RATING (CORONAVIRUS) AND DIRECTORS DISQUALIFICATION (DISSOLVED COMPANIES) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill as introduced in the House of Commons on 12 May 2021 (Bill 11).

- These Explanatory Notes have been prepared by the Ministry of Housing, Communities and Local Government and the Department for Business, Energy and Industrial Strategy in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1 This Bill:

a. implements commitments made by the Government on 25 March 2021 to clarify that coronavirus and the Government's response to it is not reflected in rateable values on the 2017 rating list,[1] and

b. addresses public concerns about the abuse of limited liability, by extending the powers of the Secretary of State and, in Northern Ireland, of the Department for the Economy to investigate the conduct of company directors to include former directors of dissolved companies, to commence disqualification proceedings against them where public interest criteria are met, and to seek compensation where their conduct has caused loss to creditors.

Policy background

Determinations in respect of certain non-domestic rating lists

2 Liability for non-domestic rates (known as business rates) is based upon the rateable value of the hereditament (the property or part of the property which is liable for business rates). To be assessed as a hereditament a property must meet a number of tests in case law including that it is capable of beneficial occupation.[2] Rateable values are set by the Valuation Office Agency and appear on non-domestic rating lists. There is a rating list for each Billing Authority and, also a Central Rating List held by the Secretary of State (typically containing network hereditaments which span many billing authority areas).

3 Business rate bills are calculated from rateable values which, broadly speaking, represent annual rental values. These rateable values are updated at general revaluations - the most recent being in 2017 when rateable values were based on the rental value market at 1 April 2015 (known as the valuation date). The next revaluation is planned for 1 April 2023 with a valuation date of 1 April 2021.

4 It is at these general revaluations that the rateable value of a hereditament and, therefore, rate bills, are updated to reflect changes in economic factors, market conditions or changes in the general level of rents. Between revaluations the determination of whether something is a

[1] Written statement by the Minister of State for Regional Growth and Local Government made on 25 March 2021.

[2] Broadly speaking a hereditament is a contiguous unit of property in the same occupation. Guidance on the meaning of a hereditament is available on the Valuation Office Agency's website.

hereditament and their rateable values can only be changed to reflect "material changes of circumstances" including, for example, physical changes to the property or the locality. 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.

5 Matters such as the impact on rental values of coronavirus or interventions in response to coronavirus are part of the general market conditions and, as such, should where necessary be reflected in updated rateable values at each revaluation. If it were otherwise, 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.

6 The Government does not believe that changes to rateable values through challenges to the rating list or the removal of hereditaments from the rating list is the right mechanism to help businesses that need support during the pandemic. On 25 March 2021 the Government therefore announced that they would introduce primary legislation with retrospective effect to clarify that coronavirus and the Government's response to it is not an appropriate use of the material change of circumstances provisions.[3] The Government has instead provided support to ratepayers affected by coronavirus through business rates relief.

Investigation and disqualification of former directors of dissolved companies

7 The Insolvency Service regularly receives complaints about the conduct of former directors of companies which have been dissolved. In most cases those complaints concern one of the following areas:

a. Allowing or causing a company to be dissolved, effectively shedding its liabilities, with a new company continuing its business. Some complaints relate to this happening multiple times, and this is sometimes known as "phoenixism";

b. Use of the company dissolution process to avoid the cost and implications of formal liquidation proceedings; or

c. Avoidance of investigation of conduct under the Company Directors Disqualification

[3] Written statement by the Minister of State for Regional Growth and Local Government made on 25 March 2021

Act 1986 (CDDA86).

8 Similar complaints have been received by the Insolvency Service in Northern Ireland, from creditors of companies which have been dissolved.

9 It is not currently possible for the conduct of former directors of dissolved companies to be investigated without first restoring the company to the register of companies, which is time consuming and costly, and involves court proceedings. This measure will allow the Secretary of State (or in Northern Ireland, the Department for the Economy ("the Department")) to investigate the conduct of former directors of dissolved companies without there being a requirement to first restore the company to the register.

10 The primary role of disqualification is to protect the business community and members of the public from individuals who have demonstrated that they are unfit to be concerned in the management of a limited company. It also acts as a deterrent to directors abusing the privileges of limited liability. In this respect, extending the disqualification regime to directors of dissolved companies will discourage the use of the dissolution process as a method of fraudulently avoiding repayment of Government backed loans given to businesses to support them during the coronavirus pandemic, such as loans made under the Bounce Back Loans Scheme.

11 The conduct of a company director may currently be considered by the Secretary of State or the Department through information obtained using the power to investigate live companies contained in the Companies Act 1985 (CA85) and the power to investigate the conduct of directors of insolvent companies under the CDDA86 or the Company Directors Disqualification (Northern Ireland) Order 2002 (CDD(NI)O02).

12 In both situations, if the investigation determines that there is evidence that the director's conduct has fallen below the expected standards of probity and competence which are appropriate for persons fit to be directors of companies, and public interest criteria are met, then an application may be made to the court by the Secretary of State, or as the case may be, the Department, for a disqualification order to be made against them. Such an application would either be made under section 8 of the CDDA86 in the case of a live company, under section 6 in the case of an insolvent company, or in Northern Ireland Articles 11 and 9 of the CDD(NI)O02 respectively.

13 Investigations are usually triggered by receipt of a complaint, or in the case of an insolvent company, by a report on the conduct of the director submitted to the Secretary of State or the Department by an insolvency practitioner appointed to manage the affairs of an insolvent company (often referred to as the office-holder), in accordance with a requirement under section 7A of the CDDA86 or Article 10A of the CDD(NI)O02. Live company investigations under the provisions of CA85 are undertaken by the Insolvency Service on behalf of the Secretary of State. Insolvent company investigations are undertaken by the Insolvency Service in Great Britain and Northern Ireland, on behalf of the Secretary of State or the Department respectively

14 Complaints about the operation or activities of a live company may be made to the Insolvency

Service, whether in Great Britain or Northern Ireland, by members of the public. Those complaints are considered and reviewed in order to determine whether an investigation under CA85 is appropriate and in the public interest.

15 The Insolvency Service regularly receives complaints about companies which have been dissolved in Great Britain, and similar complaints have been made to the Insolvency Service in Northern Ireland. Under the law as it currently stands, it is not possible to investigate any further without taking steps to have the company restored to the register of companies, a process which is complex, time consuming, and would be at the cost of the public purse.

16 Complaints regarding dissolved companies often relate to new companies, frequently started very soon after the previous company was dissolved, taking over the dissolved companies' business, using the same assets (such as location or vehicles), with the same individuals acting as directors. This can be evidence of what is often referred to as "phoenixism", where a company ceases trading leaving its creditors unpaid, and a new company takes over the business without its outstanding liabilities. Evidence points to a low-level but recurring theme of the dissolution process being used to shed liabilities, allowing a new company to take over the business without the burden of its previous debt. The debts avoided in this way often include tax and civil penalties, liabilities to consumers, or employment tribunal awards.

17 Other common complaints about dissolved companies are that the dissolution process has been used as a way of avoiding having to put the company into formal insolvency proceedings, with the associated costs and scrutiny that that entails, or that it is used as a way of avoiding investigation of the actions of the directors under the CDDA86 or the CDD(NI)O02.

18 The measure will allow the Secretary of State, the Department, or the official receiver, to investigate the conduct of former directors of dissolved companies, without it being necessary to first restore the company to the register. It will not be necessary for the dissolved company to have been subject to insolvency proceedings in order for the power to investigate to apply.

19 The proposal to create this new investigative power was included in the Insolvency and Corporate Governance consultation, which ran between March and June 2018. The Government's response to the consultation, which was published in August 2018, which is available here, noted that the majority of respondents had been supportive of the proposal to widen existing powers to investigate the conduct of former directors of dissolved companies, and where appropriate to take action against them. The response also noted that whilst the dissolution process is an important part of maintaining the integrity of the register of companies, it should not be used as an alternative to formal insolvency proceedings.

20 The new powers will have retrospective effect. This will mean that the conduct of former directors of dissolved companies that took place prior to commencement of the measure may be investigated, and where appropriate disqualification action may be taken with regard to that conduct.

21 Former directors of dissolved companies against whom disqualification proceedings are taken will have the opportunity to offer disqualification undertakings to the Secretary of State, or as

the case may be, the Department, as is currently the case for directors of insolvent companies.

22 Where an application for a disqualification order is made to the court in respect of a former director of a dissolved company, the court will have a duty to make such an order if it is satisfied that the person has been a director, and that their conduct makes them unfit to be concerned in the management of a company. This mirrors the current position where such an application is made in respect of the director of an insolvent company.

23 A disqualification order made against a former director of a dissolved company, or a disqualification undertaking given by such a person, will be for a minimum period of 2 years and a maximum period of 15 years. This will mirror the periods currently prescribed where orders are made or undertakings accepted in the case of directors of insolvent companies.

24 The provision which allows a period of disqualification to be sought where a disqualified director of an insolvent company was subject to the influence of another person, or was accustomed to acting under the instructions of another person, will include disqualified former directors of dissolved companies.

25 A disqualification order (or an undertaking which has been accepted by the Secretary of State or the Department) prohibits the subject from acting in the promotion, formation, or management of a company for the period of the order or undertaking, without the leave of the court. Breach of such an order or undertaking is a criminal offence under section 13 CDDA86 and Article 18 CDD(NI)O02.

26 The existing provisions contained in section 15A of the CDDA86, and Article 19A CDD(NI)O02, which allows the Secretary of State or the Department to seek compensation from directors subject to disqualification orders or undertakings where their actions can be shown to have caused loss to creditors of insolvent companies, will include former directors of dissolved companies, and will be expanded to include creditors of those companies. This will have retrospective effect, so that conduct which was considered in the disqualification proceedings and which took place prior to commencement of the measure can be considered for compensation.

Legal background

Determinations in respect of certain non-domestic rating lists

27 Part 3 of the Local Government Finance Act 1988 ("the 1988 Act") concerns non-domestic rating. Sections 41 and 52 of the 1988 Act require new local and central rating lists to be compiled and maintained by Valuation Officers. Sections 42 and 53 require those rating lists to show hereditaments and their rateable values. Section 64 concerns the meaning of a hereditament and Schedule 6 concerns the determination of rateable values. Clause 1 applies for the purposes of relevant determinations concerned with whether a hereditament ought to be shown in a rating list and matters which should be taken into account in determining its

rateable value.

Investigation and disqualification of former directors of dissolved companies

28 Provisions for the investigation of companies and company directors are found in the Insolvency Act 1986 (IA86), the Companies Act 1985 (CA85), and the Company Directors Disqualification Act 1986 (CDDA86) for Great Britain.

29 For Northern Ireland, similar provisions are in the Insolvency (Northern Ireland) Order 1989 (I(NI)O89) and the Company Directors Disqualification (Northern Ireland) Order 2002 (CDD(NI)O02). Investigative powers in CA85 extend to Northern Ireland.

30 Provisions in IA86 and I(NI)O89 relate to the duty of the official receiver to investigate the affairs of companies subject to compulsory winding-up proceedings, and are found in section 132 of that Act and Article 112 of that Order respectively.

31 Section 447 of CA85 contains a power for the Secretary of State to direct a company to produce such documents and information as is required, and to authorise an investigator to make those requirements. In this way the affairs of live companies may be investigated. If an investigation reveals that the conduct of a director has fallen below expected standards then an application for disqualification may be made under section 8 of CDDA86 or Article 11 of CDD(NI)O02, if this is in the public interest. As an alternative the Secretary of State has the power to petition the court that the company be wound up in the public interest, under section 124A IA86, in which case disqualification proceedings could be brought under section 6 CDDA86 if the court made a winding-up order and the company's assets were insufficient to meet its liabilities and the expenses of the winding up. A similar power for the Department exists in Article 104A of the I(NI)O89, which would allow disqualification proceedings to be brought under Article 9.

32 Both section 6 of CDDA and Article 9 of CDD(NI)O02, specify that the court has a duty to make a disqualification order where an application is made, if it is satisfied that the person has been a director of a company which has at any time become insolvent, and that their conduct makes them unfit to be concerned in the management of a company.

33 In Great Britain section 7(1) of CDDA provides the Secretary of State with the power to make an application for a disqualification order under section 6. The official receiver may also make an application for disqualification under this subsection, but only in the case of a company subject to compulsory liquidation proceedings, and only if directed to do so by the Secretary of State. Section 7(2A) allows the Secretary of State to accept a disqualification undertaking if it is offered, and it is expedient in the public interest that they should do so. Similar provisions, giving the Department the power to make an application for a disqualification order, to direct the official receiver to do so under certain circumstances, and to accept disqualification undertakings, are prescribed by Article 10 of the CDD(NI)O02.

34 Section 7(4) CDDA86 provides the Secretary of State and the official receiver with a power to require a person to provide information and documents which relate to any person's conduct

as a director of an insolvent company, and so provides the power to investigate conduct in those circumstances. The equivalent power in Article 10(5) of the CDD(NI)O02 allows for the Department to require similar information and documents from the current or former liquidator, administrator, or administrative receiver of the company.

35 Sections 8ZA and 8ZB of CDDA86 allow the Secretary of State to make an application to the court (or where appropriate to direct the official receiver to make such an application) for a disqualification order to be made against a person from whom a disqualified director of an insolvent company was accustomed to receiving instructions, or who was influenced by that person in their conduct as a director. There is an equivalent power for the Department in Articles 11A and 11B of the CDD(NI)O02.

36 Section 15A of CDDA86 allows the Secretary of State to seek compensation from a director who has been disqualified under any section of CDDA86 (whether they are subject to a disqualification order or undertaking), where it can be shown that the conduct for which they were disqualified led to losses to creditors of an insolvent company of which they were a director at any time. Compensation may be sought by way of an application to the court by the Secretary of State for an order under section 15A(1) CDDA86, or the Secretary of State may accept an undertaking from the disqualified director to pay compensation, under section 15A(2). Similar provisions exist in Article 19A of the CDD(NI)O02.

Territorial extent and application

37 Business rates policy is fully devolved. Clause 1 extends to England and Wales and applies to England only.

38 Company director disqualification is a matter for which responsibility is reserved to the UK Parliament with regard to both Scotland and Wales. Clause 2 amends certain sections of CDDA86, which extends and applies to England, Wales and Scotland (though section 22F, which is amended by clause 2(11), extends to England and Wales only).

39 Responsibility for company director disqualification is a matter which is transferred to the Northern Ireland Assembly. Clause 3 amends certain sections of CDD(NI)O02, which extends and applies to Northern Ireland.

40 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Clause 1: Determinations in respect of certain non-domestic rating lists

41 Clause 1 of the Bill makes provision as to what matters attributable to coronavirus should be taken into account when deciding whether a hereditament ought to appear in the rating list

and determining rateable values on the 2017 rating list.

42 Clause 1(1) provides that the section applies to relevant determinations. Relevant determinations are defined in clauses 1(2) and 1(3).

43 Clause 1(2)(a) provides that a relevant determination is a determination which is concerned with whether a hereditament ought to appear in the rating list. Whether something is a hereditament and should appear in the rating list, and therefore, be liable for business rates, is the first question to be addressed by the Valuation Officer and the Courts. There is established case law on the meaning of a hereditament including that something must be capable of beneficial occupation to be considered a hereditament[4]. Hereditament is defined in clause 1(8) and ensures that references to a determination in clause 1(2)(a) include a determination of that first question of whether something is a hereditament.

44 Clause 1(2)(b) provides that a relevant determination is a determination of the rateable value of a hereditament on the 2017 rating list. Rateable values are determined in line with rules in Schedule 6 to the 1988 Act. Broadly speaking the rateable value is the annual rental value of the hereditament. Schedule 6 to the 1988 Act provides for the rateable value, during the lifetime of a rating list, to be assessed by reference to two dates:

a. Paragraph 2(3)(b) of Schedule 6 to the 1988 Act gives the Secretary of State the power to specify a day – known as the valuation date - by reference to which the assessment of rateable value in a rating list is to be made. For the 2017 rating lists, that day was specified as 1 April 2015.[5] Therefore, rateable values in the 2017 rating lists are made by reference to valuations as at 1 April 2015.

b. Paragraph 2(6A) of Schedule 6 to the 1988 Act gives the Secretary of State powers to specify rules for determining the day – known as the material day - by reference to which certain matters are to be reflected. Those matters are listed in paragraph 2(7) of Schedule 6 to the 1988 Act and include matters such as those affecting the physical state of the hereditament or mode or category of occupation of the hereditament.

45 Therefore, rateable values in the 2017 rating lists are made by reference to factors affecting valuations as at 1 April 2015 except for those matters listed in paragraph 2(7) of Schedule 6 which are reflected as at the material day. As a result, where one of the matters listed in paragraph 2(7) of Schedule 6 changes during the life of a rating list then the rateable value of existing hereditaments may need to be amended and that matter may need to be reflected in the rateable value of new hereditaments. A change in any matter not within the list in paragraph 2(7) of Schedule 6 should not lead to a change in an existing rateable value, or be

[4] Guidance on the meaning of hereditament and the test needed to be met for entry in the rating list is available in the VOA's Rating Manual Section 3 Part 1

[5] The Rating Lists (Valuation Date) (England) Order 2014 No. 2841.

reflected in the rateable value of new hereditaments, before the next rating lists are compiled.

46 Clause 1(3) excludes from the provisions of the clause determinations as to whether a hereditament is non-domestic or domestic (and therefore liable for Council Tax) or exempt or not exempt from business rates.

47 Clause 1(4) provides that, subject to exceptions in clause 1(5), no account is taken of any matter that is directly or indirectly attributable to coronavirus when making a relevant determination. This includes matters arising before the passing of the Act. This ensures, for example, that any checks, challenges or appeals the Valuation Officer has received seeking either for a hereditament to be deleted from the list or its rateable value to be reduced will be determined taking no account of matters attributable to coronavirus. This includes checks, challenges and (in respect of Tribunal and Courts) appeals lodged before the passing of the Act concerning matters arising before the passing of the Act. It will also include determinations the Valuation Officer makes in maintaining the current 2017 rating list in the absence of any check, challenge or appeal such as the inclusion of a new hereditament in the rating list (including such determinations with retrospective effect).

48 Clause 1(5) provides exceptions to the effect of clause 1(4) for the following matters:

a. the physical state of the hereditament. This will ensure, for example, that changes to the physical structure of the hereditament or the extent of the hereditament (such as structural changes to the internal fabric of the hereditament, a new extension to the hereditament or a demolition of part of the hereditament) continue to the be reflected in the rating list when they arise even if they are attributable to coronavirus. It will also ensure that changes to the mode or category of occupation of the hereditament (for example from a restaurant to a shop) may still be reflected in the rating list where this has been affected by the change in the physical state of the hereditament, and

b. the quantity of minerals or other substances in or extracted from the hereditament (typically this provision applies to mines and quarries) and the quantity of refuse or waste permanently deposited on the hereditament (applying to landfill sites). Mines, quarries and landfill sites are valued for business rates based, in part, on the amount of minerals extracted each year or, for landfill, the amount of waste deposited.[6] A special rule in paragraphs 2(7)(c) and (cc) of Schedule 6 to the 1988 Act allows for the rateable value of these hereditaments to vary year to year between revaluations based on changes in the rates of mineral extraction (or for landfill deposits). Clause 1(5)(b) and (c) will preserve that special rule in respect of changes in the minerals extracted or landfill deposits attributable to coronavirus.

[6] Guidance in the Valuation Office Agency's Rating Manual is available on the valuation of mineral hereditaments and landfill sites.

49 Clause 1(6) provides a non-exhaustive list of matters included in clause 1(4). The clause will ensure, for example, that restrictions on the use of a property imposed by the Government's Non-Pharmaceutical Interventions (such as rules on social distancing) will not be taken into account for a relevant determination. For example, in so far as a hereditament has been forced to close because of the Non-Pharmaceutical Interventions then no account will be taken of this in determining whether the hereditament ought to be shown in the rating list or determining its rateable value. It will also ensure, for example, that where occupiers have decided that in order to comply with health and safety legislation, they have had to implement social distancing in their buildings, then this will not be taken into account for relevant determinations.

50 Clause 1(7) provides that determinations falling within clause 1(4) include those which are based upon matters taken at a day which falls before the Act is passed (as well as a day on or after it is passed). This ensures that clause 1(4) applies to determinations which have a material day before the Act is passed.

51 Clause 1(8) provides for definitions.

52 Clause 1(9) revokes The Valuation for Rating (Coronavirus) (England) Regulations 2021 (S.I. 2021/398) which require, with effect from 25 March 2021, that interventions to control coronavirus should be assumed to have not occurred for the purposes of determining rateable values. These regulations are superseded by clause 1.

Clause 2: Unfit directors of dissolved companies: Great Britain

53 Clause 2 amends certain sections of CDDA86 to provide a power to the Secretary of State and the official receiver to investigate the conduct of former directors of dissolved companies, for the Secretary of State to seek their disqualification where appropriate, and to seek compensation where their actions have led to losses to creditors of dissolved companies.

54 Section 6 of CDDA86 is amended to increase its scope to include former directors of dissolved companies. In particular, section 6(1) is amended so that if the court is satisfied on application that the person was a director of an insolvent company, or was a former director of a company which was dissolved without becoming insolvent, and their conduct as a director of that company (either taken alone or considered along with their conduct in other companies) makes them unfit to be concerned in the management of a company, it has a duty to make a disqualification order. Section 6(3) is amended to provide the court with jurisdiction to make a disqualification order in a case that concerns a former director of a dissolved company is the court which would have had jurisdiction to wind it up on the date of dissolution.

55 Section 7(2) of CDDA86 is amended so that where an application for a disqualification order is made by the Secretary of State in respect of a former director of a dissolved company, it may not be made after the period which is 3 years beginning on the day that the company was dissolved. Section 7(4) is amended so that the Secretary of State or the official receiver may require any person to provide information or documentation which relates to the conduct of a person who was a former director of a dissolved company, as may be reasonably required.

56 Section 8ZB(2) of CDDA86 is amended so that where a disqualification application is made by

the Secretary of State under section 8ZA (in the circumstances that the person in respect of whom the disqualification application is made influenced the actions of a disqualified former director of a dissolved company), the period within which such an application may be made is 3 years starting with the date on which the company in question was dissolved.

57 Section 15A of CDDA86 is amended so that compensation may be sought where a former director of a dissolved company's conduct in that company may be considered when seeking compensation for losses to creditors.

58 Sections 22A to 22H of CDDA86 apply that Act to:

- Building societies within the meaning of the Building Societies Act 1986
- Incorporated friendly societies within the meaning of the Friendly Societies Act 1992
- NHS foundation trusts
- Registered societies within the meaning of the Co-operative and Community Benefit Societies Act 2014
- Charitable incorporated organisations
- Further education bodies
- Protected cell companies incorporated under Part 4 of the Risk Transformation Regulations 2017

Those sections of the CDDA86 are amended so that references to dissolved companies do not apply when the Act is being applied to those bodies.

59 Clause 2 also provides that the conduct which may be investigated and considered as a result of the amendments to the CDDA86 made by that clause, includes that which occurred in companies which were dissolved prior to commencement, and that which occurred prior to commencement in companies which were not dissolved at that time.

Clause 3: Unfit directors of dissolved companies: Northern Ireland

60 Clause 3 makes equivalent amendments to certain Articles of CDD(NI)O02 as did clause 2 for the CDDA86. The amendments provide a power to the Department and the official receiver to investigate the conduct of former directors of dissolved companies, for the Department to seek their disqualification where appropriate, and to seek compensation where their actions have led to losses to creditors of dissolved companies.

61 Article 9 of CDD(NI)O02 is amended to increase its scope to include former directors of dissolved companies. In particular, Article 9(1) is amended so that if the court is satisfied on application that the person was a director of an insolvent company, or was a former director of a company which was dissolved without becoming insolvent, and their conduct as a director of that company (either taken alone or considered along with their conduct in other companies) makes them unfit to be concerned in the management of a company, it has a duty to make a disqualification order.

62 Article 10(2) of CDD(NI)O02 is amended so that where an application for a disqualification order is made by the Department in respect of a former director of a dissolved company, it may not be made after the period which is 3 years beginning on the day that the company was

dissolved. Article 10(5A) is inserted, giving a power to the Department or the official receiver to require any person to provide information or documentation which relates to the conduct of a person who was a former director of a dissolved company, as may be reasonably required.

63 Article 11B(2) of CDD(NI)O02 is amended so that where a disqualification application is made by the Department under Article 11A (in the circumstances that the person in respect of whom the disqualification application is made influenced the actions of a disqualified former director of a dissolved company), the period within which such an application may be made is 3 years starting with the date on which the company in question was dissolved.

64 Article 19A of CDD(NI)O02 is amended so that compensation may be sought where a former director of a dissolved company's conduct in that company may be considered when seeking compensation for losses to creditors.

65 Articles 24D to 25C of CDD(NI)O02 apply that Order to:

- Building societies within the meaning of the Building Societies Act 1986
- Incorporated friendly societies within the meaning of the Friendly Societies Act 1992
- Registered societies within the meaning of the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969
- Credit unions
- Protected cell companies incorporated under Part 4 of the Risk Transformation Regulations 2017

Those Articles of the CDD(NI)O02 are amended so that references to dissolved companies do not apply when the Order is being applied to those bodies.

66 Clause 3 also provides that the conduct which may be investigated and considered as a result of the amendments to the CDD(NI)O02 made by that clause, includes that which occurred in companies which were dissolved prior to commencement, and that which occurred prior to commencement in companies which were not dissolved at that time.

Commencement

67 Clauses 1 and 4 come into force on Royal Assent.

68 Clauses 2 and 3 come into force on Royal Assent for the purposes mentioned in clause 4. Clauses 2 and 3 come into force for remaining purposes two months after Royal Assent.

Financial implications of the Bill

69 Clause 1 contains provisions which will ensure that:

a. hereditaments which might otherwise have not been shown (or shown) in the rating list due to certain matters attributable to coronavirus will continue to be shown (or not shown) as hereditaments, and

b. rateable values on the 2017 rating lists will take no account of certain matters

attributable to coronavirus.

70 Therefore, in the majority of cases clause 1 will ensure that ratepayers who might otherwise have sought a reduction in their rateable value or the deletion of their hereditament and, therefore, a reduction in their business rates bill due to coronavirus will be unable to argue for such a change. Those ratepayers could still see a reduction in their business rates bill because of a rate relief introduced due to coronavirus.

71 No Impact Assessment has been prepared for clause 1 as it amends a local taxation regime and amendments to any tax are excluded from the definition of a regulatory provision.[7]

72 Clauses 2 and 3 have no financial implications.

Parliamentary approval for financial costs or for charges imposed

73 The Bill does not require a money resolution or a ways and means resolution. A money resolution is required where a bill authorises new charges on the public revenue – broadly speaking, new public expenditure – and a ways and means resolution is required where a bill authorises new charges on the people – broadly speaking, new taxation or other similar charges.

Compatibility with the European Convention on Human Rights

74 Section 19 of the Human Rights Act 1998 requires a Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the Bill with the Convention Rights (as defined by section 1 of that Act). The Rt Hon Robert Jenrick MP, Secretary of State for Housing, Communities and Local Government, has stated that in his view the provisions of the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill are compatible with Convention rights.

Related documents

75 The following documents are relevant to the Bill and can be read at the stated locations:

- The Local Government Finance Act 1988
  https://www.legislation.gov.uk/ukpga/1988/41/contents

[7] Section 22(4)(a) of the Small Business, Enterprise, and Employment Act 2015

- Written Ministerial Statement, Luke Hall MP Minister of State for Regional Growth and Local Government. 25 March 2021. https://questions-statements.parliament.uk/written-statements/detail/2021-03-25/hcws901

Annex A - Territorial extent and application in the United Kingdom

The territorial extent and application of the Bill is summarised as follows. Clause 1 extends to England and Wales and applies to England. Clause 2 extends and applies to England, Wales and Scotland. Clause 3 extends and applies to Northern Ireland. Please see the table below for further details.[8]

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Clause 1	Yes	No	No	No	N/A	N/A	N/A	No
Clause 2	Yes	Yes	Yes	No	No	No	N/A	No
Clause 3:	No	No	No	Yes	N/A	N/A	Yes	Yes

Clause 1 of the Bill makes provision in relation to local government finance (non-domestic rating). Local government finance is a devolved matter in Scotland, Wales and Northern Ireland. Local taxes to fund local authority expenditure are an exception to the fiscal, economic and monetary policy reservation by virtue of Schedule 7A, Part 2, Section A1 of the Government of Wales Act 2006 (as amended). Local taxes to fund local authority expenditure are exceptions to the fiscal, economic and monetary policy reservation by virtue of Schedule 5, Part 2, Section A1 of the Scotland Act 1998. Local government finance is not an excepted or reserved matter in Schedule 2 or 3 of the Northern Ireland Act 1998. The Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly could therefore make corresponding provision in respect of these measures.

Clause 2 amends certain sections of CDDA86, which extends and applies to England, Wales and Scotland (though section 22F, which is amended by clause 2(11), extends to England and Wales only). Company director disqualification is a matter for which responsibility is reserved to the UK Parliament with regard to both Scotland and Wales.

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[8] References in this Annex to a provision being within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Clause 3 amends certain sections of CDD(NI)O02, which extends and applies to Northern Ireland. Responsibility for company director disqualification is a matter which is transferred to the Northern Ireland Assembly.

RATING (CORONAVIRUS) AND DIRECTORS DISQUALIFICATION (DISSOLVED COMPANIES) BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill as introduced in the House of Commons on 12 May 2021 (Bill 11).

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