

Corporate Insolvency and Governance Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

Clause 1

LORD STEVENSON OF BALMACARA

Page 3, line 20, at end insert—

“() is independent from the company,”

LORD LENNIE

Page 3, line 24, after “debts,” insert—

“(da) a statement on behalf of any trade union made on behalf of employees affected by the proposed rescue of the company as a going concern,”

LORD STEVENSON OF BALMACARA

Page 3, line 27, leave out “would” and insert “could”

LORD HODGSON OF ASTLEY ABBOTTS

Page 3, line 27, at end insert—

“() In deciding whether to make the statement under subsection (1)(e) the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.”

Member’s explanatory statement

This amendment would allow monitors to rely on information from the company. This is intended to reduce barriers to becoming a monitor.

LORD STEVENSON OF BALMACARA

Page 6, line 26, leave out “more than once” and insert “multiple times with no limit”

LORD HODGSON OF ASTLEY ABBOTTS

Page 11, line 22, at end insert “, other than debts or other liabilities arising as a result of the moratorium”

Clause 1 - continued

BARONESS KRAMER

Page 11, line 22, at end insert –

“(g) goods and services where the supplier is a small entity as defined in section 13(4) to (10) of this Act at the time the company becomes subject to the procedure.

(3A) In cases where subsection (3)(g) applies, payment terms engaged in by the small entity will be deemed to have been no longer than 30 days regardless of the terms of any contract or payment holiday.”

Member’s explanatory statement

This amendment would add small entities into the list of those with preferential treatment for payments due.

BARONESS BOWLES OF BERKHAMSTED

Page 13, line 48, at end insert –

“(f) banks and other financial creditors may not apply new fees and interest rates other than to reflect market-wide changes, including base rate or interbank lending rate changes”.

LORD CALLANAN

Page 15, line 12, at end insert –

“(7) This section does not apply in relation to a floating charge that is –
 (a) a collateral security (as defined by section A27);
 (b) a market charge (as defined by section A27);
 (c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));
 (d) a system-charge (as defined by section A27).”

Member’s explanatory statement

This amendment ensures that section A22 does not apply to a collateral security, market charge, security financial collateral arrangement or system-charge.

LORD PALMER OF CHILDS HILL

Page 20, line 42, at end insert –

“() The Secretary of State must provide a definition of the role of the monitor with regards to its relationship to –
 (a) the current directors of the company; and
 (b) any future liquidator.”

Member’s explanatory statement

This is a probing amendment to clarify the role of the monitor.

LORD CALLANAN

Page 30, line 21, at end insert –

- “(4) Subsection (1) does not apply to a provision in an instrument creating a floating charge that is –
- (a) a collateral security (as defined by section A27);
 - (b) a market charge (as defined by section A27);
 - (c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));
 - (d) a system-charge (as defined by section A27).”

Member’s explanatory statement

This amendment ensures that section A50 does not apply to a collateral security, market charge, security financial collateral arrangement or system-charge.

After Clause 1

BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause –

“Review of the moratorium in Great Britain

- (1) Within 18 months of the day on which this Act is passed, the Secretary of State must review the provisions on moratoriums under sections 1 to 3.
- (2) In the review the Secretary of State must consider the operation of the moratorium provisions, and the impact of moratoriums on small and medium-sized businesses and unsecured creditors, including in subsequent insolvencies, and must make recommendations about how the provisions might be amended to mitigate any negative effects.
- (3) The Secretary of State must prepare a report containing the findings of the review under this section including recommendations about introducing legislation.
- (4) The Secretary of State must –
 - (a) lay the report under subsection (3) before Parliament, and
 - (b) publish the report.”

LORD FOX

Insert the following new Clause –

“Moratoriums in Great Britain: time-limited effect and renewal

- (1) Part A1 of the Insolvency Act 1986 (inserted by section 1 of this Act) ceases to have effect on 30 September 2020, subject to the condition in subsection (2).
- (2) The condition in this subsection is that the Secretary of State has made regulations by statutory instrument providing that Part A1 of the Insolvency Act 1986 should continue to have effect for a specified further period of no more than one year.
- (3) Regulations under this section may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.

After Clause 1 - continued

- (4) The Secretary of State must keep under review the operation of Part A1 of the Insolvency Act 1986 during the period for which it has effect.
- (5) The Secretary of State must arrange for a report of a review under subsection (4) to be laid before both Houses of Parliament no later than 15 September 2020.”

Member’s explanatory statement

This new clause would terminate the free-standing moratorium provision for Great Britain on 30 September 2020, subject to temporary renewal for up to one year.

Clause 4**BARONESS BOWLES OF BERKHAMSTED**

Page 45, line 25, at end insert –

- “(e) banks and other financial creditors may not apply new fees and interest rates other than to reflect market-wide changes, including base rate or interbank lending rate changes”.

LORD CALLANAN

Page 46, line 35, at end insert –

- “(7) This Article does not apply in relation to a floating charge that is –
 - (a) a collateral security (as defined by Article 13DI);
 - (b) a market charge (as defined by Article 13DI);
 - (c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));
 - (d) a system-charge (as defined by Article 13DI).”

Member’s explanatory statement

This amendment ensures that Article 13DD does not apply to a collateral security, market charge, security financial collateral arrangement or system-charge.

LORD HODGSON OF ASTLEY ABBOTTS

Page 52, line 4, at end insert –

“13EZA Conflicts of interest

Before accepting the role of monitor, the monitor must satisfy himself or herself that he or she has taken all reasonable precautions to be free of conflicts of interest.”

Member’s explanatory statement

This amendment seeks to avoid any party having undue influence over the monitor.

LORD CALLANAN

Page 60, line 38, at end insert –

- “(4) Paragraph (1) does not apply to a provision in an instrument creating a floating charge that is –
 - (a) a collateral security (as defined by Article 13DI);

Clause 4 - continued

- (b) a market charge (as defined by Article 13DI);
- (c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));
- (d) a system-charge (as defined by Article 13DI)."

Member's explanatory statement

This amendment ensures that Article 13HB does not apply to a collateral security, market charge, security financial collateral arrangement or system-charge.

After Clause 4

BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause –

“Review of the moratorium in Northern Ireland

- (1) Within 18 months of the day on which this Act is passed, the Secretary of State must review the provisions on moratoriums under sections 4 to 6.
- (2) In the review the Secretary of State must consider the operation of the moratorium provisions, and the impact of moratoriums on small and medium-sized businesses and unsecured creditors, including in subsequent insolvencies, and must make recommendations about how the provisions might be amended to mitigate any negative effects.
- (3) The Secretary of State must prepare a report containing the findings of the review under this section including recommendations about introducing legislation.
- (4) The Secretary of State must –
 - (a) lay the report under subsection (3) before Parliament, and
 - (b) publish the report.”

LORD FOX

Insert the following new Clause –

“Moratoriums in Northern Ireland: time-limited effect and renewal

- (1) Part 1A of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (inserted by section 4 of this Act) ceases to have effect on 30 September 2020, subject to the condition in subsection (2).
- (2) The condition in this subsection is that the Secretary of State has made regulations by statutory instrument providing that Part 1A of the Insolvency (Northern Ireland) Order 1989 should continue to have effect for a specified further period of no more than one year.
- (3) Regulations under this section may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.
- (4) The Secretary of State must keep under review the operation of Part IA of the Insolvency (Northern Ireland) Order 1989 during the period for which it has effect.

After Clause 4 - continued

- (5) The Secretary of State must arrange for a report of a review under subsection (4) to be laid before both Houses of Parliament and the Northern Ireland Assembly no later than 15 September 2020.”

Member’s explanatory statement

This new clause would terminate the free-standing moratorium provision in Northern Ireland on 30 September 2020, subject to temporary renewal for up to one year.

Clause 10

LORD STEVENSON OF BALMACARA

Page 63, line 18, at end insert –

“, unless the court has reason to suspect the person was in breach of the general duties under sections 171 to 177 of the Companies Act 2006 during the relevant period.”

BARONESS BARKER

Page 63, line 21, leave out “30 June 2020” and insert “30 September 2020”

Member’s explanatory statement

This amendment would extend the relevant period for the suspension of liability for wrongful trading in Great Britain.

LORD CALLANAN

Page 63, line 22, leave out “Act” and insert “section”

Member’s explanatory statement

This amendment changes the definition of the “relevant period” so that the term is defined by reference to the coming into force of the section rather than by reference to the coming into force of the Act as a whole.

Clause 11

BARONESS BARKER

Page 64, line 46, leave out “30 June 2020” and insert “30 September 2020”

Member’s explanatory statement

This amendment would extend the relevant period for the suspension of liability for wrongful trading in Northern Ireland.

LORD CALLANAN

Page 64, line 47, leave out “Act” and insert “section”

Member’s explanatory statement

This amendment changes the definition of the “relevant period” so that the term is defined by reference to the coming into force of the section rather than by reference to the coming into force of the Act as a whole.

After Clause 17

LORD HENDY
LORD HAIN
LORD MONKS

Insert the following new Clause—

“Ring-fence for unsecured creditors

- (1) Section 176A of the Insolvency Act 1986 (share of assets for unsecured creditors) is amended as follows.
- (2) After subsection (2), insert—
 - “(2A) The prescribed part of the company’s net property available for the satisfaction of unsecured debts shall not be—
 - (a) less than 30 per cent, and
 - (b) less than 30 per cent of the total proceeds of the sale of any assets sold by the liquidator, administrator or receiver.”

LORD HODGSON OF ASTLEY ABBOTTS

Insert the following new Clause—

“Review of pre-pack transactions

In Schedule B1 to the Insolvency Act 1986, after paragraph 74 insert—

“Review of pre-pack transactions

- 74A (1) The assets of a company may not be transferred under the terms of a pre-pack transaction unless the proposed purchaser has obtained an opinion in writing from a member of the Pre-Pack Pool that the transaction is not unreasonable.
- (2) In this paragraph, a “pre-pack transaction” means a transaction which is negotiated before a company enters administration, and under which all or a substantial part of the company’s assets are sold to an associate on or shortly after the appointment of an administrator.
 - (3) For the purposes of sub-paragraph (2), “associate” has the meaning given in section 435 of the Insolvency Act 1986.”

Member’s explanatory statement

This amendment requires a positive opinion to be obtained from a member of the Pre-Pack Pool before a company enters into a pre-pack transaction. The Pre-Pack Pool is an independent body of experienced business people set up in response to the recommendations of Teresa Graham’s report.

LORD LENNIE

Insert the following new Clause—

“Trade union representation in restructuring process

- (1) Before 31 December 2020, the Secretary of State must—
 - (a) carry out a review of the role of trade unions in company restructuring arrangements;
 - (b) set out the conclusions of the review in a report;

After Clause 17 - continued

- (c) publish the report; and
 - (d) arrange for copies of the report to be laid before both Houses of Parliament.
- (2) The report under subsection (1) must in particular set out the Government's proposals for ensuring that trade unions representing employees affected by any proposed restructuring are –
- (a) provided with all the information made available to the court,
 - (b) fully consulted by the directors of a company before any application for restructuring is made, and
 - (c) given the opportunity to contribute to decisions made by the court affecting their members.”

LORD STEVENSON OF BALMACARA

Insert the following new Clause –

“Ring-fence for unsecured creditors

- (1) Section 176A of the Insolvency Act 1986 is amended as follows.
- (2) After subsection (2), insert –
 - “(2A) The prescribed part of the company's net property available for the satisfaction of unsecured debts shall not be less than 30 per cent.””

BARONESS NEVILLE-ROLFE

Insert the following new Clause –

“Administration: sale to connected persons

- (1) The Secretary of State may by regulations make provision for –
 - (a) prohibiting, or
 - (b) imposing requirements or conditions in relation to,
 the disposal, hiring out or sale of property of a company by the administrator to a connected person in circumstances specified in the regulations.
- (2) The Secretary of State may not make regulations under this section after 30 June 2021.”

LORD VAUX OF HARROWDEN

Insert the following new Clause –

“Mandatory referral of connected party pre-pack proposals to the Pre-Pack Pool

- (1) Schedule B1 to the Insolvency Act 1986 (administration) is amended as follows.
- (2) In paragraph 60, after sub-paragraph (2) insert –
 - “(3) The administrator may not sell, hire out or otherwise dispose of property of a company to a connected person until the proposed sale, hiring out or disposal has been referred to the Pre-Pack Pool and a member of the Pre-Pack Pool has issued a statement.
 - (4) In sub-paragraph (3) “connected person” has the meaning given in paragraph 60A of Schedule B1.””

Clause 21

BARONESS BOWLES OF BERKHAMSTED

Page 78, line 39, at end insert –

“(c) has financially harmed small or medium-sized companies or unsecured creditors,”

Clause 22

BARONESS NEVILLE-ROLFE

Page 79, line 11, leave out subsections (3) and (4)

LORD FOX

Page 79, line 15, after “year,” insert “and

“(b) may not substitute a date that is later than two years after the day on which this Act was passed,”

Clause 29

BARONESS BOWLES OF BERKHAMSTED

Page 82, line 37, at end insert –

“(c) has financially harmed small or medium-size businesses or unsecured creditors,”

Clause 30

BARONESS NEVILLE-ROLFE

Page 83, line 8, leave out subsections (3) and (4)

After Clause 34

LORD STEVENSON OF BALMACARA

Insert the following new Clause –

“Review of the Small Business Commissioner in relation to insolvency

- (1) Within 12 months of the day on which this Act is passed, the Secretary of State must review the impact of the Small Business Commissioner on mitigating the effects, and reducing instances, of insolvency since it was established.
- (2) In the review the Secretary of State must consider whether the Small Business Commissioner could be granted further powers, in particular to enforce the payment of commercial debts owed to a small business by larger businesses if the small business is at risk of becoming insolvent or has already become insolvent.”

After Clause 38

LORD STEVENSON OF BALMACARA

Insert the following new Clause—

“Financial Reporting Council

- (1) Within 3 months of the date on which this Act is passed, the Secretary of State must commission a review regarding the introduction of legislation in Parliament which provides for the replacement of the Financial Reporting Council with an independent regulator for accounting, auditing and actuarial work (“the regulator”).
- (2) The review under subsection (1) must consider the following duties of the regulator—
 - (a) to establish minimum standards for both the appointment and oversight of auditors;
 - (b) to ensure that one of the following may not be appointed as a single auditor to larger companies—
 - (i) PricewaterhouseCoopers International Limited (PwCIL),
 - (ii) Deloitte Touche Tohmatsu Limited,
 - (iii) Ernst & Young Global Limited Liability Partnership, or
 - (iv) KPMG International Cooperative,
 and that, when an auditor listed in subsection (2)(b)(i) to (iv) is appointed, another auditor not so listed is jointly appointed;
 - (c) to monitor compliance with standards, including the powers—
 - (i) to require information and reports from audit committees, and
 - (ii) to place an observer on an audit committee;
 - (d) to take remedial action, including issuing public reprimands and making written statements to shareholders; and
 - (e) to make recommendations to the Secretary of State on corporate governance reform.”

Insert the following new Clause—

“Corporate governance: reforms

- (1) Before 31 December 2020, the Secretary of State must—
 - (a) carry out a review of corporate governance;
 - (b) set out the conclusions of the review in a report;
 - (c) publish the report; and
 - (d) arrange for copies of the report to be laid before both Houses of Parliament.
- (2) The report under subsection (1) must in particular set out the Government’s proposals for—
 - (a) ensuring greater accountability of directors in group companies which sell failing subsidiaries;
 - (b) legislating to enhance powers for insolvency practitioners in relation to value extraction schemes (removal of value from a firm at the expense of its creditors when in financial distress);

After Clause 38 - continued

- (c) further raising standards by ensuring that directors of a company publish regular explanations to their shareholders as to the extent to which the company can afford to pay dividends alongside its financial commitments such as capital investments, workers' rewards and pension schemes."

BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause—

“Verification of individuals

- (1) The Companies Act 2006 is amended as follows.
 (2) After section 1067 (registered numbers of UK establishments of overseas company), insert—

“Registrar’s requirements as to verification

- (1) The registrar must impose requirements as to the verification of the identity of—
 (a) directors,
 (b) persons of significant control,
 (c) any individuals filing documents on behalf of a company with the registrar, and
 (d) shareholders.
 (2) The registrar must impose requirements to ensure that a third-party agent registering a company has provided evidence of due diligence undertaken prior to registration.”
 (3) In section 1072 (requirements for proper delivery) after subsection (2) insert—
 “(3) The registrar may request further evidence in relation to any document notwithstanding that it has been properly delivered to the registrar.”
 (4) In section 1081 (annotation of the register), after subsection (1A) insert—
 “(1B) The registrar must place a public note in the register recording where information placed on the register has been found to be inaccurate or where a company has failed to provide evidence that substantiates the accuracy of information.”
 (5) After section 1111 (supplementary provisions) insert—

“1111A Information sharing to prevent economic crime

The registrar may share information provided to the registrar with the following agencies if the registrar reasonably believes that the information might prevent, or aid the detection of, a criminal offence—

- (a) the National Crime Agency,
 (c) the Serious Fraud Office
 (d) Her Majesty’s Revenue and Customs.
 (e) the National Economic Crime Centre, and
 (f) any police force.””

Clause 39

BARONESS NEVILLE-ROLFE

Baroness Neville-Rolfe gives notice of her intention to oppose the Question that Clause 39 stand part of the Bill.

Clause 40

BARONESS NEVILLE-ROLFE

Baroness Neville-Rolfe gives notice of her intention to oppose the Question that Clause 40 stand part of the Bill.

Schedule 1

LORD HENDY

LORD HAIN

LORD MONKS

Page 101, line 9, at end insert –

“17A A company is excluded from being eligible if, on the filing date, it has outstanding unpaid tax, national insurance or pension payments in respect any employees of the company, other than directors.”

Page 101, line 9, at end insert –

“17A A company is excluded from being eligible if, on the filing date, it has any outstanding unpaid remuneration (including redundancy payments) to any of its workers, other than directors.”

Page 101, line 9, at end insert –

“17A A company is excluded from being eligible unless, on the filing date, any alleged or proven breach of a sex equality clause under section 66 of the Equality Act 2010 or of a sex equality rule under section 67 of that Act is redressed immediately in respect of the past and eliminated for the future, to the monitor's satisfaction.”

Page 101, line 9, at end insert –

“17A A company is excluded from being eligible if, on the filing date, it has failed to publish the information required by section 78 of the Equality Act 2010 and the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 by the required date specified.”

Schedule 2

LORD CALLANAN

Page 104, line 15, at end insert “, and

(b) a master agreement for securities financing transactions.”

Member's explanatory statement

This amendment provides 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.

Page 104, line 24, leave out from "derivative" to end of line 25 and insert " , and
(b) a master agreement for derivatives.

(2) "Derivative" has the meaning given by Article 2(5) of Regulation (EU) No. 648/2012."

Member's explanatory statement

This amendment provides 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.

Page 104, line 27, at end insert " , and
(b) a master agreement for spot contracts."

Member's explanatory statement

This amendment provides 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.

Page 104, line 35, leave out from "to" to end of line 36 and insert "an agreement which is, or forms part of, an arrangement involving the issue of a capital market investment.

(2) "Capital market investment" has the meaning given by paragraph 14 of Schedule ZA1."

Member's explanatory statement

This amendment provides 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 section A18 of the Insolvency Act 1986.

Schedule 4

LORD CALLANAN

Page 122, line 39, leave out "Act" and insert "Schedule"

Member's explanatory statement

This amendment changes the definition of the "relevant period" so that the term is defined by reference to the coming into force of the Schedule rather than by reference to the coming into force of the Act as a whole.

Schedule 6

LORD CALLANAN

Page 154, line 10, at end insert " , and
(b) a master agreement for securities financing transactions."

Member's explanatory statement

This amendment provides 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.

Page 154, line 19, leave out from "derivative" to end of line 20 and insert " , and

(b) a master agreement for derivatives.

(2) "Derivative" has the meaning given by Article 2(5) of Regulation (EU) No. 648/2012."

Member's explanatory statement

This amendment provides 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.

Page 154, line 22, at end insert " , and

(b) a master agreement for spot contracts."

Member's explanatory statement

This amendment provides 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.

Page 154, line 30, leave out from "to" to end of line 31 and insert "an agreement which is, or forms part of, an arrangement involving the issue of a capital market investment.

(2) "Capital market investment" has the meaning given by paragraph 14 of Schedule ZA1."

Member's explanatory statement

This amendment provides 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.

Schedule 8

LORD CALLANAN

Page 166, line 12, leave out "Act" and insert "Schedule"

Member's explanatory statement

This amendment changes the definition of the "relevant period" so that the term is defined by reference to the coming into force of the Schedule rather than by reference to the coming into force of the Act as a whole.

Schedule 9

LORD HENDY

LORD HAIN

LORD MONKS

Page 179, line 28, leave out "and B" and insert " , B and C"

Schedule 9 - continued

Page 179, line 29, at end insert –

“() No proposed compromise or arrangement may be put into effect unless the court has ruled that conditions A, B and C have been met.”

Page 180, line 4, at end insert –

“() the purposes of the compromise or arrangement include the purpose of ensuring that all unpaid tax, national insurance and pension payments in respect of every worker of the company, other than directors, is paid on or before the date the compromise or arrangement comes into effect.”

LORD HENDY

LORD HAIN

LORD MONKS

BARONESS BRYAN OF PARTICK

Page 180, line 4, at end insert –

“() the compromise or arrangement ensures that all unpaid remuneration (including redundancy payments) to every worker of the company, other than directors, is paid on or before the date the compromise or arrangement comes into effect.”

LORD HENDY

LORD HAIN

LORD MONKS

Page 180, line 4, at end insert –

“() the purposes of the compromise or arrangement include the purpose of ensuring that, at the date the compromise or arrangement comes into effect, any alleged or proven breach of a sex equality clause under section 66 of the Equality Act 2010 or of a sex equality rule under section 67 of that Act is redressed immediately in respect of the past and eliminated for the future, to the monitor's satisfaction.”

LORD HENDY

LORD HAIN

LORD MONKS

BARONESS BRYAN OF PARTICK

Page 180, line 4, at end insert –

“() Condition C is that all obligations of the company to any pension scheme have priority over all other creditors in the proposed compromise or arrangement.”

Schedule 9 - continued

LORD HENDY
LORD HAIN
LORD MONKS

Page 180, line 4, at end insert –

“() Condition C is that at least 30 per cent of any proceeds of the sale of any assets in consequence of the compromise or arrangement by way of the elimination, reduction, prevention or mitigation of the effect of any of the financial difficulties that are affecting, or will or may affect, the company's ability to carry on business, are used for the purpose of satisfying unsecured creditors.”

LORD HENDY
LORD HAIN
LORD MONKS
BARONESS BRYAN OF PARTICK

Page 180, line 4, at end insert –

“() Condition C is that –

- (a) if the company employs fewer than 250 workers, at least two directors on the board of the company have been directly elected by the workers of the company;
- (b) if the company employs 250 workers or more, at least one third of directors on the board of the company have been directly elected by the workers of the company; and
- (c) a majority of the directors elected to the board of the company in accordance with paragraphs (a) and (b) have voted in favour of the proposed compromise or arrangement on a resolution of the board of directors proposing the compromise or arrangement.”

LORD HENDY
LORD HAIN
LORD MONKS
LORD LENNIE

Page 180, line 4, at end insert –

“() Condition C is that –

- (a) a collective agreement has been made between the company and appropriate representatives of any of the employees who may be affected by measures which may be taken in relation to the proposed compromise or arrangement; and
- (b) the collective agreement extends to all the matters specified in section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992 (collective agreements and collective bargaining) which may be affected by the proposed compromise or arrangement if it comes into effect or by measures which may be taken in consequence of it.

Schedule 9 - continued

- () In this section, “appropriate representatives” has the meaning given by section 188(1B) of the Trade Union and Labour Relations (Consolidation) Act 1992 (duty of employer to consult representatives), but the meaning is to be construed as if for the words “proposed dismissals” were substituted “proposed compromise or arrangement”.”

LORD HENDY
LORD HAIN
LORD MONKS

Page 180, line 4, at end insert –

- “() Condition C is that the company gives an undertaking to the court that for three years from the date of the court’s approval of the proposed compromise or arrangement it will not –
- (a) make or agree to make any payments of dividends,
 - (b) agree to buy back its shares, or
 - (c) pay or agree to pay any director remuneration at a rate which exceeds in value 10 times the lowest full-time equivalent rate of pay of the company’s employees for an equivalent period.”

Page 180, line 4, at end insert –

- “() In this section “worker” has the meaning given by section 296 of the Trade Union and Labour Relations (Consolidation) Act 1992 (meaning of worker and related expressions).”

LORD CALLANAN

Page 189, line 17, leave out “24(1) (insolvency)” and insert “24 (insolvency) –

- (a) in sub-paragraph (1)”

Member’s explanatory statement

This amendment makes 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 Act 2000.

Page 189, line 19, leave out “section 355A” and insert “sections 355A and 355B”

Member’s explanatory statement

This amendment provides 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.

Page 189, line 20, at end insert –

- “(b) in sub-paragraph (2), after “recognised investment exchange” insert “(other than the reference to “an authorised person” in section 355B(2)(a))”.”

Member's explanatory statement

This amendment ensures 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.

Page 190, line 36, at end insert –

“355B Enforcement of requirements imposed by section 355A

- (1) For the purpose of enforcing a requirement imposed on a company by section 355A(2) or (3), the appropriate regulator may exercise any of the following powers (so far as it would not otherwise be exercisable) –
 - (a) the power to publish a statement under section 205 (public censure);
 - (b) the power to impose a financial penalty under section 206.
- (2) Accordingly, sections 205 and 206, and so much of this Act as relates to either of those sections, have effect in relation to a requirement imposed by section 355A(2) or (3) as if –
 - (a) any reference to an authorised person included (so far as would not otherwise be the case) a reference to a company falling within any of paragraphs (a) to (d) of section 355A(1),
 - (b) any reference to a relevant requirement included (so far as would not otherwise be the case) a reference to a requirement imposed by section 355A(2) or (3), and
 - (c) “the appropriate regulator” had the same meaning as in section 355A.
- (3) In this section “the appropriate regulator” has the same meaning as in section 355A.”

Member's explanatory statement

This amendment provides 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.

Page 202, line 25, at end insert –

- “() Sections 197, 198 and 202A of the Banking Act 2009, and sections 201 and 202 of that Act, so far as relating to those sections, apply in relation to a failure by an infrastructure company to comply with subsection (2) or (3) above as they apply in relation to a compliance failure within the meaning of Part 5 of that Act.”

Member's explanatory statement

This amendment provides 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.

Schedule 12

LORD CALLANAN

Page 221, line 25, at end insert “and

- (b) a master agreement for securities financing transactions”

Member's explanatory statement

This amendment provides for master agreements for securities financing transactions to be excluded from the operation of new section 233B of the Insolvency Act 1986.

Page 221, line 34, leave out from “derivative” to end of line 35 and insert “and
(b) a master agreement for derivatives.

(2) “Derivative” has the meaning given by Article 2(5) of Regulation (EU) No. 648/2012.”

Member's explanatory statement

This amendment provides for master agreements for derivatives to be excluded from the operation of new section 233B of the Insolvency Act 1986.

Page 221, line 37, at end insert “and
(b) a master agreement for spot contracts.”

Member's explanatory statement

This amendment provides for master agreements for spot contracts to be excluded from the operation of new section 233B of the Insolvency Act 1986.

Page 222, line 2, leave out from “to” to end of line 3 and insert “an agreement which is, or forms part of, an arrangement involving the issue of a capital market investment.

(2) “Capital market investment” has the meaning given by paragraph 14 of Schedule ZA1.”

Member's explanatory statement

This amendment provides for agreements relating to the issue of capital market investments to be excluded from the operation of new section 233B of the Insolvency Act 1986.

Page 222, line 23, at end insert –

“Aircraft equipment

21 Nothing in section 233B affects the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 (S.I. 2015/912).”

Member's explanatory statement

This amendment clarifies the relationship between the proposed new section 233B of the Insolvency Act 1986 and the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015.

Schedule 13

LORD CALLANAN

Page 227, line 35, at end insert “and
(b) a master agreement for securities financing transactions.”

Member's explanatory statement

This amendment provides for master agreements for securities financing transactions to be excluded from the operation of new Article 197B of the Insolvency (Northern Ireland) Order 1989.

Page 227, line 44, leave out from “derivative” to end of line 45 and insert “and
(b) a master agreement for derivatives.

- (2) “Derivative” has the meaning given by Article 2(5) of Regulation (EU) No. 648/2012.”

Member’s explanatory statement

This amendment provides for master agreements for derivatives to be excluded from the operation of new Article 197B of the Insolvency (Northern Ireland) Order 1989.

Page 228, line 2, at end insert “and

- (b) a master agreement for spot contracts.”

Member’s explanatory statement

This amendment provides for master agreements for spot contracts to be excluded from the operation of new Article 197B of the Insolvency (Northern Ireland) Order 1989.

Page 228, line 10, leave out from “to” to end of line 11 and insert “an agreement which is, or forms part of, an arrangement involving the issue of a capital market investment.

- (2) “Capital market investment” has the meaning given by paragraph 14 of Schedule ZA1.”

Member’s explanatory statement

This amendment provides 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.

Page 228, line 31, at end insert –

“Aircraft equipment

- 21 Nothing in Article 197B affects the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 (S.I. 2015/912).”

Member’s explanatory statement

This amendment clarifies 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.

Corporate Insolvency and Governance Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

10 June 2020
