on average) as that for existing investigation outcomes.

49. These assumptions are discussed below.

Assumption of constant funding

50. There is already more misconduct in the economy than there are available resources to investigate, but the Insolvency Service's investigation and enforcement activity can have an important deterrent effect to others by being seen to tackle undesirable behaviour by rogue directors.

51. Although the changes will expand the investigatory power of the Insolvency Service to include directors of dissolved companies it does not necessarily follow that additional funding will be made available to the Insolvency Service, because this will be determined by Spending Review processes which considers the relative priority of all Government

[41] https://www.gov.uk/government/publications/insolvency-practitioner-regulation-process-review-2020/annual-review-of-insolvency-practitioner-regulation-2020

[42] http://www.bristol.ac.uk/medialibrary/sites/geography/migrated/documents/pfrc1316.pdf

[43] https://publications.parliament.uk/pa/bills/cbill/58-01/0146/SIGNED%20-%20IA%20Insolvency%20and%20Corporate%20Governance%20Enactment%20Stage.pdf

expenditure. Our assumption is that the funding envelope for the Insolvency Service's investigation and enforcement activity will remain unchanged, as it was in the most recent Spending Review 2020. It follows therefore that we assume that the extent to which the new powers will be used will be discretionary with cases being prioritised for investigation where it is most strongly in the public interest.

Assumption of equivalent resource per investigation

52. The process of investigating the conduct of directors of dissolved companies will mirror that for existing investigations, going through the same stages of initial assessment, prioritisation, selection for substantive investigation and subsequent disqualification and/or criminal referral depending on the merits of the case. The resource needs of existing investigations varies on a case by case basis, and it is reasonable to assume the needs of investigations into director conduct in dissolved companies will also vary from case to case. Our best assumption is that, on average, resource requirements for investigations under the new power will be similar to investigations currently undertaken.

Assumption of equivalent profile of directors

53. The profile of former directors of insolvent companies varies, but in most cases the conduct of only one director is investigated substantively and action taken[44]. Some of these former directors of insolvent companies will be either employed or be acting as a director of another company and would therefore incur opportunity costs resulting from the time taken to comply with or defend themselves against the investigation. We also expect the profile of investigated former directors of dissolved companies to vary but that their characteristics in the aggregate to be similar to that of former directors of insolvent companies, with equivalent opportunity costs on average.

Assumption of equivalent economic benefit of enforcement action taken

54. Internal Insolvency Service analysis estimates that, in 2019/20, for every director disqualified the economic damage (the future harm) avoided[45] on average was £81,000[46] Similar analysis is not available for investigation outcomes under the new power; deficiencies may be higher or lower as may the likelihood of subsequent failure. In the absence of such evidence our assumption is that, on average, investigations of director conduct in dissolved companies will yield similar outcomes to current ones, this would include benefits to business from fraud that is avoided.

55. From these assumptions, many of which can be tested in subsequent post implementation reviews, the following **inferences** can be drawn:

    a. There is no change to the overall number of investigations and outcomes that can be attributed to this new power;

[44] Based on analysis of Insolvency Service management information

[45] This is not the amount of money that would accrue to creditors, it covers the expected net benefit to the market for each director disqualified in terms of creditor damage prevented.

[46] This is calculated based on the probability that an unfit director would be responsible for a subsequent company failure multiplied by the average deficiency (assets minus liabilities). This methodology comes from a National audit report in 1999 and is based the assumption that, if not disqualified, an unfit director would go on to repeat the unfit conduct and lead to another company failure. Disqualifying the director should prevent this additional failure.

b. Investigations under this new power will displace existing investigations on a one-for-one basis;

c. There is no change (compared with the status quo) to the overall economic benefit of investigation activity that can be attributed to this new power;

d. There is no change (compared with the status quo) to the costs or benefits to creditors of investigation activity that can be attributed to this new power; and

e. There is no change (compared with the status quo) to the cost to business of investigations that can be attributed to this new power.

56. These inferences are discussed below.

Inference of no change to overall numbers of investigations

57. This inference follows from the assumptions of constant overall funding, and equivalent resources per investigation. The Insolvency Service prioritises investigation activity within its agreed funding envelope. With this additional power therefore the number of Insolvency Service investigations will remain the same but will cover more areas of director misconduct, namely in relation to dissolved companies and including Bounce Back Loan fraud using dissolution to evade repayment.

Inference of one-for-one displacement of existing investigations

58. This inference follows from the assumptions of constant overall funding and equivalent resources per investigation. Some existing investigations in to the conduct of directors of insolvent companies would effectively be substituted for investigations into the conduct of directors of dissolved companies. The extent of this substitution will be dependent on targeting those cases where investigation is most strongly in the public interest.

59. In 2019/20 there were 1,196 director disqualifications[47] involving conduct in insolvent companies. Based on the new measure to investigate directors of dissolved companies, some of those disqualifications will now be substituted. Our best estimate for the upper bound would be 32 cases based on the number of complaints per year (see point 14). The true upper bound is unknown as complaints are unlikely to capture the true extent of misconduct, which by its very nature, will to an extent be hidden. Our best estimate of the upper bound however represents a small proportion (2.7%) of existing investigation activity, and so the measure is likely to have a minor impact on the mix of cases the Insolvency Service chooses to investigate and therefore any impact on the estimated annual direct cost to business would likely be limited.

Inference of no change to economic benefit

60. This inference follows from the above inferences, and from the assumption of equivalent average economic benefit per investigation outcome. As the scope of investigations increases, it is a fair assumption that “dissolved” cases substituted in will have a higher public interest compared to the displaced “insolvent” cases - the changes will open the possibility of some serious misconduct being tackled that currently cannot be – and so the “average” public interest is likely to increase slightly. The relationship between public interest and economic benefit is likely to be complex. Not all public interest cases will have a high economic benefit as the public interest criteria are not based on economic value.

[47] https://www.gov.uk/government/statistics/insolvency-service-enforcement-outcomes-202021

For example, on other aspects such as Ministerial or wider public interest, and the category of misconduct. But if the 32 cases identified in paragraph 59 delivered a 25% difference in economic benefit then this could deliver additional, i.e. after displacement, economic benefits of +/- £600k. However, in this IA we have not claimed these costs or benefits given the impossibility of predicting the impact of the measure on future case mix.

Inference of no change to costs to creditors

61. This inference follows from and mirrors the above inference. The measure widens the scope of investigations and the substitution affect will mean there will be a cost to creditors associated with not investigating the conduct of insolvent cases that have been displaced that is equal to the economic benefit foregone. Because of the assumption of equivalent economic benefits, it follows that we assume these costs are the same as the cost in the counterfactual associated with not investigating the conduct of directors of dissolved companies.

62. As explained in the problem under consideration and rationale it is difficult to measure extent of abuse and set a counterfactual. Though the complaints received indicate a low-level of abuse of company dissolution it is not possible to know the exact level of abuse in the economy or the level of Bounce Back Loan fraud at this time. However, the number of incidences that may relate to Bounce Back Loan fraud involving dissolution will not affect the monetised impacts of the policy since the number of investigations will remain the same (due to funding staying the same), higher public interest does not necessarily correlate to a higher economic benefit and the assumption that investigations into director conduct in dissolved companies will yield similar outcomes to current ones. The desired outcome from this policy relies on investigation and enforcement activity acting as a deterrent against undesirable behaviour of rogue directors to reduce misconduct of this type in the economy.

Inference of no change to the cost to business from investigations

63. There are no costs to business from investigations as any directors affected by enforcement action will be “non-compliant” and fall outside the scope of Better Regulation Framework[48] under the Fines and Penalties exclusion, meaning there is no cost on business to consider. Where an investigation results in court action and the case is lost by the Insolvency Service, directors may be awarded costs. Where a former director of a dissolved company is also a director of an active company, they will also incur time costs dealing with the investigation at the expense of running their business, but since the overall number of investigations into director conduct will remain the same (with director conduct in insolvent companies being substituted for that in dissolved companies) those costs will remain the same assuming director conduct investigations involving dissolved companies will yield similar outcomes to existing investigations and the profile of directors of dissolved and insolvent companies is the same. Based on this inference there is no cost on business to consider.

64. The measure will have no impact on director’s liability insurance as it tackles non-compliance and insurance does not cover fraudulent, criminal or regulatory non-compliant activity[49].

[48] The Better Regulation Framework (publishing.service.gov.uk)

[49] https://www.agcs.allianz.com/news-and-insights/expert-risk-articles/d-o-insurance-explained.html

Non-monetised benefits

65. The measure will have wider non-monetised impacts, particularly given investigatory activity helps build trust in the economy and acts as a deterrent against miscreant directors.

66. The non-monetised benefits are outlined below.

    a. Increasing confidence of banks and other lenders to extend credit to smaller companies as they can be confident that director conduct is trustworthy

    b. Increased trust amongst businesses and supply-chains encouraging economic activity

    c. The Insolvency Service's investigation and enforcement activity will also act as a deterrent to undesirable behaviour by rogue directors

    d. A more level playing field and fairer competition

    e. Court cost savings to the Insolvency Service and creditors who in the counterfactual would need to apply to court to restore the company to the register.

    These benefits do not need to be that substantial to justify the policy in terms of costs and benefits for the regulations to break even. For example, with over 4 million companies, and an EANDCB of around £5.5m, companies would only have to have a willingness to pay of around £1.50 a year, about the price of a coffee[50], for stronger action against rogue directors[51]. And this excludes the benefits that arise to other actors in the economy.

67. The court cost savings are likely to be the smallest of these non-monetised benefits. The savings to the Insolvency Service and creditors are non-monetised in this instance as the additional power will not remove all cases of this kind. Assuming the savings would compromise court costs, Companies House, legal and petitioning to liquidate fees, the cost savings per case would be £1,980. The number of cases would then be reduced compared to the counterfactual of 33 cases in 2019, where companies and LLPs were restored for the purpose of compulsory winding up via the court order process, by a) the number of Insolvency Service investigations related to the power, and b) the impact from the deterrence effect. However, as we do not know the quantifiable impact of either of these reductions the impact is non-monetised. We can calculate that the maximum benefit would be £65,340 (33*£1,980). The true benefit would be between zero and the maximum benefit and would be split between business and public sector.

68. The net present value is estimated to be -£43.0m. The non-monetised benefits would improve the net present value and could be sufficient to turn the present value positive, however it is not possible to confirm this as the benefit is not quantifiable.

Risks and assumptions

69. There is a risk that changing the limited liability regime alters the relationship between limited liability and director duties in unintended ways. This may affect the incentives to become a director. However, we do not expect this risk to materialise as the measure has mitigations in place, such as targeting rogue directors, and the intention here is to improve

[50] https://www.ucc-coffee.co.uk/wp-content/uploads/2019/02/16725-UCC-Price-Watch_Jan.pdf

[51] Willingness to pay techniques, such as stated preference, are frequently used to estimate the benefits for a good or service where there is no market price. The implication being that an agent's willingness to pay for a good or service is equivalent to the benefit from they derive from it.

director behaviours. We believe it should have minimal impact on incentives and will not affect most directors conducting their duties in good faith.

70. The number of insolvencies is expected to rise as a result of the Covid-19 pandemic[5253], this could mean that there is greater demand for investigations into director conduct in failed companies than previously, but the capacity of the Insolvency Service will still be limited. This could displace investigations into the conduct of directors of dissolved companies leading to few investigations of this kind, meaning the Insolvency Service's investigation and enforcement activities may not act as a deterrent against rogue director behaviour involving dissolved companies. This risk is short term, resulting from the aftermath of the Covid-19 lockdown, and will be mitigated by targeting those cases where investigation is most strongly in the public interest, which may be heightened towards misconduct relating to directors of dissolved companies due to the Government's aim to combat Bounce Back Loan fraud.

71. The key assumptions are discussed above, and in the main relate to equivalence in a number of dimensions between investigations under new and existing powers. These are not measurable ex ante and deviation from these assumptions could lead to:

    a. Increases / decreases in the number of investigations;

    b. Increases / decreases in the costs to business / benefits to creditors

72. This is mitigated by our expectation that the proportion of investigations under the new power will be small.

Impact on small and micro businesses

73. The aim of the measure is to ensure that public concerns about abuse of the company and insolvency law regime by rogue directors can be addressed. The measure applies to director conduct in dissolved companies of all sizes, with small and micro businesses constituting 99% of the business population[54]. At the consultation stage respondents suggested the problem of abuse of the limited liability regime through the dissolution process is particular to SMEs[55].

74. The measure extends the Insolvency Service's investigation power to directors of dissolved companies. This will not have a business impact as the companies have been dissolved and no longer exist. Consequent restoration to the register and investigation will also have no business impact as such companies are "non-compliant". As such there will be no cost to compliant micro businesses of being investigated, and as noted in the cost benefit analysis where a former director of a dissolved company is also a director of an active company, they will incur time costs dealing with the investigation at the expense of running their business, however the costs will remain the same as the number of overall investigations will not change.

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[52] https://www.eulerhermes.com/en_global/news-insights/economic-insights/2021-22-vaccine-economics.html

[53] https://obr.uk/efo/economic-and-fiscal-outlook-march-2021/

[54] https://www.gov.uk/government/statistics/business-population-estimates-2020/business-population-estimates-for-the-uk-and-regions-2020-statistical-release-html

[55] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/736163/ICG_-_Government_response_doc_-_24_Aug_clean_version__with_Minister_s_photo_and_signature__AC.pdf

75. Creditors may be unwilling to incur time and resource to object to a dissolution and initiate insolvency proceedings. This will be especially true for small business creditors who do not have the funds to restore a company and the small amounts owed often do not justify the expense. Consequently, the measure will benefit small business creditors but will not be quantifiable.

76. Evidence also points to directors using dissolution to avoid debts[56] which provides offending companies unfair cost advantages. The measure will address this inequity and ensure a level playing field for competition. This level playing field will benefit compliant small and micro businesses.

77. The measure, by routing out rogue directors, will also increase trust amongst businesses and supply chains encouraging greater economic activity. Again, this benefit will accrue mainly to small and micro businesses.

Wider impacts

Insolvency Service

78. The Insolvency Service investigation and enforcement teams help tackle individuals and companies who act against the public and corporate interest. The measure will expand the investigatory power of the Insolvency Service to include conduct of directors of dissolved companies, widening the ability to tackle misconduct in the economy.

79. Investigations and enforcements teams will need to spend time familiarising themselves with the changes which will be an opportunity cost. An assumption has been made that this will take twenty minutes, in line with the times for directors and IPs. This cost is calculated by multiplying the numbers of staff by the hourly rates resulting in a familiarisation cost of £3,110.

80. There may also be a small one-off IT cost to the Insolvency Service to update management information systems. This will be incorporated into the existing investigations and enforcement update management information systems.

81. There will be no ongoing impact on the Agency as the funding will remain the same and activity will need to be prioritised according to public interest criteria within the funding agreed.

Equalities Impact Assessment

82. An equality impact assessment has been completed in line with public sector equality duty. At the consultation respondents did not raise any concerns regarding equality impacts. A full equality impact assessment has been carried out and concluded that the provisions of the proposed new legislation do not give rise to any equality issues and will operate neutrally as regards people who share protected characteristics. Men however will be disproportionately affected as analysis of FAME[57] suggests that around two-thirds of directors are male.

83. Almost any person who is at least 16 years old can be a director of a UK company, even if they do not live in the UK. There are some restrictions which can prohibit a person from

[56] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691857/Condoc_-_Insolvency_and_Corporate_Governance_FINAL_.pdf

[57] https://www.bvdinfo.com/en-gb/our-products/data/national/fame

being a director, such as if they are an undischarged bankrupt, or have been disqualified from acting as a director. The proposed changes would apply to all directors.

84. Given the intent of the provisions, no forms of discrimination are considered to arise. The proposed legislation does not treat some people less favourably than others because of a protected characteristic, either directly or indirectly.

85. The proposed changes extend the already existing director investigation and disqualification regime. The legislation will not deliver a less good outcome for any groups compared to others. There is no known evidence to suggest that different groups have different needs which are relevant to the legislation. The measures will not restrict access to (or outcomes from) company dissolution or director investigations for any group when compared against any other, or as compared to those who do not share any protected characteristics.

86. No favouritism or discrimination is likely to be perceived from the legislation. Nor in any way should it affect relationships between the different groups. No opportunities have been identified for this legislation to help to tackle prejudice or promote understanding between different groups.

A summary of the potential trade implications of measure

87. The impacts from the measure are not considered to impact international trade and investment.

Monitoring and Evaluation

88. In line with Better Regulation guidance, a post-implementation review (PIR) of the measures will be conducted, making use of guidance on evaluation in the Magenta book[58]. This will occur within five years of the measures coming into force. The PIR will help inform policy making decisions within the Insolvency Service.

89. In line with Magenta book guidance on PIRs[59], a light touch PIR will be carried out. This is deemed proportionate given the equivalent annual net direct cost to business in this impact assessment (£5.5m) comfortably falls under the threshold of £50m, which is the threshold for a more substantial review.

90. A logic model of the policy change can be seen in Figure 3. The focus of the PIR will be to ensure that the policy objective has been met, meaning it will look to evidence that public concerns that rogue directors who abuse the company and insolvency law regimes can be investigated and held accountable, demonstrating that the legal loophole that currently exists in the insolvency enforcement landscape has been addressed. It will also test some of the assumptions made regarding the assumptions in the other costs and benefits section of this IA.

91. It is expected that the PIR will take a process evaluation approach, to understand if the extended powers are able to be used as intended. This evaluation is expected to be largely informed by monitoring data, such as number of cases and number of complaints, collected through Insolvency Service Management Information. The Insolvency Service will also

[58] https://www.gov.uk/government/publications/the-magenta-book

[59] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879444/Magenta_Book_supplementary_guide._Guidance_for_Conducting_Regulatory_Post_Implementation_Reviews.pdf

consider if primary data collection is appropriate, for example to evidence awareness of the new measure.

92. As the investigations and enforcement brought in by the legislation will be undertaken by the Insolvency Service as part of its current investigation and enforcement activity, the number of cases related to the power could be quite small for analytical purposes. Therefore, the use of case studies to capture real life cases in detail is an appropriate method to address if the extended powers are being used as expected and to evidence if public concerns that rogue directors who abuse the company and insolvency law regimes can be investigated and held to account.