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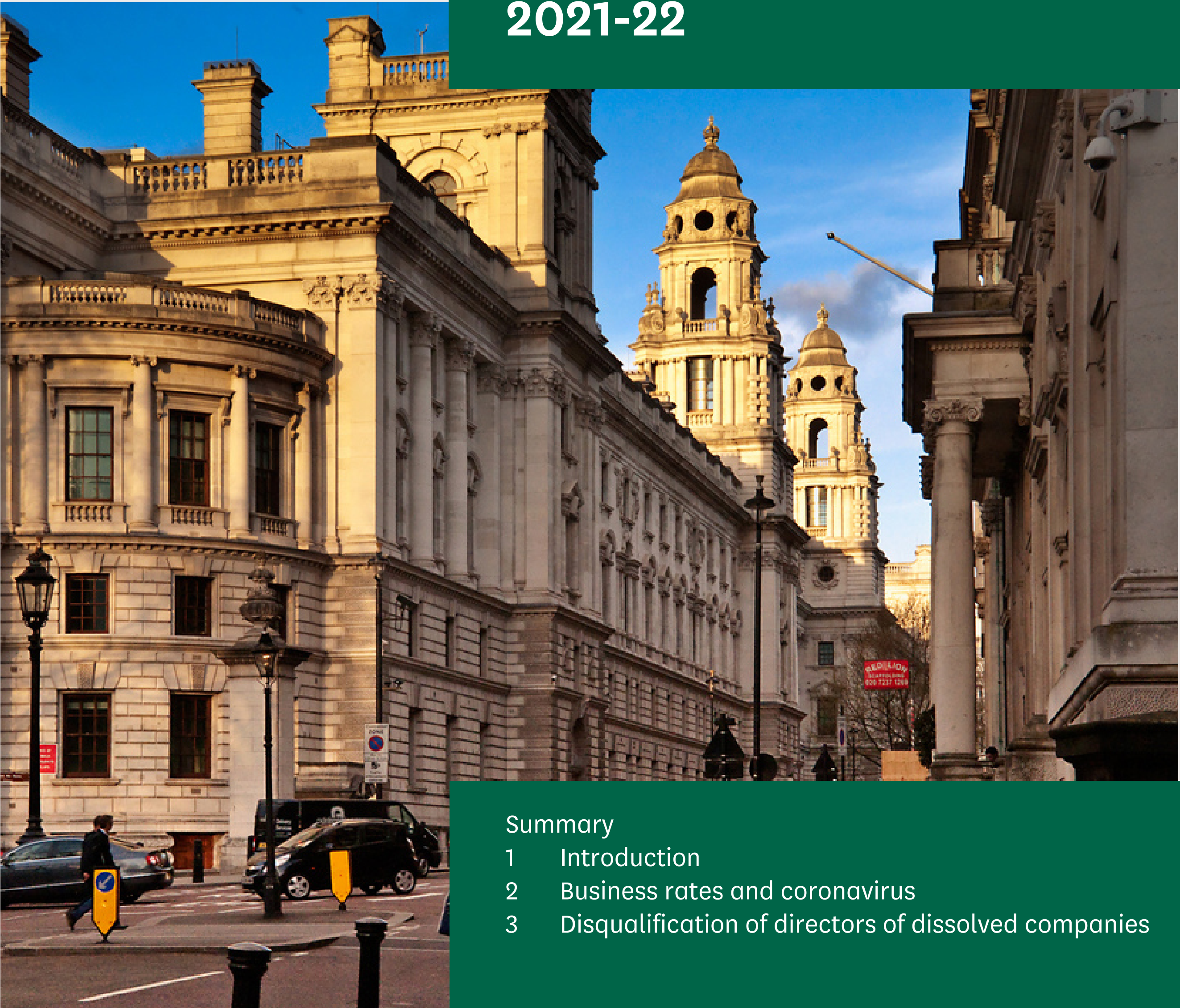
Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill 2021-22



Summary
1 Introduction
2 Business rates and coronavirus
3 Disqualification of directors of dissolved companies

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Contents

1 Introduction **6**

2 Business rates and coronavirus **7**

2.1 Business rates revaluation **7**

2.2 Material changes in circumstances **8**

2.3 Policy **11**

March 2021 emergency regulations 11

2.4 Additional rate relief package **12**

2.5 The Bill: clause 1 **14**

Covid-19 provisions 15

Territorial extent 16

3 Disqualification of directors of dissolved companies **18**

3.1 Background **18**

3.2 The perceived problem **22**

3.3 Consultation **23**

3.4 Proposals **24**

3.5 The Bill – clauses 2 and 3 **25**

3.6 Impact Assessment **27**

3.7 Reaction **27**

3.8 Commons Second Reading **28**

3.9 Commons Committee Stage **28**

Summary

The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill 2021-22 had its first reading in the House of Commons on 12 May 2021. Second Reading took place on 28 June 2021 without a division, and Committee Stage took place on 6 and 8 July 2021, with no amendments made to the Bill. The Bill, and its explanatory notes, can be found on the Parliamentary website. The Bill makes minor adjustments to two distinct parts of the law.

The Bill consists of four clauses. Clause 1 concerns the impact of the coronavirus pandemic on business rates. Clauses 2 and 3 would amend existing legislation to make it easier for the Government to investigate misconduct by directors of dissolved companies. Clause 4 covers the extent and commencement of the Bill.

Business rates are devolved to Scotland, Wales and Northern Ireland. Clause 1 extends to England and Wales but has effect in England only. Company law matters are reserved to the UK Parliament in Great Britain so clause 2 extends to England, Wales and Scotland. Clause 3 makes equivalent amendments for Northern Ireland, for which a legislative consent motion has been obtained.

Clause 1 of the Bill provides that rateable values for business rates may not be altered to take account of the economic impact of the coronavirus pandemic, subject to a number of exceptions set out in the clause. It prevents appeals against rateable values on the basis of a ‘material change of circumstances’. Ordinarily, this is a ground of appeal that is available outside of the Valuation Office Agency’s regular general business rates revaluations. The type of appeal prevented by this Bill normally allows rateable values – and thus business rates bills – to take account of changes in economic circumstances.

Clauses 2 and 3 amend existing legislation to make it easier for the Government to investigate misconduct by directors of dissolved companies.

Dissolution is a quick and cheap way of removing a company from the Companies House register. There were over 170,000 company dissolutions in the first quarter of 2021.

The Company Directors Disqualification Act 1986 (CDDA) grants the Government powers to investigate the conduct of directors of insolvent companies by requiring the provision of information and documents. It also allows the Government to apply for a court order (or seek a disqualification undertaking) disqualifying a director who engaged in misconduct from serving as a director for up to 15 years.

However, because of what the Government considers to be a loophole, these powers in CDDA do not extend to former directors of dissolved companies. Investigating the conduct of directors of dissolved companies is currently a complex process requiring a court order to restore the company to the register.

The Government consulted on proposals to give the Insolvency Service powers to investigate directors of dissolved companies in 2018. This Bill brings forward these proposals.

Clause 2 extends the scope of powers in CDDA to apply to directors of dissolved companies. It allows easier investigation (and if necessary, enforcement through disqualifications) of dissolved company directors who have engaged in misconduct. Directors will no longer be able to dissolve companies to impede investigations into their conduct.

CDDA extends to England, Wales and Scotland. Clause 3 makes equivalent amendments in Northern Ireland.

The Government believes the changes will act as a deterrent to directors who might seek to dissolve their companies to obstruct investigations into them for fraudulently avoiding the repayment of Government-backed loans during the pandemic.

1 Introduction

The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill 2021-22 had its first reading in the House of Commons on 12 May 2021. The Bill, and its explanatory notes, can be found on the Parliamentary website.

Second Reading took place on 28 June 2021 without a division. Nine MPs spoke in the Second Reading Debate, which lasted 1 hour 18 minutes. These MPs are: Ministers Luke Hall and Paul Scully, Shadow Ministers Jeff Smith and Seema Malhotra, SNP spokesperson Peter Grant, Liberal Democrat spokesperson Sarah Olney, Conservative MPs Kevin Hollinrake and Duncan Banker, and DUP MP Jim Shannon.

The Bill's Public Bill Committee met on 6 and 8 July 2021. The Committee comprised 16 MPs (10 Conservative,[1] 5 Labour[2] and one SNP[3]). Three new clauses were proposed by the Labour frontbench, of which two were defeated on division. The Bill therefore emerged from Committee Stage unamended.

The Bill consists of four clauses. Clause 1 concerns the impact of the coronavirus pandemic on business rates. Clauses 2 and 3 would amend existing legislation to make it easier for the Government to investigate misconduct by former directors of dissolved companies. Clause 4 covers the extent and commencement of the Bill.

Business rates are devolved to Scotland, Wales and Northern Ireland. Clause 1 extends to England and Wales but has effect in England only. The Government has said that the Welsh Government is seeking Wales's inclusion in the provisions of clause 1.

Company law matters are reserved to the UK Parliament in Great Britain so clause 2 extends to England, Wales and Scotland. Clause 3 makes equivalent amendments for Northern Ireland, for which a legislative consent motion has been obtained.[4]

1 Ministers Luke Hall and Paul Scully, in addition to Duncan Baker, Simon Baynes, Michael Tomlinson, Jane Hunt, Suzanne Webb, Mark Jenkinson, Jacob Young and Angela Richardson

2 Shadow Ministers Jeff Smith and Seema Malhotra, in addition to Mick Whitley, Navendu Mishra and Marie Rimmer

3 SNP spokesperson Peter Grant

4 Letter from Lesley Hogg (Northern Ireland Assembly) to John Benger and Ed Ollard (UK Parliament), dated 30 June 2021

2 Business rates and coronavirus

Clause 1 of this Bill concerns the effects of the Covid-19 pandemic on the determination of rateable values in the business rates system.

Clause 1 has effect in **England only**. Accordingly, the remainder of section 2 below relates to valuation practice, rate reliefs, and the Government response to the Covid-19 pandemic in England only.

2.1 Business rates revaluation

Business rates are payable on non-domestic properties throughout the UK. The business rates system is fully devolved in Scotland, Wales and Northern Ireland. In England and Wales, the Valuation Office Agency (VOA) assigns all non-domestic properties a rateable value, based on an estimate of the annual amount for which the property could be rented on an open market. The rateable value is then multiplied by a 'multiplier', set by the UK Government in England. The resulting figure is the amount payable per year in rates. Thus a property with a rateable value of £20,000, with a multiplier of 50.1p, would pay £10,200 in business rates.

The VOA revalues all non-domestic properties at regular intervals. At a revaluation it produces a new 'rating list', which supersedes the old 'rating list'. The most recent revaluation in England, Scotland and Wales came into effect on 1 April 2017 based on rental values at 1 April 2015 (see the Library briefing Business rates: the 2017 revaluation).

In England, the next revaluation is due to come into effect in 2023, based on estimated rental values as at 1 April 2021. These dates were both delayed by two years due to the pandemic: that decision was announced on 21 July 2020. [5]

The rateable value of a property is based on rental values on a specific date (the 'antecedent valuation date' or AVD). The rateable value of a property – and thus the rates payable on it – should therefore have a relationship to the economic conditions in the locality.

[5] HC WS 400 2019-21, 21 Jul 2020: see also the Non-Domestic Rates (Lists) Act 2021.

2.2 Material changes in circumstances

Rateable values may only be altered outside of the regular cycle of revaluations under certain circumstances. These are set out in the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. [6] These regulations also govern when ratepayers can appeal against the rateable value of their property/ies, if they believe the rateable value is incorrect.

Appeals against rateable values are a regular feature of the business rates system. More details can be found in the Library briefing paper Business rates. In England, appeals must be preceded by a 'check' and 'challenge' stage, where discussions and exchange of information takes place between the ratepayer and the VOA. After these stages, a ratepayer may progress to an appeal, which is heard by the Valuation Tribunal. If a ratepayer is unhappy with the outcome of the appeal, they have the option then of progressing to the Upper Tribunal (Lands Chamber), and then to the Court of Appeal, and ultimately to the UK Supreme Court, on points of law.

Regulation 4 (1) of the 2009 regulations sets out a number of circumstances in which a property's rateable value can be altered at a time other than a general revaluation. One of these, in sub-section 4 (1) (b), is when:

> …the rateable value shown in the list for a hereditament is inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was compiled.

The regulations also say that a 'material change in circumstances' (MCC) constitutes a change to any of the matters set out in the Local Government Finance Act 1988 schedule 6, paragraph 2 (7):

> (7) The matters are—
>
> (a) matters affecting the physical state or physical enjoyment of the hereditament,
>
> (b) the mode or category of occupation of the hereditament,
>
> (c) the quantity of minerals or other substances in or extracted from the hereditament,
>
> (cc) the quantity of refuse or waste material which is brought onto and permanently deposited on the hereditament,
>
> (d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there, and

[6] Made under powers in the *Local Government Finance Act 1988*.

> (e) the use or occupation of other premises situated in the locality of the hereditament.

The Valuation Officers or the Court must determine whether these matters apply in individual cases, in accordance with case law. Further discussion of relevant issues can be found in the VOA's Rating Manual. This is an internal guide for valuation officers, which does not have the force of law. It expands on a number of points within the six matters set out in Schedule 6 to the 1988 Act. Regarding sub-paragraph (a), the Rating Manual says:

> ...physical enjoyment of the hereditament ...[sub-paragraph a] includes the ability of the tenant to enjoy the premises by being physically present in them. It follows that a statutory order or a legal prohibition preventing use would be a change under this head. [7]

In principle, this type of 'enjoyment' could be argued to be prevented or diminished by the regulations in place during the pandemic preventing shops from opening, restricting travel to workplaces, or enforcing social distancing requirements. At the same time, the Rating Manual also notes that "changes in level of trade or business ...are not MCCs as such". [8]

Regarding sub-paragraph (d), the Rating Manual says that if "physically observable or physically manifest features in the locality of the hereditament....change to a degree which would be perceptible as between the date of compilation of the list and the material day", then a material change of circumstances may have occurred. 'Physically manifest features' includes "traffic flow; pedestrian flow or footfall; noise, fumes or vibration; aircraft movements; increased trading hours of licensed premises". [9]

The Rating Manual says that the 1988 Act was purposely worded so as to exclude 'intangible' matters from valuers' decisions on MCCs. It lists the matters which should be reflected at the AVD (and therefore reflected at general revaluations as:

> 8.2 Matters to be taken as they were at the AVD will include:
>
> - the purchasing power of money and inflationary trends
> - the money supply in the economy as a whole. Changes in distribution of money between different regions and social classes will not be relevant
> - propensity to spend within the economy as a whole. No account should be taken of changes in the propensity of individuals or organisations to spend, or in their spending

[7] Valuation Office Agency, Rating Manual, section 3 part 2, paragraph 9.1.2

[8] Ibid., paragraph 9.2.4

[9] Ibid., paragraph 9.4.5

preferences between different products, services, raw materials, land and buildings

- interest rates
- people's attitudes and preferences
- the state of the market in which the hereditament is to be judged

> The intention was that economic matters such as level of interest rates, state of the economy, propensity to spend, together with attitude matters such as fashion, are taken as they were in the AVD setting. But a Schedule 6 para 2(7) matter is not to be disregarded on account of the fact that its cause is economic.

In short, general economic changes to the market of the type described above should not constitute an MCC.

The Government states in the Explanatory Notes to the Bill that a large number of requests to change rateable values, on the grounds that an MCC has occurred, were received in 2020 and early 2021:

> Since the start of the coronavirus pandemic, the Valuation Office Agency has received a large number of checks (a prerequisite to challenging rateable values) arguing that interventions concerning the use of property (such as requirements to close businesses or to maintain social distancing to comply with health and safety legislation) are a material change of circumstances. If successful, these checks and subsequent challenges may impact hereditaments shown on the rating lists and the level of rateable values across a wide range of properties, sectors and regions ahead of the next revaluation. [10]

At Committee Stage in the Commons, Adrian Blaylock, from CIPFA, stated that "by the end of March 2021, 568,000 MCCs had been lodged with the Valuation Office Agency".[11]

The impact of the coronavirus pandemic on the UK economy is sufficiently widespread that, if a large number of appeals based on MCCs were successful, it could amount to a shadow revaluation of much of the non-domestic property in the UK.

From April 2021 to March 2023, the VOA is conducting the next business rates revaluation. Managing a large number of MCC appeals at the same time could lead to demands for extra resources for the VOA. Additionally, if

[10] MHCLG, Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill – Explanatory Notes, paragraph 4. The reference to 'checks' in this quote is the first stage of the appeal process, also noted above.

[11] PBC Deb 6 Jul 2021 c31

tribunal decisions established the principle that rateable values on the 2017 rating list should be altered according to the public health restrictions in place at a given time, this could permit multiple changes in respect of each affected property, reflecting every change in restrictions. As the Explanatory Notes state, in this scenario “the Valuation Office Agency would have to constantly reassess all hereditaments and rateable values with every coronavirus related intervention or change in intervention regarding the use or enjoyment of property or the locality”. [12]

A further consideration is the effect on local authority income of a very large number of changes to rateable values outside of a general revaluation. When a property’s rateable value is reduced, the business rate bills payable on it also reduce. Where this occurs between general revaluations, the outcome is reduced revenue for local authorities. Since 2013, business rates revenue has formed an increasingly important part of local government revenue. Written evidence from the Institute of Revenues, Rating and Valuation (IRRV) suggested:

> .....if the[se] cases had gone to appeal it is highly likely that they would have been successful and this would have allowed adjustments that would have significantly reduced the rating yield; and this would have created a major problem for the financing of local government.[13]

When appeals have yet to be decided, local authority finance officers must make provision for the possible outcome. This means retaining enough funds to pay any refunds that may flow from appeals. That money cannot therefore be spent on public services, though it may become available again in the longer term when appeals are unsuccessful.

2.3 Policy

March 2021 emergency regulations

The Government made regulations preventing Covid-19-related restrictions from being taken into account in rateable value assessments on 24 March 2021. [14] These regulations have essentially the same effect as clause 1 of the Bill, but they only apply to restrictions applying after the regulations were made. They prevent any alterations to rateable values taking into account the effects of Covid-19 where they are based on claims of a material change of circumstances from the date of the regulations. The purpose of Clause 1 of the Bill is to extend this prevention to all valuation officers’ and courts’ decisions regarding MCCs throughout the Covid-19 pandemic.

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[12] Ibid., paragraph 5

[13] IRRV, Written evidence RDDB02, 6 Jul 2021

[14] See the *Valuation for Rating (Coronavirus) (England) Regulations 2021* (SI 2021/398)

The Government published a Written Statement on 25 March 2021 explaining the rationale for making these regulations at short notice. They include:

- Preventing a large number of appeals, which would could have potentially overloaded the Valuation Tribunal system and/or the courts; [15]
- Preventing successful appeals from businesses on MCC grounds when those businesses had not in fact been substantially affected by the pandemic – for instance, where they had been able to move to remote working with minimal impact; [16]

A report from the BBC in December 2020 suggested that the VOA had made an 'interim agreement' for a general 25% reduction in the rateable values of offices, which would have reduced revenue by £481 million. [17] Discussions did take place between the VOA and some sector representatives regarding a possible approach to MCC claims, but no firm offer was made. The VOA brought discussions to an end in early 2021. [18]

2.4 Additional rate relief package

In the Written Statement that announced the decision to legislate to exclude Covid-19 from MCCs, the Government also announced an additional £1.5 billion to fund further reliefs from business rates in the 2021-22 financial year:

> So we are now going even further than the £16 billion of relief since Budget 2020 – and providing £1.5 billion of additional support to businesses that have not already received business rates relief. This is the fastest and fairest way to support businesses outside the retail, hospitality and leisure sectors who have been adversely affected by the pandemic.
>
> The new relief will ensure a fairer and more proportioned allocation of support [than would result from a large number of MCCs], by awarding funding through local authorities, who will able to use their knowledge of their local businesses and the local economy to award dedicated support to those businesses who need it most. Funding will be allocated to councils taking into account the economic impact COVID-19 has had on specific sectors. This approach will ensure relief is awarded quicker than would be the case if businesses

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[15] The Government stated in March 2021 that 170,000 appeals had been lodged relating to material changes of circumstance: see Business rates relief boosted with new £1.5 billion pot - GOV.UK (www.gov.uk)

[16] See remarks in Jonathan Knott, "Covid-19 business rates appeals ruled out as £1.5bn fund expands relief", Local Government Chronicle, 25 March 2021

[17] BBC, "Offices share £481m rebate after interim business rates ruling", 22 Dec 2021

[18] London Loves Business, "Thousands of businesses waiting decision over Covid related appeals", 16 Feb 2021

> sought support under the sometimes drawn out process of a rating appeal, which can often last years. [19]

This relief is targeted at businesses / properties that are not eligible for reliefs that have already been made available to the retail, hospitality and leisure sectors. The March 2021 Budget stated that properties in those sectors would receive 100% business rate relief for the first three months of the 2021-22 financial year, and 66% rate relief for the remainder of the financial year. [20] Further details of Covid-19-related rate relief, and business grants, can be found in the Library briefing paper Business rates.

The funding will be distributed to billing authorities (district and unitary councils), which will then be required to design local schemes determining which classes of property will be eligible. The Government has not published details of how the fund will be allocated amongst billing authorities at the time of writing. The press release on 25 March said:

> The £1.5 billion pot will be distributed according to official data on the impacts of the pandemic on different sectors, ensuring an even and more proportionate allocation of support across England based on the economic impacts of COVID-19 and not on estimates of the impact on a property's value. [21]

A response to a Parliamentary Question on 18 May 2021 said that the guidance on the distribution of the relief package will be finalised once the Bill has passed through Parliament:

> **Rachael Maskell**: To ask the Secretary of State for Housing, Communities and Local Government, when the Government plans to provide (a) local authorities and (b) businesses with further details on the £1.5 billion additional business rates support package as announced on 25 March 2021.
>
> **Luke Hall**: Ratepayers will be able to access the additional £1.5 billion business rates relief package once the relevant primary legislation is passed and councils have set up their own schemes. Ahead of this, officials will work closely with local government on the development of the relief and the Department will publish guidance in due course. [22]

Members queried the need to wait for the Bill to pass before funding for rate relief can be released to councils. At Committee Stage on 8 July 2021, Luke Hall, the minister for local government, said that draft guidance on the distribution of the funding had been shared with the Local Government

[19] HCWS 901 2019-21, 25 Mar 2021
[20] HM Treasury, Budget 2021, 2021, p49
[21] Ibid.
[22] HC PQ UIN 1113 2021-22, 18 May 2021

Association, IRRV, and CIPFA (the Chartered Institute of Public Finance and Accountancy).[23]

Additionally, section 47 (7) of the Local Government Finance Act 1988 prevents decisions on discretionary relief from being made more than six months after the end of the financial year in which they apply. This means that decisions regarding relief for the 2020-21 financial year cannot be made retrospectively after September 2021. If the Government's relief package is not available by then, local authorities will only be able to apply this discretionary relief package in respect of the 2021-22 financial year. Luke Hall, the minister for local government, stated at Committee Stage that that was the Government's intention.[24]

The £1.5 billion fund will be available in England only, and it will attract 'Barnett consequentials'. Thus a proportionate sum of money will be made available to the devolved administrations in Scotland, Wales and Northern Ireland, and they will be able to spend it as they see fit.

At Committee Stage, Jeff Smith MP, for the Opposition, questioned whether the sum of £1.5 billion would be sufficient, and also whether it was expected to cover airports. Airports were not covered by previous Covid-related business rate relief schemes in 2020-21 or 2021-22, and they often have high rateable values and thus pay substantial business rate bills. Airports can apply to the Airport and Ground Operations Support Scheme (AGOSS) for financial support for, amongst other things, paying business rate bills. This is subject to a cap of £4 million per business in 2021-22, and £8 million in respect of 2020-21.[25]

2.5 The Bill: clause 1

Clause 1 (1) of the Bill states that the clause concerns "the making of a relevant determination in relation to an English list". A 'determination' is a decision of a Valuation Officer or a court regarding the valuation of a property for business rates purposes. An 'English list' is a non-domestic rating list compiled by the VOA in respect of a billing authority area within England.

Luke Hall, the minister for local government, stated at Committee Stage that, on 7 July 2021, "the Welsh Government announced that they also agree with our position, and set out their intention to seek to include provisions covering Wales in the Bill".[26] This would require the Government to introduce an

[23] PBC Deb 8 Jul 2021 c75

[24] PBC Deb 8 Jul 2021 c74

[25] See PQ HC UIN 161813, 10 Mar 2021; see also the Library briefing Support for the aviation, tourism and travel industries, CDP 2021/0082, June 2021, p14

[26] PBC Deb 8 Jul 2021 c70. The Minister also stated that the Scottish Government agreed with the UK Government on the treatment of MCCs, but he did not mention any proposal to include Scotland in this Bill. The Northern Ireland Executive had not taken a decision as of 8 July.

amendment to the Bill in due course, and the Welsh Parliament would need to pass a Legislative Consent Motion (LCM).

Sub-clauses (2) and (3) define the scope of 'relevant determinations' – that is, the type of valuation decision that is to be covered by clause 1. The decisions covered are those about the rateable value of a 'hereditament' (a property), and about whether a hereditament should be in the rating list or not. A 'relevant determination' does not include a decision on whether a property is a domestic or non-domestic property, or whether it falls into a category of exempt properties set out in schedule 5 of the Local Government Finance Act 1988.

Sub-clause (2) (b) specifies that clause 1 covers decisions on the rateable value of a property within an English rating list compiled on 1 April 2017 – i.e., the current rating list. Clause 1 would therefore not apply to the rating list scheduled to come into effect on 1 April 2023, or to any rating lists prior to 1 April 2017.

These sub-clauses will also apply to a rating list "whether or not it is still in force". Those words ensure that the Bill will still apply to the 2017 rating list after it has been replaced by the next rating list, following the next revaluation. Appeals can normally still be lodged against the provisions of a previous rating list, late in the list and in some circumstances for a limited period of time after it has ceased to be in force. Therefore, determinations in respect of such cases may come after the end of the list. These words clarify that future appeals regarding valuations will be covered by the provisions of clause 1 even if they concern a rating list that is no longer current at that point.

Covid-19 provisions

Clause 1 (4) would provide that the valuation decisions defined in sub-clauses (2) and (3) cannot take account of any matter "that is directly or indirectly attributable to coronavirus".

Clause 1 (5) would make three exceptions to the provision in clause 1 (4). The effects of Covid-19 may be taken into account in valuation decisions, where they affect the physical state of the property; the quantity of minerals extracted; or the quantity of waste disposed from the property. Schedule 6 of the Local Government Finance Act 1988 makes special provision for valuation practice for properties where waste is disposed or from which minerals are extracted. In effect, the minerals extracted, or the waste disposed of, are treated as physical characteristics of the property. This sub-clause provides that the impact of Covid-19 on those factors must be taken into account in valuations, reflecting their treatment in the original 1988 legislation.

Clause 1 (6) clarifies that the definition of a matter that is "attributable to coronavirus" includes steps taken to comply with legislation concerning the spread of Covid-19, or relating to steps taken to comply with that legislation. It also includes steps taken in response to guidance or advice provided by any public body regarding the spread of Covid-19. In other words, these are the

matters that cannot be taken into account in valuation decisions and the assessment of rateable values on the 2017 rating list.

Written evidence from the IRRV stressed the importance of distinguishing between Covid-related and non-Covid-related changes to trading conditions, suggesting that the following changes ought not to be treated as Covid-related:

- Social distancing;
- Maximum capacity;
- requirements for physical barriers;
- Perspex screens;
- requirements to provide areas for cleaning, hand washing etc and the installation of additional points for testing, checking of tests and signing in; and
- restrictions to opening hours etc.[27]

Clause 1 (7) states that the provisions in the Bill cover “a determination made by reference to a day, or a matter as it is assumed to be on a day, which falls before, as well as on or after, the day on which this Act is passed”. Thus the provisions in clause 1 would cover a valuation decision based on the situation regarding a particular property on any day during the Covid-19 pandemic. This sub-clause, together with sub-clause (4), gives the Bill retrospective effect.

Clause 1 (8) defines various terms used within clause 1. Clause 1 (9) revokes the regulations passed on 25 March.

Territorial extent

Clause 4 (1) of the Bill states that section 1, concerning rating, extends to England and Wales. Nonetheless, its territorial effect is in England only. This is because clause 1 (1) and 1 (8) state that clause 1’s provisions are only to apply to an ‘English list’ – i.e. a non-domestic rating list covering England. As noted at the start of this section, as of early July 2021 the Welsh Government is seeking to extend clause 1 of the Bill to Wales.

Clause 4 (4) (a) provides that the Bill’s provisions will come into force on the day that it becomes an Act of Parliament. However, clauses 1 (4) and (7) (see above) give the Bill retrospective effect. It requires Valuation Officers to disregard the effects of Covid-19 when making a valuation decision (a ‘determination’) in respect of a day in the past, as well as in the future. This

[27] IRRV, Written evidence RDDB02, 6 Jul 2021

means that the provisions of the Act would cover the entire period since the appearance of Covid-19.

Business rates are devolved to Scotland, Wales and Northern Ireland. The devolved legislatures would be free to introduce equivalent legislation if they saw fit.

3 Disqualification of directors of dissolved companies

3.1 Background

In the UK companies are set up by registering them with Companies House. There are over 4.5 million companies currently registered. [28]

Once set up, there are many reasons a company might be closed down. It could be that the people running the company want to step down without there being anyone to replace them, or the company may be forced to close because it can no longer pay its debts.

The processes available to close a company depends on whether the company can pay its debts (is "solvent") or cannot pay its debts (is "insolvent"). [29] There are two main possibilities:

1. **Liquidation**

Liquidation involves selling the company's assets to pay debts, and distributing any money left to shareholders. [30] There are three types of liquidation.

One type - **Members' Voluntary Liquidation** (MVL) – is only available to solvent companies. It requires a majority of the company's directors to declare that the company is solvent, [31] and for shareholders [32] to vote for liquidation by a 75% majority. In practice, where a company only has one shareholder or a small number from the same family, this might be easy to obtain.

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[28] Companies House, Official Statistics, 29 April 2021

[29] Administration is another process available to insolvent companies, but it is intended to try and rescue the company rather than close it if possible. See Companies House, What does going into administration mean? 27 February 2019

[30] See gov.uk, Liquidate your limited company

[31] i.e. will be able to pay its debts within 12 months from liquidation. See gov.uk, Liquidate your limited company

[32] The word used in legislation is "members" rather than shareholders. This allows for the inclusion of companies which don't issue shares (like companies limited by guarantee, where the members are the guarantors)

A qualified insolvency practitioner is then appointed as liquidator, [33] paid out of the company's assets. The company is eventually removed from the companies register.

A typical MVL process takes around six months to a year and costs £1000 to £4000. [34]

For an insolvent company, the first type of liquidation available is **Creditors' Voluntary Liquidation** (CVL). CVL is similar to MVL, but because the company is insolvent, there is a risk of creditors not getting money which they are owed. As a result, creditors have more control over the process, including in approving the appointment of the liquidator and agreeing their costs. [35]

The second type for an insolvent company is **Compulsory Liquidation**. This is where someone (usually a frustrated creditor, but it could also be the directors or shareholders) asks a court to make an order to liquidate (wind up) the company. There are several grounds on which the court can make such an order, with the most common being that the company is unable to pay its debts. After a hearing, the court will decide whether to make an order for liquidation. If so, an Official Receiver (a civil servant and an officer of the court) will be initially appointed as liquidator, whom the creditors can replace with a private sector insolvency practitioner. [36]

2. Dissolution

Dissolving a company is cheaper and quicker than liquidating it. It requires a majority of a company's directors to sign and send a form to Companies House, with a £10 fee. A proposed notice of striking off will then be published in The Gazette (an official public record) and if nobody objects for 2 months, the company will be dissolved upon publication of a further notice. Any remaining assets of the company will pass to the Crown. [37]

Directors making an application for dissolution must inform all shareholders, creditors (people the company owes money to, like suppliers and banks), employees, pension fund managers and other directors of the application within 7 days. Not providing this notice is a criminal offence, punishable by up to seven years' imprisonment. [38]

It is only available to companies which have not traded in the last 3 months. The idea is to provide an easy way for companies which are not trading to be removed from the register.

[33] See Part IV, Chapter II of the Insolvency Act 1986, or Chapter III, Part IV of The Insolvency (Northern Ireland) Order 1989

[34] As described by ContractorUK, an online news site for the IT contracting industry

[35] See Chapter IV of Part IV of the Insolvency Act 1986, or Chapter IV, Part V of The Insolvency (Northern Ireland) Order 1989

[36] See Chapter VI of Part IV of the Insolvency Act 1986, or Chapter VI, Part V of The Insolvency (Northern Ireland) Order 1989

[37] Companies House Guidance, Strike off, dissolution and restoration, updated 24 March 2021

[38] Ibid. See also section 9.1 for details of the registrar's own compulsory dissolution powers

It is not intended to be used by companies which have debts but want to avoid the hassle of liquidation. An unpaid creditor can usually apply for a company to be restored to the register within six years of its dissolution. [39]

Between January and March 2021, there were 171,169 company dissolutions in the UK, an increase of 25% compared with the same quarter of 2020. [40]

Problems with liquidation and dissolution

All three types of liquidation (MVL for solvent companies, and CVL or Compulsory Liquidation for insolvent companies) involve significant time and cost. As well as paying a liquidator, there may be lawyers, accountants and other advisers involved. Negotiations with creditors can take a long time. Depending on a company's size and complexity, the total cost of a liquidation can range from a few thousand to many millions of pounds, and can take from a few months to years.

For example, Carillion went into compulsory liquidation following a court order on 15 January 2018. In September 2019, the Official Receiver estimated total liquidation costs would reach £62 million, [41] and over three years later the process is still ongoing. [42]

Dissolution provides a quick and cheap way to remove a company from the register, but it is only available in specific circumstances. According to the Government, the Insolvency Service regularly receives complaints about former directors of companies who have abused the dissolution process in three main ways:

- by dissolving a company to escape its liabilities (such as debts owed), then setting up a new company in its place, often using the same location and assets (known as "phoenixism"). In theory, this shouldn't be possible because the dissolution procedure requires all creditors to be notified (therefore giving them the chance to object to dissolution). In practice, some creditors may not have taken action due to a lack of funds, or a lack of desire to incur costs in pursuing the debt against a company with no or few assets; [43]
- dissolving a company to avoid the cost and time of formal liquidation proceedings, even though liquidation is a more suitable option; and

[39] Government Legal Department Guidance, Company Restoration Guide, last updated 30 May 2018

[40] Companies House Official Statistics, Incorporated companies in the UK January to March 2021, 29 April 2021

[41] Institute for Government and Burges Salmon, Carillion: Two years on, March 2020, p7

[42] See Financial Times, Carillion liquidators agree funding deal for £250m lawsuit against KPMG, 19 May 2021

[43] See the example given in the BEIS consultation, Insolvency and Corporate Governance, 20 March 2018, p21

- (crucially) to avoid investigation of their conduct under the Company Directors Disqualification Act 1986 [44] (CDDA). [45]

Directors Disqualification

Under section 6 of CDDA, [46] courts can disqualify someone from serving as a director if they were directors of a company that has become insolvent and they displayed conduct as a director that makes them "unfit to be concerned in the management of a company". Example of unfit conduct given by the Insolvency Service include fraudulent behaviour and conduct that seeks to deprive creditors of assets. [47]

An order for disqualification is made by the court. Alternatively, directors may voluntarily give a "disqualification undertaking" and avoid court proceedings, which has the same effect as a court-ordered disqualification. Once made, the order or undertaking bans that person from acting as a director or taking part in the management of a company for up to 15 years (with the average being around 5.5 years). [48] Disqualification also comes with some other restrictions; for example, a disqualified person cannot act as a trustee of a charity without court approval. [49]

Breaching the order is a criminal offence carrying a maximum sentence of two years' imprisonment. [50] Details of banned directors are available on a public register at Companies House.

In financial year 2020/2021 the Insolvency Service obtained or were involved in obtaining 948 director disqualifications for conduct relating to insolvent companies. Most were obtained through undertakings rather than court order. [51] In 2018/19 the Insolvency Service estimated that each director disqualified produced a net benefit (through damage to creditors prevented) of around £100,000. [52]

In January 2021, three years after Carillion entered compulsory liquidation, the Insolvency Service announced that it was seeking disqualification orders against eight directors and former directors on the grounds that their

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44 In Northern Ireland, the Company Directors Disqualification (Northern Ireland) Order 2002

45 See Explanatory Notes, para 7

46 For Northern Ireland, Article 9 of The Company Directors Disqualification (Northern Ireland) Order 2002 (CDD(NI)O)

47 Insolvency Service, Company Directors Disqualification Act 1986 and Failed Companies, updated 8 July 2020.

48 See Insolvency Service, Commentary - Insolvency Service Enforcement Outcomes 2020/21, last updated 22 April 2021. This figure includes a comparatively small number of disqualifications obtained under the CDDA on grounds other than conduct relating to insolvent companies

49 Insolvency Service, Effect of a disqualification, updated 8 July 2020

50 Ibid

51 See Insolvency Service, Commentary - Insolvency Service Enforcement Outcomes 2020/21, last updated 22 April 2021. Please note all Insolvency Service statistics apply to GB only. A separate Insolvency Service handles matters in Northern Ireland

52 Insolvency Service, Annual Report and Accounts 2018-19, p16

conduct as directors of Carillion made them unfit to be concerned in the management of a company. [53]

3.2 The perceived problem

Due to what the Government considers to be a "gap in legislation", [54] the power to disqualify directors under section 6 of CDDA only applies to directors of companies which have become insolvent. It does not apply to a director of a company which has been dissolved.

As a result, to obtain a disqualification order against a former director of a company which has been dissolved, the Government must go through a three-stage process entailing:

1. the Secretary of State [55] applying to the court to restore the dissolved company to the register of companies, [56] which the Government considers to be "time consuming and costly"[57]. The process involves paying a court fee of £280 and a Companies House fee of £100, as well as legal fees;[58]
2. once the company has been restored to the register, using powers under section 447 (Power to require documents and information) of the Companies Act 1985 to obtain information and documents from a company, which are necessary to investigate the conduct of a director; [59] and
3. finally, if desired, seeking a disqualification order (or obtaining an undertaking) under section 8 CDDA [60] (on the grounds that disqualification is in the public interest) or section 6 CDDA (but only if the restored company is insolvent).

The Government's view is that this more cumbersome process (which often costs thousands of pounds to pursue and still might uncover no evidence of misconduct) makes it harder to hold directors accountable (by eventually obtaining disqualification orders or undertakings) for unfit conduct.

In 2019, out of 529,680 UK company dissolutions, 33 were restored to the register in England and Wales so that they can be liquidated instead. The

[53] Insolvency Services, Carillion – directors' disqualification proceedings, 14 January 2021.
[54] BEIS, Insolvency and Corporate Governance, Government response, 26 August 2018, para 4.1
[55] Currently, the Secretary of State for Business, Energy & Industrial Strategy
[56] using powers under section 1029 of the Companies Act 2006
[57] Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill, Explanatory Notes, para 9
[58] Insolvency Service, Bill Impact Assessment, 19 April 2021, p6
[59] These powers are exercised by the Insolvency Service on behalf of the Secretary of State. See Explanatory Notes, para 13
[60] Or Article 11 of CDD(NI)O for Northern Ireland

Insolvency Service concludes that while misconduct in relation to dissolution is a problem, it may not be "very prevalent". They estimate that (at most) misconduct currently occurs in 1% of company dissolutions, or around 5,000 per year, although there is a concern that this could rise, with more insolvencies expected due to the pandemic. [61]

3.3 Consultation

Between March and June 2018, the Department for Business, Energy & Industrial Strategy (under Secretary of State Greg Clark) ran a consultation on "Insolvency and Corporate Governance" focusing on four issues. One of these was "proposals to extend existing investigative powers into the conduct of directors to cover directors of dissolved companies". [62]

The consultation noted concerns that company directors can avoid being held accountable for misconduct by dissolving their company rather than liquidating it. This is because of the "impractical" process of restoring such a company to the register before being able to investigate. [63] The consultation also noted that restoring companies to the register which have ceased operations could undermine the register's integrity.

Specifically, the consultation proposed granting the Secretary of State for Business new powers to:

a) Require any person to provide such information as may be reasonably requested to allow the Insolvency Service to investigate the conduct and actions of former directors of a dissolved company;
b) Seek an order disqualifying a former director from being a director of any other company;
c) Seek an order that the former director financially compensates creditor(s), where the director's actions caused identifiable losses; and
d) Seek a prosecution where there is evidence of criminal conduct.

The trigger for investigations would likely be a complaint from the public, a creditor or another Government department, or a connection to an existing investigation. The new powers would be exercised at the Secretary of State's discretion where there is sufficient evidence of wrongdoing and when in the public interest. [64]

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[61] Insolvency Service, Bill Impact Assessment, 19 April 2021, pp8 and 9
[62] BEIS consultation, Insolvency and Corporate Governance, 20 March 2018, p6
[63] Ibid, p20
[64] Ibid, pp20-22

The consultation attracted 93 responses, mainly from professional advisers and associations, business and trade groups, individual businesses and investment firms. [65]

The Government's response to the consultation was published in August 2019. [66] It said that a "large majority " agreed that there was a problem, and that respondents found the proposal for a new investigation power "in the main, logical and sensible". Further, some respondents suggested there was "widespread support in the construction industry for action to deal with this conduct". [67]

The Government concluded that it would proceed with amending CDDA to extend the investigation regime to include former directors of dissolved companies. This would ensure that action can be taken against former directors of dissolved companies without the "expense and delay" of restoring companies to the register. A new duty on the court to disqualify directors of dissolved companies would be introduced to "mirror" existing section 6 of CDDA, which relates to insolvent companies.

Some respondents to the consultation had raised concerned about how the Government would choose which cases to investigate or target. However, the Government responded that the Insolvency Service had a "rigorous vetting process" in place to "ensure quality outcomes for creditors and all stakeholders" affected by directors abusing the dissolution regime. [68]

3.4 Proposals

In its August 2018 consultation response, the Government committed to legislation to expand the ability to hold directors accountable "when legislative time allows". [69] However, neither the December 2019 nor the May 2021 Queen's Speech background paper showed an intention to bring forward these proposals in the upcoming parliamentary session.

Nonetheless, on 12 May 2021, the day after the 2021 Queen's Speech, the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill 2021-22 was formally introduced (given its first reading) in the House of Commons.

On the same day, in a press release, the Government [70] announced that legislation is being brought forward to grant the Insolvency Service "powers

[65] BEIS Government response, Insolvency and Corporate Governance, 26 August 2018, p5

[66] with a foreword from Small Business, Consumers and Corporate Responsibility Minister Kelly Tolhurst. The position is now occupied by Paul Scully.

[67] BEIS Government response, Insolvency and Corporate Governance, 26 August 2018, pp39-40

[68] Ibid

[69] Ibid

[70] Specifically, the Insolvency Service, Ministry of Housing, Communities & Local Government, Department for Business, Energy & Industrial Strategy, and the Treasury

to investigate directors of companies that have been dissolved". The press release suggested that the company dissolution process was being misused "as a method of fraudulently avoiding repayment of Government backed loans given to businesses to support them during the Coronavirus pandemic", thereby creating greater urgency for implementing these proposals. [71] The Government has estimated that between 15% and 80% of these loans may not be fully repaid. [72]

The Insolvency Service says there is evidence of directors dissolving their companies to try and avoid enforcement activity by Government bodies. This has been reported by both the Home Office in relation to enforcement visits to businesses for hiring illegal workers, and by Trading Standards for payment of business rates. [73]

3.5 The Bill – clauses 2 and 3

Clause 2 implements these proposals in England, Wales and Scotland. Clause 3 does the same for Northern Ireland. These clauses seek to widen the scope of existing sections rather than adding new provisions.

Clause 2 would amend the following sections of CDDA:

- **Section 6** (Duty of court to disqualify unfit directors of insolvent companies) to increase its scope to include former directors of dissolved companies. Currently, section 6 can only be used to disqualify directors of companies which have become insolvent;

- **Section 7** (Disqualification orders under section 6: applications and acceptance of undertakings) to state that any applications by the Secretary of State for a disqualification order made under section 6 cannot be made more than three years after the relevant company was dissolved. This is in line with the current rules around obtaining disqualification orders for directors of insolvent companies.

  The Secretary of State or Official Receiver's power to require information or documentation when investigating an insolvent company would also be extended to cover dissolved companies;

- Section 8ZA currently provides that the court can also make a disqualification order against someone who was directing or instructing

[71] See press release, New powers to tackle unfit directors of dissolved companies, 12 May 2021

[72] Due to credit and fraud risks. See National Audit Office, Investigation into the Bounce Back Loan Scheme, 7 October 2020, p11

[73] Insolvency Service, Bill Impact Assessment, 19 April 2021, pp9 and 10

someone against whom a disqualification order has been made (or an undertaking obtained) under sections 6 and 7. Clause 2 therefore amends **section 8ZB** (Application for order under section 8ZA) to provide that such applications cannot be made more than three years after a company is dissolved, in line with the current rules for insolvent companies;

- **Section 15A** to provide that a court order for compensation can be made against a disqualified director whose conduct has caused loss to creditors of a dissolved company. This is in line with the current rules for insolvent companies; and

- **Sections 22A to 22H** are currently there to apply the Act to bodies which are not companies. This allows directors of, for example, building societies and charities to also be disqualified. The Insolvency Service says that the problem of dissolution interfering with investigations only applies to companies and not such bodies, so there is no need to include them in these proposals. Clause 2 therefore amends these sections to ensure that the changes being made will not apply to them.

Clause 2 also makes clear that the changes will have retrospective effect, allowing for investigations and court orders to be made against directors relating to conduct before the Bill is passed.

Clause 3 makes largely identical amendments to The Company Directors Disqualification (Northern Ireland) Order 2002, the equivalent legislation applicable in Northern Ireland.

Commencement and Extent

The power to investigate directors of dissolved companies by requiring information or documents [74] comes into force upon Royal Assent, allowing such investigations to commence immediately. The remaining provisions of clauses 2 and 3 come into force two months after Royal Assent. [75]

The Government considers company director disqualification a reserved matter in Great Britain, so clause 2 extends to England, Scotland and Wales, but it is devolved in Northern Ireland.

A legislative consent motion has been obtained from the Northern Ireland Assembly to allow the UK Parliament to legislate on its behalf, in accordance with convention. [76]

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[74] Introduced by clause 2(3)(b) which amends section 7(4) of CDDA, and by clause 3(b) which amends Article 10 of CDD(NI)O

[75] Clause 4(4) and (5) of the Bill

[76] Explanatory Notes, paras 38-39, table on p16

3.6 Impact Assessment

The Insolvency Service produced an Impact Assessment on the proposals in April 2021. However, early drafts were deemed "not fit for purpose"[77] by the Regulatory Policy Committee,[78] so it was only published on the Parliament website on 11 June 2021.

The Impact Assessment states that the main cost of the measures will be £5.45 million in ongoing costs for directors to familiarise themselves with the changes. There will also be a net cost to businesses per year of £5 million and no monetised benefits. The overall financial impact (net present value) is estimated at negative £43 million.

There are however a number of non-monetary benefits which the Insolvency Service believes could be sufficient to turn the net present value figure positive, namely:

1. increasing the confidence of lenders to extend credit to smaller companies;
2. increased trust amongst businesses and supply-chains;
3. deterring undesirable behaviour;
4. promoting a level playing field and fair competition; and
5. court cost savings to the Insolvency Service and creditors who might no longer need to apply to court to restore dissolved companies to the register.[79]

3.7 Reaction

Reaction has largely viewed the measures as a justifiable closure of a loophole.

The Institute of Chartered Accountants in England and Wales supported the proposed measures when they were consulted on in 2018, saying they agreed "there is a problem, and the proposal seems reasonable".[80]

A partner at law firm Irwin Mitchell, Tom Paton, said that the current restrictions on investigating directors of dissolved companies are "entirely

[77] Regulatory Policy Committee, Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill, 10 June 2021, p3

[78] The RPC is described by the Government as a committee of independent experts sponsored by the Department for BEIS. See Regulatory Policy Committee, About us

[79] Insolvency Service, Bill Impact Assessment, 19 April 2021, pp1-4

[80] ICAEW, Powers to ban unfit dissolved company directors extended, 17 May 2021

illogical and they open the regime to abuse. It is pleasing that this change is going through at last”. [81]

Chris Horner, Insolvency Director at Business Rescue Expert, [82] said that the “measures will ultimately create a fairer, more level playing field and will also be better for the treasury as we expect tax receipts to be higher and more outstanding bounce back loans to be recouped as a result.” [83]

3.8 Commons Second Reading

No MPs spoke in opposition to clauses 2 and 3 at Second Reading.

However, the Opposition raised concerns about the resourcing of the Insolvency Service, which would be responsible for investigating the conduct of directors of dissolved companies, in addition to its existing work investigating directors of insolvent companies.

Shadow Minister Jeff Smith said the Government must “ensure that a lack of resources does not lead to investigations into directors of dissolved companies coming at the expense of investigations into directors of insolvent ones”. Conservative MP Kevin Hollinrake also expressed concerns about adequate resourcing, saving that the Insolvency Service “is not the most proactive oranisation around. It may be a lack of resources, but certainly there is no point having the regulations if we do not regulate such businesses”. In response, Minister Paul Scully said the Government “will be working with the Insolvency Service to ensure that it has the resources to do its job”.

Mr Hollinrake also said regulators in the UK must “beef up their resources” on “hunting down fraud and financial crime”, stating that where fraud had occured, criminal prosecutions were an appropriate sanction. [84]

3.9 Commons Committee Stage

The Public Bill Committee heard evidence about the director disqualification measures from five expert witnesses:

- Stephen Pegge (Managing director, commercial finance at UK Finance, a finance and banking trade association);

[81] Irwin Mitchell, It Ain’t Over ‘Til It’s Over: Company Directors And Dissolution – A New Chapter, 17 May 2021

[82] According to its website, part of insolvency practice Robson Scott Associates Limited

[83] Business Rescue Expert, Directors face punishment for closing companies to avoid repaying bounce back loans or other debts, undated

[84] HC Deb 28 June 2021, vol 698 cols 62 to 84

- David Kerr (fellow, Chartered Institute of Credit Management);
- John Tribe (senior lecturer in law, University of Liverpool);
- Andrew Agathangelou (founder of social enterprise the Transparency Task Force); and
- Duncan Swift (President of restructuring and insolvency trade association R3).

All were supportive of clauses 2 and 3, viewing the measures (at the very least) as a step in the right direction, although Mr Agathangelou and Mr Swft in particular thought it did not go far enough.[85]

A written submission arguing against the measures was received by the Committee from Anton Smith, a Partner at Ashton Bond Gigg solicitors. Mr Smith argued that the proposals were “misguided” because the law already provides appropriate tools to deal with companies that have wrongly been dissolved (namely the ability to restore dissolved companies to the register and then place them into liquidation instead), but that such tools are not publicised so provide little deterrent.[86]

On 8 July 2021 Clauses 2 and 3 passed Committee Stage without a division, although Shadow Minister Seema Malhotra noted a number of other “gaps” that in her view would “significantly limit the potential effectiveness of the Bill. These were (i) concerns around the resourcing of the Insolvency Service; (ii) a lack of detail on the Government’s plans on how it will use the Bill’s measures to investigate directors (and in particular the rare use of compensation orders which make directors personally liable for misconduct which has caused loss to creditors); and (iii) concerns around Parliament’s ability to scutinise the outcomes of the legislation.[87]

The Labour Opposition (Seema Malhotra and Jeff Smith) therefore tabled two amendments – New Clauses 1 and 3 – which would (i) require the Business Secretary to report to Parliament every three months on the number of directors of dissolved companies that have been investigated and disqualified (NC1); and (ii) require the Business Secretary to report to Parliament on the effectiveness of clauses 2 and 3, a year after they come into force (NC3).[88] Minister Luke Hall argued these amendments were unnecessary because the Insolvency Service already “routinely produces insolvency statistics”. He also noted that the Government has committed to produce a post-implementation review of clauses 2 and 3 within five years of them coming into force.

Mrs Malhotra subsequently agreed to withdraw New Clause 1 but pressed New Clause 3 to a division, where it was defeated by 5 votes to 8 along party

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[85] See HC PBC Official Report, Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill, 6 and 8 July 2021, pp3 to 64

[86] Submission, Written evidence submitted by Anton Smith, Partner, Ashton Bond Gigg solicitors (RDDB01), June 2021

[87] Ibid, pp80-81

[88] Bill Amendment Paper, Committee Stage: Thursday 8 July 2021

lines (with Labour and SNP MPs voting for the amendment and Conservative MPs voting against).[89]

[89] See HC PBC Official Report, Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill, 6 and 8 July 2021, pp82-89

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