

Corporate Insolvency and Governance Bill

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

[Amendments marked ★ are new or have been altered]

Amendment
No.

Clause 1

LORD HOPE OF CRAIGHEAD

- 1★ Page 3, line 26, at end insert—
“(ca) a list by the directors of all known creditors of the company,”

Member’s explanatory statement

This amendment is to assist the monitor in their duty to notify every creditor of the company of whose claim he or she is aware.

LORD LEIGH OF HURLEY
VISCOUNT TRENCHARD

- 2★ Page 3, line 31, after “company” insert “or the company’s business or part of that business”

LORD CALLANAN

- 3★ Page 3, line 44, leave out “changing the definition of “the relevant documents”” and insert “adding to the list of documents”

Member’s explanatory statement

This amendment narrows the Secretary of State’s power to change a list of documents, so that it is confined to adding to the list. The power could subsequently be re-exercised so as to remove anything added.

- 4★ Page 4, line 23, at end insert—
“(c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and

Clause 1 - continued

- (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by section 126 of the Pensions Act 2004, the Board of the Pension Protection Fund.”

Member’s explanatory statement

This amendment extends the monitor’s duty to give notice that a moratorium has come into force.

- 5★ Page 5, line 43, leave out from beginning to end of line 2 on page 6

Member’s explanatory statement

This amendment removes a Henry VIII power to change a list of documents.

LORD LEIGH OF HURLEY
VISCOUNT TRENCHARD

- 6★ Page 6, line 14, after “company” insert “or the company’s business or part of that business”

- 7★ Page 6, line 19, after “company” insert “or the company’s business or part of that business”

LORD CALLANAN

- 8★ Page 6, leave out lines 29 to 32

Member’s explanatory statement

This amendment removes a Henry VIII power to change a list of documents.

LORD LEIGH OF HURLEY
VISCOUNT TRENCHARD

- 9★ Page 7, line 29, after “company” insert “or the company’s business or part of that business”

- 10★ Page 7, line 41, after “company” insert “or the company’s business or part of that business”

LORD CALLANAN

- 11★ Page 8, leave out lines 8 to 11

Member’s explanatory statement

This amendment removes a Henry VIII power to change a list of documents.

- 12★ Page 10, line 42, at end insert –

“(c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and

Clause 1 - continued

- (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by section 126 of the Pensions Act 2004, the Board of the Pension Protection Fund.”

Member’s explanatory statement

This amendment extends the monitor’s duties to give notice where a moratorium is extended or comes to an end.

BARONESS DRAKE
BARONESS WARWICK OF UNDERCLIFFE
BARONESS BOWLES OF BERKHAMSTED
BARONESS ALTMANN

- 13★** Page 11, leave out lines 21 and 22

Member’s explanatory statement

This would remove amounts payable in respect of pre-moratorium debts arising under a contract or other instrument involving financial services from (i) the exemption from the payment holiday; and (ii) the super-priority provisions in the event of a company entering into an insolvency process within 12 weeks of the end of a moratorium.

BARONESS BOWLES OF BERKHAMSTED
LORD FOX
BARONESS KRAMER
LORD HODGSON OF ASTLEY ABBOTTS

- 14★** Page 13, line 48, at end insert –
“(f) banks and other financial creditors may not seek to accelerate payment.”

LORD FOX
BARONESS BOWLES OF BERKHAMSTED
BARONESS ALTMANN
LORD HAIN

- 15★** Page 19, line 7, at end insert –
“() However, the court may not give permission for the disposal of any property or asset under subsection (1) which has been pledged to the company’s defined benefit pension scheme unless the Pension Protection Fund has given prior permission for its disposal.”

LORD LEIGH OF HURLEY
VISCOUNT TRENCHARD

- 16★** Page 21, line 24, after “company” insert “or the company’s business or part of that business”
- 17★** Page 21, line 25, after “company” insert “or the company’s business or part of that business”

Clause 1 - continued

LORD CALLANAN

18★ Page 22, line 35, at end insert –

- “(c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
- (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by section 126 of the Pensions Act 2004, the Board of the Pension Protection Fund.”

Member’s explanatory statement

This amendment extends the duty to give notice that the monitor has changed.

19★ Page 24, line 39, at end insert –

“A44A Challenge brought by Board of the Pension Protection Fund

- (1) This section applies where –
 - (a) a moratorium –
 - (i) is in force in relation to a company that is an employer in respect of an eligible scheme, or
 - (ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and
 - (b) the trustees or managers of the scheme are a creditor of the company.
- (2) The Board of the Pension Protection Fund may make any application under section A42(1) or A44(1) that could be made by the trustees or managers as a creditor.
- (3) For the purposes of such an application, any reference in section A42(1) or A44(1) to the interests of the applicant is to be read as a reference to the interests of the trustees or managers as a creditor.
- (4) In this section “eligible scheme” has the meaning given by section 126 of the Pensions Act 2004.”

Member’s explanatory statement

This amendment gives the Board of the Pension Protection Fund the same rights to challenge the monitor or the directors as the trustees or managers of certain pensions schemes have.

20★ Page 30, line 18, at end insert –

“A49A Power to make provision in connection with pension schemes

- (1) The Secretary of State may by regulations provide that, in a case where –
 - (a) a moratorium –
 - (i) is in force in relation to a company that is an employer in respect of an eligible scheme, or

Clause 1 - continued

- (ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and
- (b) the trustees or managers of the scheme are a creditor of the company,
- the Board of the Pension Protection Fund may exercise any of the following rights.
- (2) The rights are those which are exercisable by the trustees or managers as a creditor of the company under or by virtue of –
- (a) section A12, or
- (b) a court order under section A44(4)(c).
- (3) Regulations under subsection (1) may provide that the Board may exercise any such rights –
- (a) to the exclusion of the trustees or managers of the scheme, or
- (b) in addition to the exercise of those rights by the trustees or managers of the scheme.
- (4) Regulations under subsection (1) –
- (a) may specify conditions that must be met before the Board may exercise any such rights;
- (b) may provide for any such rights to be exercisable by the Board for a specified period;
- (c) may make provision in connection with any such rights ceasing to be so exercisable at the end of such a period.
- (5) Regulations under subsection (1) are subject to the affirmative resolution procedure.
- (6) In this section “eligible scheme” has the meaning given by section 126 of the Pensions Act 2004.”

Member’s explanatory statement

This amendment enables the Board of the Pension Protection Fund to be given the power to exercise certain rights of the trustees or managers of a pension scheme.

21★ Page 31, line 44, at end insert –

- ““employer”, in relation to a pension scheme –
- (a) in sections A8(2)(c), A17(8)(c) and A39(8)(c), means an employer within the meaning of section 318(1) of the Pensions Act 2004;
- (b) elsewhere in this Part, has the same meaning that it has for the purposes of Part 2 of the Pensions Act 2004 (see section 318(1) and (4) of that Act);”

Member’s explanatory statement

This amendment defines “employer” for the purposes of the Minister’s other amendments to clause 1 which use that term.

22★ Page 32, line 5, at end insert –

- ““money purchase scheme” has the meaning given by section 181(1) of the Pension Schemes Act 1993;”

Member's explanatory statement

This amendment defines "money purchase scheme" for the purposes of the Minister's other amendments to clause 1 which use that term.

23★

Page 32, line 11, at end insert—

““occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;
“pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;”

Member's explanatory statement

This amendment defines "occupational pension scheme" and "pension scheme" for the purposes of the Minister's other amendments to clause 1 which use those terms.

Clause 4

LORD CALLANAN

24★

Page 35, line 33, leave out “changing the definition of “the relevant documents”” and insert “adding to the list of documents”

Member's explanatory statement

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

25★

Page 36, line 12, at end insert—

- “(c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
- (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005, the Board of the Pension Protection Fund.”

Member's explanatory statement

This amendment extends the monitor's duty to give notice that a moratorium has come into force.

26★

Page 37, leave out lines 34 to 38

Member's explanatory statement

This amendment removes a Henry VIII power to change a list of documents.

27★

Page 38, leave out lines 20 to 24

Member's explanatory statement

This amendment removes a Henry VIII power to change a list of documents.

28★

Page 40, leave out lines 4 to 8

Member's explanatory statement

This amendment removes a Henry VIII power to change a list of documents.

29★ Page 42, line 42, at end insert –

- “(c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
- (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005, the Board of the Pension Protection Fund.”

Member's explanatory statement

This amendment extends the monitor's duties to give notice where a moratorium is extended or comes to an end.

30★ Page 54, line 25, at end insert –

- “(c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
- (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005, the Board of the Pension Protection Fund.”

Member's explanatory statement

This amendment extends the duty to give notice that the monitor has changed.

31★ Page 56, line 31, at end insert –

“13FC Challenge brought by Board of the Pension Protection Fund

- (1) This Article applies where –
 - (a) a moratorium –
 - (i) is in force in relation to a company that is an employer in respect of an eligible scheme, or
 - (ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and
 - (b) the trustees or managers of the scheme are a creditor of the company.
- (2) The Board of the Pension Protection Fund may make any application under Article 13F(1) or 13FB(1) that could be made by the trustees or managers as a creditor.
- (3) For the purposes of such an application, any reference in Article 13F(1) or 13FB(1) to the interests of the applicant is to be read as a reference to the interests of the trustees or managers as a creditor.
- (4) In this Article “eligible scheme” has the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005.”

Member's explanatory statement

This amendment gives the Board of the Pension Protection Fund the same rights to challenge the monitor or the directors as the trustees or managers of certain pension schemes have.

32★ Page 61, line 6, leave out from “Assembly” to end of line 10

Member's explanatory statement

This amendment removes the temporary modification to the parliamentary procedure for regulations. See also the proposed new clause in the Minister's name to be inserted after Clause 43.

33★ Page 61, line 10, at end insert –

“13HAA Power to make provision in connection with pension schemes

- (1) A Northern Ireland department may by regulations provide that, in a case where –
 - (a) a moratorium –
 - (i) is in force in relation to a company that is an employer in respect of an eligible scheme, or
 - (ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and
 - (b) the trustees or managers of the scheme are a creditor of the company,

the Board of the Pension Protection Fund may exercise any of the following rights.
- (2) The rights are those which are exercisable by the trustees or managers as a creditor of the company under or by virtue of –
 - (a) Article 13CC, or
 - (b) a court order under Article 13FB(4)(c).
- (3) Regulations under paragraph (1) may provide that the Board may exercise any such rights –
 - (a) to the exclusion of the trustees or managers of the scheme, or
 - (b) in addition to the exercise of those rights by the trustees or managers of the scheme.
- (4) Regulations under paragraph (1) –
 - (a) may specify conditions that must be met before the Board may exercise any such rights;
 - (b) may provide for any such rights to be exercisable by the Board for a specified period;
 - (c) may make provision in connection with any such rights ceasing to be so exercisable at the end of such a period.
- (5) Regulations may not be made under paragraph (1) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (6) In this Article “eligible scheme” has the meaning given by Article 110 of the Pensions (Northern Ireland) Order 2005.”

Member's explanatory statement

This amendment enables the Board of the Pension Protection Fund to be given the power to exercise certain rights of the trustees or managers of a pension scheme.

34★ Page 62, line 36, at end insert –

““employer”, in relation to a pension scheme –

- (a) in Articles 13BE(2)(c), 13CH(8)(c) and 13EE(8)(c), means an employer within the meaning of Article 2(2) of the Pensions (Northern Ireland) Order 2005;
- (b) elsewhere in this Part, has the same meaning that it has for the purposes of Part 3 of the Pensions (Northern Ireland) Order 2005 (see Article 2(2) and (5) of that Order);”

Member’s explanatory statement

This amendment defines “employer” for the purposes of the Minister’s other amendments to Clause 4 which use that term.

35★ Page 62, line 38, at end insert –

““money purchase scheme” has the meaning given by section 176(1) of the Pension Schemes (Northern Ireland) Act 1993;”

Member’s explanatory statement

This amendment defines “money purchase scheme” for the purposes of the Minister’s other amendments to Clause 4 which use that term.

36★ Page 62, line 44, at end insert –

““occupational pension scheme” has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993;
“pension scheme” has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993;”

Member’s explanatory statement

This amendment defines “occupational pension scheme” and “pension scheme” for the purposes of the Minister’s other amendments to Clause 4 which use those terms.

After Clause 7

LORD CALLANAN

37★ Insert the following new Clause –

“Administration in Great Britain: revival of power about sales to connected persons

- (1) Paragraph 60A of Schedule B1 to the Insolvency Act 1986 (which expired in May 2020) is revived.
- (2) For sub-paragraph (10) of that paragraph substitute –
“(10) This paragraph expires at the end of June 2021 unless the power conferred by it is exercised before then.””

Member’s explanatory statement

This amendment revives paragraph 60A of Schedule B1 to the Insolvency Act 1986, which expired in May 2020 by virtue of the sunset provision in sub-paragraph (10) of that paragraph.

38★ Insert the following new Clause –

“Administration in Northern Ireland: power about sales to connected persons

- (1) The Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) is amended as follows.
- (2) Schedule B1 (administration) is amended in accordance with subsections (3) to (5).
- (3) Paragraph 61 (powers of administrator) becomes sub-paragraph (1) of that paragraph.
- (4) After that sub-paragraph insert –
 - “(2) But the power to sell, hire out or otherwise dispose of property is subject to any regulations that may be made under paragraph 61A.”
- (5) After paragraph 61 insert –

“61A (1) Regulations may 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) Regulations under this paragraph may in particular require the approval of, or provide for the imposition of requirements or conditions by –
 - (a) creditors of the company,
 - (b) the High Court, or
 - (c) a person of a description specified in the regulations.
 - (3) In sub-paragraph (1), “connected person”, in relation to a company, means –
 - (a) a relevant person in relation to the company, or
 - (b) a company connected with the company.
 - (4) For the purposes of sub-paragraph (3) –
 - (a) “relevant person”, in relation to a company, means –
 - (i) a director or other officer, or shadow director, of the company;
 - (ii) a non-employee associate of such a person;
 - (iii) a non-employee associate of the company;
 - (b) a company is connected with another if any relevant person of one is or has been a relevant person of the other.
 - (5) In sub-paragraph (4), “non-employee associate” of a person means a person who is an associate of that person otherwise than by virtue of employing or being employed by that person.
 - (6) Paragraph (11) of Article 4 (extended definition of company) applies for the purposes of sub-paragraphs (3) to (5) as it applies for the purposes of that Article.
 - (7) Regulations under this paragraph may make incidental, consequential, supplemental and transitional provision.
 - (8) Regulations may not be made under this paragraph unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

After Clause 7 - continued

(9) This paragraph expires at the end of June 2021 unless the power conferred by it is exercised before then.”

(6) In Article 2(2), in the definition of “regulations”, after the words “and paragraph 16 of Schedule A1”(which are repealed by paragraph 3(b) of Schedule 7 to this Act) insert “and paragraph 61A of Schedule B1”.”

Member’s explanatory statement

This amendment confers a power to make provision under the law of Northern Ireland about sales to connected persons in the context of an administration. It is similar to the corresponding power in Great Britain (which is revived by one of the Minister’s other amendments).

Clause 10

LORD CALLANAN

39★ Page 64, line 17, leave out from “30” to end of line 18 and insert “September 2020.”

Member’s explanatory statement

This amendment alters the definition of the “relevant period” that applies for the purposes of Clause 10 so that the period ends with 30 September 2020.

LORD WALLACE OF TANKERNESS
BARONESS TAYLOR OF BOLTON
BARONESS FOOKES
LORD PANNICK

40★ Page 64, line 18, at end insert—

“() Subsection (1) applies in relation to claims whose underlying facts arose during the period beginning with 1 March 2020 and ending with the day on which this section comes into force only insofar as the court is satisfied that those facts were related to the effects of coronavirus.”

Member’s explanatory statement

This amendment allows a claimant to obtain a remedy for wrongful trading where it can be shown that the facts are unrelated to the effects of the coronavirus. The section therefore does not retroactively remove a wrongful trading claim that can be shown to be unrelated to the pandemic.

Clause 11

LORD CALLANAN

41★ Page 65, line 40, leave out from “30” to end of line 41 and insert “September 2020.”

Member’s explanatory statement

This amendment alters the definition of the “relevant period” that applies for the purposes of Clause 11 so that the period ends with 30 September 2020.

LORD WALLACE OF TANKERNESS
BARONESS FOOKES
BARONESS TAYLOR OF BOLTON
LORD PANNICK

42★ Page 65, line 46, at end insert –

“() Subsection (1) applies in relation to claims whose underlying facts arose during the period beginning with 1 March 2020 and ending with the day on which this section comes into force only insofar as the court is satisfied that those facts were related to the effects of coronavirus.”

Member’s explanatory statement

This amendment allows a claimant to obtain a remedy for wrongful trading in Northern Ireland where it can be shown that the facts are unrelated to the effects of the coronavirus. The section therefore does not retroactively remove a wrongful trading claim that can be shown to be unrelated to the pandemic.

Clause 13

LORD CALLANAN

43★ Page 70, line 10, leave out from “30” to end of line 11 and insert “September 2020.”

Member’s explanatory statement

This amendment alters the definition of the “relevant period” that applies for the purposes of subsection (1)(a) of Clause 13 so that the period ends with 30 September 2020.

Clause 17

LORD CALLANAN

44★ Page 77, line 1, leave out from “30” to end of line 2 and insert “September 2020.”

Member’s explanatory statement

This amendment alters the definition of the “relevant period” that applies for the purposes of subsection (1)(a) of Clause 17 so that the period ends with 30 September 2020.

After Clause 17

LORD HODGSON OF ASTLEY ABBOTTS
LORD VAUX OF HARROWDEN
BARONESS BOWLES OF BERKHAMSTED
BARONESS ALTMANN

45 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.

After Clause 17 - continued

- (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 new Clause 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.

BARONESS NEVILLE-ROLFE
LORD STEVENSON OF BALMACARA

46★ 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.”

Clause 20

LORD CALLANAN

47★ Page 79, line 6, at end insert—

“() the need for the provision made by the regulations is urgent,”

Member’s explanatory statement

This amendment makes urgency a condition of the exercise of the power in Clause 18.

Clause 21

BARONESS FOOKES
BARONESS TAYLOR OF BOLTON
LORD WALLACE OF TANKERNESS
LORD PANNICK

48★ Page 79, line 35, at end insert—

“(3A) The Secretary of State must lay a report before Parliament every three months reviewing the use of regulations under section 18.”

Member's explanatory statement

At present Clause 21 requires the Secretary of State to "keep the regulations under review". This amendment would set a timetable for those reviews and require a report to Parliament.

Clause 22

LORD CALLANAN

- 49★ Page 80, line 14, leave out from "which is" to end of line 15 and insert—
- “(i) after the period of one year beginning with the date for the time being specified in subsection (1), or
 - (ii) after the period of two years beginning with the date on which this Act is passed, but”

Member's explanatory statement

This amendment prevents regulations under Clause 18 being made more than two years after Royal Assent.

BARONESS TAYLOR OF BOLTON
BARONESS FOOKES
LORD WALLACE OF TANKERNESS
LORD PANNICK

- 50★ Page 80, line 16, after "may" insert "not"

Member's explanatory statement

This amendment would prevent the Clause 18 power from being renewed on more than one occasion. It would therefore expire on 30 April 2021, and could be renewed once to 30 April 2022 but no further.

Clause 24

LORD CALLANAN

- 51★ Page 80, line 29, after "applies," insert "or
- (b) regulations made under section 23 which make provision by amending an Act or an Act of the Scottish Parliament,".

Member's explanatory statement

This amendment and the Minister's final amendment to Clause 24 provide for regulations under Clause 23 (consequential provision etc) which amend an Act or an Act of the Scottish Parliament to be subject to the made affirmative procedure.

- 52★ Page 80, line 38, at end insert—
- “(4A) Where regulations cease to have effect as a result of subsection (3) that does not—
- (a) affect anything previously done under or by virtue of the regulations, or
 - (b) prevent the making of new regulations.”

Member's explanatory statement

This amendment clarifies that if regulations under Clause 18 cease to have effect that does not affect anything previously done under or by virtue of the regulations or prevent the making of new regulations.

- 53★ Page 81, line 6, after “section 23” insert “which do not make provision by amending an Act or an Act of the Scottish Parliament”

Member’s explanatory statement

See the statement for the Minister’s first amendment to Clause 24.

Clause 28

LORD CALLANAN

- 54★ Page 83, line 5, at end insert –
“() the need for the provision made by the regulations is urgent,”

Member’s explanatory statement

This amendment makes urgency a condition of the exercise of the power in Clause 26.

Clause 30

LORD CALLANAN

- 55★ Page 84, line 11, leave out from “which is” to end of line 12 and insert –
“(i) after the period of one year beginning with the date for the time being specified in subsection (1), or
(ii) after the period of two years beginning with the date on which this Act is passed, but”

Member’s explanatory statement

This amendment prevents regulations under Clause 26 being made more than two years after Royal Assent.

Clause 32

LORD CALLANAN

- 56★ Page 84, line 28, after “applies,” insert “and regulations made under section 31 by the Department which make provision by amending an Act or Northern Ireland legislation,”

Member’s explanatory statement

This amendment and the Minister’s final amendment to Clause 32 provide for regulations made by the Department for the Economy under Clause 31 (consequential provision etc) which amend an Act or Northern Ireland primary legislation to be subject to the made affirmative procedure in the Northern Ireland Assembly.

- 57★ Page 84, line 38, at end insert –
“(4A) Where regulations cease to have effect as a result of subsection (3) that does not –
(a) affect anything previously done under or by virtue of the regulations, or
(b) prevent the making of new regulations.”

Member's explanatory statement

This amendment clarifies that if regulations made by the Department for the Economy in Northern Ireland cease to have effect that does not affect anything previously done under or by virtue of the regulations or prevent the making of new regulations.

- 58★ Page 85, line 4, after “section 31” insert “which do not make provision by amending an Act or Northern Ireland legislation”

Member's explanatory statement

See the statement for the Minister's first amendment to Clause 32.

Clause 33

LORD CALLANAN

- 59★ Page 85, line 22, after “applies,” insert “or
(b) regulations made under section 31 by the Secretary of State which make provision by amending an Act,”

Member's explanatory statement

This amendment and the Minister's final amendment to Clause 33 provide for regulations made by the Secretary of State under Clause 31 (consequential provision etc) which amend an Act to be subject to the made affirmative procedure.

- 60★ Page 85, line 31, at end insert –
“(4A) Where regulations cease to have effect as a result of subsection (3) that does not –
(a) affect anything previously done under or by virtue of the regulations, or
(b) prevent the making of new regulations.”

Member's explanatory statement

This amendment clarifies that if regulations made by the Secretary of State cease to have effect that does not affect anything previously done under or by virtue of the regulations or prevent the making of new regulations.

- 61★ Page 85, line 43, after “section 31” insert “which do not make provision by amending an Act”

Member's explanatory statement

See the statement for the Minister's first amendment to Clause 33.

Clause 39

LORD CALLANAN

- 62★ Page 88, line 43, at end insert “if the Secretary of State considers it reasonable to do so to mitigate an effect of coronavirus.”

Member's explanatory statement

This amendment would mean that the power to make regulations under clause 39(1)(b) could be exercised only if the Secretary of State considered it reasonable to exercise the power to mitigate an effect of coronavirus.

- 63★ Page 88, line 44, after “section” insert “—
“coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);”

Member’s explanatory statement

This amendment is consequential on the first amendment to clause 39 in the name of Lord Callanan.

Clause 40

LORD CALLANAN

- 64★ Page 89, line 34, at end insert “if the Department considers it reasonable to do so to mitigate an effect of coronavirus.”

Member’s explanatory statement

This amendment would mean that the power to make regulations under Clause 40(1)(b) could be exercised only if the Department for the Economy in Northern Ireland considered it reasonable to exercise the power to mitigate an effect of coronavirus.

- 65★ Page 89, line 35, after “section” insert “—
“coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);”

Member’s explanatory statement

This amendment is consequential on the first amendment to Clause 40 in the name of Lord Callanan.

Clause 41

LORD CALLANAN

- 66★ Page 90, line 39, leave out “negative resolution” and insert “made affirmative”

Member’s explanatory statement

This amendment changes Clause 41 so that provision that could formerly have been made by the negative resolution procedure now has to be made by the made affirmative procedure (or the affirmative procedure).

- 67★ Page 90, line 43, at end insert —
“(aa) provision under section A49A(1) of the Insolvency Act 1986 (moratorium: power to make provision in connection with pension schemes);”

Member’s explanatory statement

This amendment ensures that, for the first six months, provision made under the power conferred by new section A49A(1) may be made by regulations that are subject to the made affirmative procedure.

- 68★ Page 91, line 28, leave out paragraph (b) and insert —
“(b) “regulations that are subject to the made affirmative procedure” means regulations that—

Clause 41 - continued

- (i) are contained in a statutory instrument that must be laid before Parliament as soon as reasonably practicable after being made, and
 - (ii) cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made, unless during that period the instrument is approved by a resolution of each House of Parliament.
- (6) In calculating the period of 40 days mentioned in subsection (5)(b)(ii), no account is to be taken of any time during which –
- (a) Parliament is dissolved or prorogued, or
 - (b) both Houses of Parliament are adjourned for more than 4 days.
- (7) Where by virtue of this section the Secretary of State makes regulations that are subject to the made affirmative procedure and the regulations cease to have effect because they are not approved within the period mentioned in subsection (5)(b)(ii), the fact that the regulations cease to have effect does not –
- (a) affect anything previously done under or by virtue of the regulations, or
 - (b) prevent the making of new regulations.”

Member’s explanatory statement

This amendment defines “made affirmative procedure” for the purposes of the Minister’s first amendment to Clause 41.

Clause 42

LORD CALLANAN

- 69★** Page 91, line 35, leave out “negative resolution” and insert “made affirmative”

Member’s explanatory statement

This amendment changes Clause 42 so that provision that could formerly have been made by the negative resolution procedure now has to be made by the made affirmative procedure (or the affirmative procedure).

- 70★** Page 92, line 6, leave out paragraph (b) and insert –
- “(b) “regulations that are subject to the made affirmative procedure” means regulations that –
 - (i) are contained in a statutory instrument that must be laid before Senedd Cymru as soon as reasonably practicable after being made, and
 - (ii) cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made, unless during that period the instrument is approved by a resolution of Senedd Cymru.
- (5) In calculating the period of 40 days mentioned in subsection (4)(b)(ii), no account is to be taken of any time during which Senedd Cymru is –
- (a) dissolved, or
 - (b) in recess for more than 4 days.

Clause 42 - continued

- (6) Where by virtue of this section the Welsh Ministers make regulations that are subject to the made affirmative procedure and the regulations cease to have effect because they are not approved within the period mentioned in subsection (4)(b)(ii), the fact that the regulations cease to have effect does not—
- (a) affect anything previously done under or by virtue of the regulations, or
 - (b) prevent the making of new regulations.”

Member’s explanatory statement

This amendment defines “made affirmative procedure” for the purposes of the Minister’s other amendment to Clause 42.

Clause 43

LORD CALLANAN

- 71★** Page 92, line 12, after “procedure” insert “(see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10))”

Member’s explanatory statement

This amendment is needed in light of the Minister’s other amendment to Clause 43(1).

- 72★** Page 92, line 13, leave out from “the” to end of line 15 and insert “made affirmative procedure”

Member’s explanatory statement

This amendment changes clause 43 so that provision that could formerly have been made by the negative procedure now has to be made by the made affirmative procedure (or the affirmative procedure).

- 73★** Page 92, line 21, at end insert—

- “(3) For the purposes of this section “regulations that are subject to the made affirmative procedure” means regulations that—
- (a) must be laid before the Scottish Parliament as soon as reasonably practicable after being made, and
 - (b) cease to have effect at the end of the period of 40 days beginning with the day on which the regulations are made, unless during that period the regulations are approved by a resolution of the Scottish Parliament.
- (4) In calculating the period of 40 days mentioned in subsection (3)(b), no account is to be taken of any time during which the Scottish Parliament is—
- (a) dissolved, or
 - (b) in recess for more than 4 days.
- (5) Where by virtue of this section the Scottish Ministers make regulations that are subject to the made affirmative procedure and the regulations cease to have effect because they are not approved within the period mentioned in subsection (3)(b), the fact that the regulations cease to have effect does not—
- (a) affect anything previously done under or by virtue of the regulations, or
 - (b) prevent the making of new regulations.

Clause 43 - continued

- (6) Section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 does not apply in relation to regulations that are subject to the made affirmative procedure by virtue of this section.”

Member’s explanatory statement

This amendment defines “made affirmative procedure” for the purposes of the Minister’s first amendment to Clause 43.

After Clause 43

LORD CALLANAN

74★ Insert the following new Clause—

“Modified procedure for regulations of Northern Ireland departments

- (1) During the period of six months beginning with the day on which this section comes into force, any relevant provision that may be made by a Northern Ireland department by regulations that are subject to the affirmative resolution procedure may be made by regulations that are subject to the made affirmative procedure.
- (2) In subsection (1) “relevant provision” means—
- (a) provision under Article 13HA(1) of the Insolvency (Northern Ireland) Order 1989 (power to modify moratorium provisions in relation to certain companies);
 - (b) provision under Article 13HAA(1) of that Order (moratorium: power to make provision in connection with pension schemes).
- (3) For the purposes of this section—
- (a) “regulations that are subject to the affirmative resolution procedure” means regulations that may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly;
 - (b) “regulations that are subject to the made affirmative procedure” means regulations that—
 - (i) must be laid before the Assembly as soon as reasonably practicable after being made, and
 - (ii) cease to have effect at the end of the period of 40 days beginning with the day on which the regulations are made, unless during that period the regulations are approved by a resolution of the Assembly.
- (4) In calculating the period of 40 days mentioned in subsection (3)(b)(ii), no account is to be taken of any time during which the Assembly is—
- (a) dissolved,
 - (b) in recess for more than 4 days, or
 - (c) adjourned for more than 6 days.

After Clause 43 - continued

- (5) Where by virtue of this section a Northern Ireland department makes regulations that are subject to the made affirmative procedure and the regulations cease to have effect because they are not approved within the period mentioned in subsection (3)(b)(ii), the fact that the regulations cease to have effect does not—
- (a) affect anything previously done under or by virtue of the regulations, or
 - (b) prevent the making of new regulations.
- (5) In this section “the Assembly” means the Northern Ireland Assembly.”

Member’s explanatory statement

This amendment modifies the regulation-making procedure for certain regulations for the first six months.

Schedule 1

LORD STEVENSON OF BALMACARA
LORD FOX
BARONESS ALTMANN
LORD KERSLAKE

75★ Page 102, line 9, at end insert—

“17A A company is excluded from being eligible unless, before the filing date, it has consulted all the persons who are the appropriate representatives of any of the employees who may be affected by the proposed moratorium or by any reasonably foreseeable consequences of it about those matters.”

LORD CALLANAN

76★ Page 103, line 2, after “Schedule” insert “, apart from paragraph 2,”

Member’s explanatory statement

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

Schedule 3

LORD CALLANAN

77 Page 107, line 24, leave out from “debts” to end of line 27 and insert “(within the meaning given by section 174A);

- (b) priority pre-moratorium debts (within the meaning given by section 174A).”

Member’s explanatory statement

This amendment reflects the changes made by the Minister’s amendments to new section 174A of the Insolvency Act 1986 (on page 109 of the Bill).

78 Page 107, line 30, leave out sub-paragraph (3)

Member's explanatory statement

This amendment leaves out definitions that are no longer needed because of the Minister's other amendment to page 107.

79 Page 109, line 13, leave out from “and” to end of line 15 and insert “priority pre-moratorium debts.

- (2A) In subsection (2)(b) “priority pre-moratorium debt” means –
- (a) any pre-moratorium debt that is payable in respect of –
 - (i) the monitor's remuneration or expenses,
 - (ii) goods or services supplied during the moratorium,
 - (iii) rent in respect of a period during the moratorium, or
 - (iv) wages or salary arising under a contract of employment, so far as relating to a period of employment before or during the moratorium,
 - (b) any pre-moratorium debt that –
 - (i) consists of a liability to make a redundancy payment, and
 - (ii) fell due before or during the moratorium, and
 - (c) any pre-moratorium debt that –
 - (i) arises under a contract or other instrument involving financial services,
 - (ii) fell due before or during the moratorium, and
 - (iii) is not relevant accelerated debt (see subsection (2B)).
- (2B) For the purposes of subsection (2A)(c) –
- “relevant accelerated debt” means any pre-moratorium debt that fell due during the relevant period by reason of the operation of, or the exercise of rights under, an acceleration or early termination clause in a contract or other instrument involving financial services;
- “the relevant period” means the period –
- (a) beginning with the day on which the statement under section A6(1)(e) is made, and
 - (b) ending with the last day of the moratorium.”

Member's explanatory statement

This amendment clarifies which pre-moratorium debts get priority for the purposes of new section 174A(2) of the Insolvency Act 1986. Among other things, it excludes certain debts that fall due during the moratorium because they are accelerated (for example, because the creditor exercises a contractual right to require immediate payment in full).

80 Page 109, line 18, at end insert –

- “(3A) The Secretary of State may by regulations made by statutory instrument amend this section for the purposes of changing the definition of “moratorium debt” or “priority pre-moratorium debt” in this section.
- (3B) Regulations under subsection (3A) may make consequential, supplementary, incidental or transitional provision or savings.

Schedule 3 - continued

- (3C) A statutory instrument containing regulations under subsection (3A) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Member’s explanatory statement

This amendment confers power on the Secretary of State to change the definitions of “moratorium debt” and “priority pre-moratorium debt” for the purposes of new section 174A(2) of the Insolvency Act 1986.

81

Page 109, leave out lines 23 and 24 and insert –

- “(5) Any rules made under section A18(4) (meaning of supply of goods or services) apply also for the purposes of subsection (2A)(a)(ii) of this section.

- (6) In this section –

“acceleration or early termination clause”, in relation to a contract or other instrument involving financial services, means a provision of the contract or other instrument –

- (a) under which, on the happening of an event –
 (i) a debt or other liability falls due earlier than it otherwise would, or
 (ii) a debt or other liability is terminated and replaced by another debt or liability, or
 (b) which confers on a party a right which, if exercised, will result in –
 (i) a debt or other liability falling due earlier than it otherwise would, or
 (ii) a debt or other liability being terminated and replaced by another debt or liability;

“contract or other instrument involving financial services” has the same meaning as it has for the purposes of section A18 (see Schedule ZA2);

“monitor’s remuneration or expenses” has the meaning given by section A18;

“moratorium debt” has the meaning given by section A51;
 “pre-moratorium debt” has the meaning given by section A51;

“redundancy payment” has the meaning given by section A18;

“wages or salary” has the meaning given by section A18.”

Member’s explanatory statement

This amendment defines expressions used in the Minister’s first amendment to page 109.

82

Page 111, line 25, leave out from “debts” to end of line 28 and insert “(within the meaning given by section 174A), and

- (b) priority pre-moratorium debts (within the meaning given by section 174A).”

Member's explanatory statement

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

- 83 Page 111, line 37, leave out “pre-moratorium debts mentioned in sub-paragraph (2)” and insert “priority pre-moratorium debts”

Member's explanatory statement

This amendment is consequential on the Minister's first amendment to page 111.

- 84 Page 111, leave out lines 41 and 42

Member's explanatory statement

This amendment leaves out definitions that are no longer needed because of the Minister's first amendment to page 111.

Schedule 4

LORD CALLANAN

- 85★ Page 124, line 26, leave out from “30” to end of line 27 and insert “September 2020.”

Member's explanatory statement

This amendment alters the definition of the “relevant period” that applies for the purposes of Schedule 4 so that the period ends with 30 September 2020.

Schedule 5

LORD CALLANAN

- 86★ Page 154, line 7, after “Schedule” insert “, apart from paragraph 2,”

Member's explanatory statement

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

Schedule 7

LORD CALLANAN

- 87 Page 158, line 17, after ““Part 1A,”” insert “Article 148A(3A),”

Member's explanatory statement

This amendment paves the way for the Minister's amendments to new Article 148A of the Insolvency (Northern Ireland) Order 1989 (on page 160 of the Bill).

- 88 Page 158, line 40, leave out from “debts” to end of line 3 on page 159 and insert “(within the meaning given by Article 148A);
(b) priority pre-moratorium debts (within the meaning given by Article 148A);”

Member's explanatory statement

This amendment reflects the changes made by the Minister's amendments to new Article 148A of the Insolvency (Northern Ireland) Order 1989 (on page 160 of the Bill).

89 Page 159, line 8, leave out sub-paragraph (4)

Member's explanatory statement

This amendment leaves out definitions that are no longer needed because of the Minister's second amendment to page 158.

90 Page 160, line 31, leave out from "and" to end of line 33 and insert "priority pre-moratorium debts.

- (2A) In paragraph (2)(b) "priority pre-moratorium debt" means –
- (a) any pre-moratorium debt that is payable in respect of –
 - (i) the monitor's remuneration or expenses,
 - (ii) goods or services supplied during the moratorium,
 - (iii) rent in respect of a period during the moratorium,
 or
 - (iv) wages or salary arising under a contract of employment, so far as relating to a period of employment before or during the moratorium,
 - (b) any pre-moratorium debt that –
 - (i) consists of a liability to make a redundancy payment, and
 - (ii) fell due before or during the moratorium, and
 - (c) any pre-moratorium debt that –
 - (i) arises under a contract or other instrument involving financial services,
 - (ii) fell due before or during the moratorium, and
 - (iii) is not relevant accelerated debt (see paragraph (2B)).
- (2B) For the purposes of paragraph (2A)(c) –
- "relevant accelerated debt" means any pre-moratorium debt that fell due during the relevant period by reason of the operation of, or the exercise of rights under, an acceleration or early termination clause in a contract or other instrument involving financial services;
- "the relevant period" means the period –
- (a) beginning with the day on which the statement under Article 13BC(1)(e) is made, and
 - (b) ending with the last day of the moratorium."

Member's explanatory statement

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

91 Page 160, line 36, at end insert –

- “(3A) Regulations may amend this Article for the purposes of changing the definition of “moratorium debt” or “priority pre-moratorium debt” in this Article.
- (3B) Regulations under paragraph (3A) may make consequential, supplementary, incidental or transitional provision or savings.
- (3C) Regulations may not be made under paragraph (3A) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”

Member’s explanatory statement

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

92 Page 160, leave out lines 41 and 42 and insert –

- “(5) Any rules made under Article 13D(4) (meaning of supply of goods or services) apply also for the purposes of paragraph (2A)(a)(ii) of this Article.
- (6) In this Article –
 - “acceleration or early termination clause”, in relation to a contract or other instrument involving financial services, means a provision of the contract or other instrument –
 - (a) under which, on the happening of an event –
 - (i) a debt or other liability falls due earlier than it otherwise would, or
 - (ii) a debt or other liability is terminated and replaced by another debt or liability, or
 - (b) which confers on a party a right which, if exercised, will result in –
 - (i) a debt or other liability falling due earlier than it otherwise would, or
 - (ii) a debt or other liability being terminated and replaced by another debt or liability;
 - “contract or other instrument involving financial services” has the same meaning as it has for the purposes of Article 13D (see Schedule ZA2);
 - “monitor’s remuneration or expenses” has the meaning given by Article 13D;
 - “moratorium debt” has the meaning given by Article 13HC;
 - “pre-moratorium debt” has the meaning given by Article 13D;
 - “redundancy payment” has the meaning given by Article 13D;
 - “wages or salary” has the meaning given by Article 13D.”

Member’s explanatory statement

This amendment defines expressions used in the Minister’s first amendment to page 160.

93 Page 162, line 7, leave out from “debts” to end of line 10 and insert “(within the meaning given by Article 148A), and

- (b) priority pre-moratorium debts (within the meaning given by Article 148A).”

Member's explanatory statement

This amendment reflects the changes made by the Minister's amendments to new Article 148A of the Insolvency (Northern Ireland) Order 1989 (on page 160 of the Bill).

- 94 Page 162, line 18, leave out “pre-moratorium debts mentioned in sub-paragraph (2)” and insert “priority pre-moratorium debts”

Member's explanatory statement

This amendment is consequential on the Minister's first amendment to page 162.

- 95 Page 162, leave out lines 22 and 23

Member's explanatory statement

This amendment leaves out definitions that are no longer needed because of the Minister's first amendment to page 162.

Schedule 8

LORD CALLANAN

- 96★ Page 168, line 11, leave out from “30” to end of line 12 and insert “September 2020.”

Member's explanatory statement

This amendment alters the definition of the “relevant period” that applies for the purposes of Schedule 8 so that the period ends with 30 September 2020.

Schedule 9

LORD CALLANAN

- 97 Page 186, line 24, leave out from second “a” to end of line 28 and insert “priority pre-moratorium debt.”

Member's explanatory statement

See the explanatory statement for the Minister's second amendment on page 186 of the Bill.

- 98 Page 186, line 43, leave out from “debt” to end of line 6 on page 187 and insert “—
- (a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;
 - (b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order;
- “priority pre-moratorium debt” —
- (a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;
 - (b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order.”

Member's explanatory statement

The Minister's amendments on page 186 of the Bill provide that the creditors to whom new section 901H of the Companies Act 2006 applies are those in respect of "moratorium debts" and "priority pre-moratorium debts" within the meaning of section 174A of the Insolvency Act 1986 or Article 148A of the Insolvency (Northern Ireland) Order 1989 (which provide for those kinds of debt to have priority in a winding-up).

99★

Page 187, line 6, at end insert –

“901HA Pension schemes

- (1) In a case where the company in respect of which a compromise or arrangement is proposed is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, any notice or other document required to be sent to a creditor of the company must also be sent to the Pensions Regulator.
- (2) In a case where the company in respect of which a compromise or arrangement is proposed is an employer in respect of an eligible scheme, any notice or other document required to be sent to a creditor of the company must also be sent to the Board of the Pension Protection Fund (“the Board”).
- (3) The Secretary of State may by regulations provide that, in a case where –
 - (a) the company in respect of which a compromise or arrangement is proposed is an employer in respect of an eligible scheme, and
 - (b) the trustees or managers of the scheme are a creditor of the company,
 the Board may exercise any rights, or any rights of a specified description, that are exercisable under this Part by the trustees or managers as a creditor of the company.
- (4) Regulations under this section may provide that the Board may exercise any such rights –
 - (a) to the exclusion of the trustees or managers of the scheme, or
 - (b) in addition to the exercise of those rights by the trustees or managers of the scheme.
- (5) Regulations under this section –
 - (a) may specify conditions that must be met before the Board may exercise any such rights;
 - (b) may provide for any such rights to be exercisable by the Board for a specified period;
 - (c) may make provision in connection with any such rights ceasing to be so exercisable at the end of such a period.
- (6) Regulations under this section are subject to affirmative resolution procedure (but see subsection (7)).
- (7) During the period of six months beginning with the day on which this section comes into force, regulations under this section are subject to approval after being made (and subsection (6) does not apply).
- (8) For the purposes of subsection (7), section 1291 has effect as if any reference in that section to a period of 28 days were to a period of 40 days.
- (9) In this section –

Schedule 9 - continued

“eligible scheme” means any pension scheme that is an eligible scheme for the purposes of section 126 of the Pensions Act 2004 or Article 110 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1));

“employer” –

- (a) in subsection (1), means an employer within the meaning of section 318(1) of the Pensions Act 2004 or Article 2(2) of the Pensions (Northern Ireland) Order 2005;
- (b) in subsections (2) and (3) –
 - (i) in the case of a pension scheme that is an eligible scheme for the purposes of section 126 of the Pensions Act 2004, has the same meaning as it has for the purposes of Part 2 of that Act (see section 318(1) and (4) of that Act);
 - (ii) in the case of a pension scheme that is an eligible scheme for the purposes of Article 110 of the Pensions (Northern Ireland) Order 2005, has the same meaning as it has for the purposes of Part 3 of that Order (see Article 2(2) and (5) of that Order);

“money purchase scheme” means a pension scheme that is a money purchase scheme for the purposes of the Pension Schemes Act 1993 (see section 181(1) of that Act) or the Pension Schemes (Northern Ireland) Act 1993 (see section 176(1) of that Act);

“occupational pension scheme” and “pension scheme” have the meaning given by section 1 of the Pension Schemes Act 1993;

“specified” means specified in regulations under this section.”

Member’s explanatory statement

This amendment would in certain circumstances require information provided to creditors under Part 26A of the Companies Act 2006 also to be provided to the Pensions Regulator and the Board of the Pension Protection Fund. It also enables the Board to be given the power to exercise rights which could be exercised by the trustees or managers of a pension scheme in proceedings under that Part, such as the right to vote on the proposed compromise or arrangement.

- 100** Page 198, line 11, leave out from second “a” to end of line 15 and insert “priority pre-moratorium debt.”

Member’s explanatory statement

See the explanatory statement for the Minister’s second amendment on page 198 of the Bill.

- 101** Page 198, line 30, leave out from “debt” to end of line 38 and insert “–
- (a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;

Schedule 9 - continued

- (b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order;
- “priority pre-moratorium debt” –
- (a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;
 - (b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order.”

Member’s explanatory statement

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

Schedule 10

LORD CALLANAN

- 102★ Page 205, line 30, leave out from “30” to end of line 31 and insert “September 2020.”

Member’s explanatory statement

This amendment alters the definition of the “relevant period” that applies for the purposes of Part 1 of Schedule 10 so that the period ends with 30 September 2020.

LORD PANNICK

BARONESS TAYLOR OF BOLTON

BARONESS FOOKES

LORD WALLACE OF TANKERNES

- 103★ Page 208, line 7, leave out paragraph 7

Member’s explanatory statement

This amendment relates to the retrospective effect of Schedule 10.

LORD CALLANAN

- 104★ Page 212, line 6, leave out from “30” to end of line 7 and insert “September 2020.”

Member’s explanatory statement

This amendment alters the definition of the “relevant period” that applies for the purposes of Part 2 of Schedule 10 so that the period ends with 30 September 2020.

Schedule 11

LORD CALLANAN

- 105★ Page 213, line 16, leave out from “30” to end of line 17 and insert “September 2020.”

Member's explanatory statement

This amendment alters the definition of the "relevant period" that applies for the purposes of Part 1 of Schedule 11 so that the period ends with 30 September 2020.

LORD PANNICK
BARONESS TAYLOR OF BOLTON
BARONESS FOOKES
LORD WALLACE OF TANKERNES

- 106★ Page 215, line 34, leave out paragraph 7

Member's explanatory statement

This amendment relates to the retrospective effect of Schedule 11.

LORD CALLANAN

- 107★ Page 218, line 41, leave out from "30" to end of line 42 and insert "September 2020."

Member's explanatory statement

This amendment alters the definition of the "relevant period" that applies for the purposes of Part 2 of Schedule 11 so that the period ends with 30 September 2020.

Schedule 14

LORD CALLANAN

- 108★ Page 236, line 5, leave out "or the Treasury under" and insert "under paragraph 2(2)(a) of"

Member's explanatory statement

This amendment is consequential on the Minister's other amendment to Schedule 14

- 109★ Page 236, line 7, leave out sub-paragraphs (3) to (5) and insert—

- “(3) A statutory instrument containing regulations made by the Secretary of State under paragraph 2(2)(b) of this Schedule or containing regulations made by the Secretary of State or the Treasury under paragraph 4 or 6 of this Schedule must be laid before Parliament as soon as reasonably practicable after being made.
- (4) Sub-paragraph (3) does not apply if a draft of the statutory instrument has been laid before and approved by a resolution of each House of Parliament.
- (5) Regulations contained in a statutory instrument laid before Parliament by virtue of sub-paragraph (3) cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made, unless during that period the instrument is approved by a resolution of each House of Parliament.
- (6) In calculating the period of 40 days, no account is to be taken of any time during which—
 - (a) Parliament is dissolved or prorogued, or
 - (b) both Houses of Parliament are adjourned for more than 4 days.
- (7) Where regulations cease to have effect as a result of sub-paragraph (5) that does not—

Schedule 14 - *continued*

- (a) affect anything previously done under or by virtue of the regulations, or
 - (b) prevent the making of new regulations.
- 7A(1) Regulations made by the Scottish Ministers under paragraph 2(2)(a) of this Schedule are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
- (2) Regulations made by the Scottish Ministers under paragraph 2(2)(b), 4 or 6 of this Schedule must be laid before the Scottish Parliament as soon as reasonably practicable after being made.
- (3) Sub-paragraph (2) does not apply if the regulations have been subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).
- (4) Regulations laid before the Scottish Parliament by virtue of sub-paragraph (2) cease to have effect at the end of the period of 40 days beginning with the day on which they are made, unless during that period the regulations are approved by a resolution of the Scottish Parliament.
- (5) In calculating the period of 40 days, no account is to be taken of any time during which the Scottish Parliament is—
 - (a) dissolved, or
 - (b) in recess for more than 4 days.
- (6) Where regulations cease to have effect as a result of sub-paragraph (4) that does not—
 - (a) affect anything previously done under or by virtue of the regulations, or
 - (b) prevent the making of new regulations.
- (7) Section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 does not apply in relation to regulations to which sub-paragraph (2) applies.
- 7B(1) Regulations made by the Department for the Economy in Northern Ireland under paragraph 2(2)(a) of this Schedule are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).
- (2) Regulations made by the Department for the Economy in Northern Ireland under paragraph 2(2)(b), 4 or 6 of this Schedule must be laid before the Assembly as soon as reasonably practicable after being made.
- (3) Sub-paragraph (2) does not apply if a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (4) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of sub-paragraph (3) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.
- (5) Regulations laid before the Assembly by virtue of sub-paragraph (2) cease to have effect at the end of the period of 40 days beginning with the day on which the regulations are made, unless during that period the regulations are approved by a resolution of the Assembly.

Schedule 14 - continued

- (6) In calculating the period of 40 days, no account is to be taken of any time during which the Assembly is—
 - (a) dissolved,
 - (b) in recess for more than 4 days, or
 - (c) adjourned for more than 6 days.
- (7) Where regulations cease to have effect as a result of sub-paragraph (5) that does not—
 - (a) affect anything previously done under or by virtue of the regulations, or
 - (b) prevent the making of new regulations.
- (8) A power of the Department for the Economy in Northern Ireland to make regulations under this Schedule is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (9) In this paragraph “the Assembly” means the Northern Ireland Assembly.”

Member’s explanatory statement

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

Corporate Insolvency and Governance Bill

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

18 June 2020
