

LEGISLATIVE CONSENT MEMORANDUM
CORPORATE INSOLVENCY AND GOVERNANCE BILL

1. This legislative consent memorandum is laid under Standing Order (**SO**) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of, the Senedd.
2. The Corporate Insolvency and Governance Bill (**the Bill**) was introduced in the House of Commons on 20 May 2020.
3. The Bill can be found at: <https://publications.parliament.uk/pa/bills/cbill/58-01/0128/20128.pdf>

Policy Objectives

4. The purpose of the Bill is two-fold. Firstly, some provisions are specifically aimed at putting in place temporary emergency measures to deal with the Covid-19 pandemic by amending Company and Insolvency law. The remaining provisions are bringing forward insolvency law reforms which UK Government has been developing and consulting on over the last few years.
5. These measures are regarded as being particularly helpful to address issues raised by the Covid-19 pandemic, and are therefore being brought forward to support the UK Government's stated policy objectives to help UK companies and other similar entities by easing the burden on businesses, helping them avoid insolvency and maximise their chances of survival during this period of economic uncertainty due to the COVID-19 pandemic.
6. Many otherwise economically viable businesses are experiencing significant trading difficulties and the Government-enforced social distancing measures and reduced resources are making it hard for businesses to continue to trade and meet their legal duties. The Bill is aimed at to provide businesses with the flexibility and breathing space they need to continue trading during this difficult time.

Summary of the Bill

7. The Bill is sponsored by the Department for Business, Energy and Industrial Strategy.
8. The Bill has three main sets of measures to achieve its purpose:

- i. to introduce greater flexibility into the insolvency regime (introduction of a moratorium period – see p.), allowing companies breathing space to explore options for rescue whilst supplies are protected, so they can have the maximum chance of survival;
- ii. to temporarily suspend parts of insolvency law to support directors to continue trading through the emergency without the threat of personal liability and to protect companies from aggressive creditor action; and
- iii. to provide companies and other bodies with temporary easements on company filing requirements and requirements relating to meetings including annual general meetings (AGMs).

Moratorium

9. The Bill will apply the moratorium provisions to all UK companies, including Registered Social Landlords (**RSLs**) which are companies, but the moratorium provisions will not apply to RSLs which are registered societies or to RSLs which are Charitable Incorporated Organisations (**CIOs**).
10. The Bill (at clause 1) introduces a new Part A1 (Moratorium) into the Insolvency Act 1986 (**the IA 1986**), before Part 1 of that Act, which will apply to all companies. In certain circumstances, a company can apply for a moratorium which is intended to allow a company in financial distress a breathing space to explore its rescue and restructuring options free from creditor action. This is a free-standing 20 business day moratorium, extendable by the company for a further 20 business days. The moratorium period can also be extended with the permission of the company's creditor or the court's permission.
11. During the moratorium period, certain benefits and restrictions apply. For example, no legal action will be able to be taken or continued against the company without leave of the court. There are a number of restrictions, including on: the enforcement or payment of certain debts for which a company has a payment holiday during a moratorium; certain insolvency proceedings and the directors of the company must also notify the monitor before taking certain steps in relation to other insolvency proceedings; obtaining credit; granting security; entering into market contracts; and the disposal of property.
12. A company in a moratorium will remain under the control of its directors, with the moratorium overseen by a monitor (a licensed insolvency practitioner) who is an officer of the court and who will assess the position. If it becomes clear that the company cannot be rescued, the monitor must bring the moratorium to an end and creditors can continue to enforce their debts. The moratorium will also come to an end if at any time the company enters into a scheme of arrangement or a relevant insolvency procedure.

Existing Provisions

13. RSLs in Wales are, however, subject to pre-existing insolvency provisions set out in sections 39–50 of the Housing Act 1996 (**the 1996 Act**).
14. Under the 1996 Act, before certain steps are taken in relation to insolvency the Welsh Ministers must be given notice of those steps. In addition, as soon as possible after certain steps are taken notice also needs to be given to the Welsh Ministers. Once certain steps have been taken there is a moratorium on the disposal of land by the RSL. The moratorium will last 28 days from the date that notice is received by the Welsh Ministers. This moratorium can be extended with the agreement of all the secured creditors. The Welsh Ministers can also give consent in relation to the disposal of land.
15. During the moratorium period, the Welsh Ministers can make proposals as to the future ownership and management of the land held by the RSL designed to secure the continued proper management of the landlord's land by an RSL which, once agreed with the secured creditors, will be binding on the Welsh Ministers, the landlord, all of the RSL's creditors and any liquidator, administrative receiver, receiver or administrator. The Welsh Ministers can appoint an interim manager, pending agreement of any proposals, and can appoint a manager to carry out such proposals once agreed. In addition, the Welsh Ministers can provide such financial assistance as they think appropriate.

Issues

16. Therefore, there are likely to be conflicts between the proposed Bill provisions and the existing insolvency arrangements for RSLs in Wales. The new moratorium and the appointment of a monitor under Part A1 (Moratorium) of the IA 1986 will interact with, and potentially conflict with, the housing moratorium and the appointment of a manager under the 1996 Act. There are also notice provisions in the 1996 Act which ensure that the Welsh Ministers are made aware that certain insolvency procedures will be or are engaged and which trigger the moratorium under the 1996 Act, but there is currently no provision for this process in respect of a moratorium obtained under Part A1 (Moratorium) of the IA 1986.
17. As these new provisions potentially conflict with the existing regime in the 1996 Act, on 13 May, the Minister for Housing and Local Government agreed policy instructions to request provisions for the Welsh Ministers within the Bill.
18. The agreed policy intentions were to:
 - a. ensure that the provisions within the Bill relating to the moratorium either operate in a way which is complementary to the existing RSL insolvency provisions in Wales or can be disapplied if deemed appropriate;

- b. maintain the Welsh Ministers' existing powers/functions to deal with RSL insolvencies as set out in the 1996 Act, in order to achieve the desired outcomes of that insolvency regime, the main one being the protection of social housing stock/assets and, as a consequence of this, protection for the tenants (the housing related outcomes);
- c. ensure that the provisions within the Bill relating to the moratorium operate, in so far as they can, in a way which is consistent for all types (legal forms) of RSL in Wales; and
- d. ensure that there are no negative consequences for RSLs.

Provisions in the Bill for which consent is required

Companies - Clause 1 of the Bill (section A49 of the Insolvency Act 1986) and Schedule 1 to the Bill (paragraph 21 of Schedule ZA1 to the IA 1986)

Section A49 of the IA 1986

19. Under section A49 of the IA 1986, the Welsh Ministers may, by regulations, modify Part A1 (Moratorium) as it applies in relation to a company that is an RSL or make provision in connection with the interaction between Part A1 (Moratorium) and any other insolvency procedure in relation to such a company. This power may, in particular, be used to amend, repeal, revoke or otherwise modify any provision made by an enactment. An "insolvency procedure" includes the provision set out sections 39 to 50 of the 1996 Act. This will allow the Welsh Ministers to ensure the existing 1996 Act and the proposed new insolvency procedures can work together.
20. This will allow the Welsh Ministers to ensure that there is no conflict between the provisions in the 1996 Act and the procedure under Part A1 (Moratorium) of the IA 1986 (as well as the insolvency procedures that Part A1 (Moratorium) of the IA 1986 itself interacts with). This will also allow the Welsh Ministers to maintain their existing powers/functions to deal with RSL insolvencies as set out in the 1996 Act, in order to try and achieve the housing related outcomes noted above.

Paragraph 21 of Schedule ZA1 of the IA 1986

21. Schedule 1 to the Bill inserts Schedule ZA1 into the IA 1986. This Schedule contains provisions for determining whether a company is eligible to obtain a moratorium under the new Part A1 (Moratorium) of the IA 1986. Under paragraph 21 of Schedule ZA1 to the IA 1986, the Welsh Ministers may amend Schedule ZA1 to provide for the eligibility or ineligibility of an RSL for the purposes of the moratorium under Part A1 of the IA 1986.
22. As identified above, there are likely to be conflicts between the provisions in Part A1 (Moratorium) of the IA 1986 and the existing insolvency arrangements for RSLs in Wales. Given these issues, the Welsh Ministers

need to be able to remove RSLs from eligibility for a moratorium under Part A1 (Moratorium) of the IA 1986, unless other powers to make regulations that would alter the effect of Part A1 (Moratorium) of the IA 1986 are used instead.

23. This will allow the Welsh Ministers to avoid a situation where an RSL is able to obtain a moratorium under Part A1 (Moratorium) of the IA 1986 in circumstances where the 1996 Act makes no provision for steps to be taken by the Welsh Ministers to protect social housing in those circumstances. This will also allow the Welsh Ministers to maintain their existing powers/functions to deal with RSL insolvencies as set out in the 1996 Act, in order to try and achieve the housing related outcomes noted above. In the event that eligibility has been removed by the Welsh Ministers, it may also be reinstated by the Welsh Ministers under this power.
24. Both of these regulation making powers will be subject to the affirmative procedure (as they allow the Welsh Ministers to amend primary legislation by secondary legislation).
25. However, both will be subject to the negative procedure for the first six months after Royal Assent in order to facilitate urgent regulations should they be deemed necessary.

Registered Societies – Schedule 3: Moratoriums in Great Britain: further amendments to the Bill (paragraphs 50 to 53)

26. The provisions in Part A1 (Moratorium) of the IA 1986 will not apply to registered societies within the meaning of the Co-operative and Community Benefit Societies Act 2014 (**2014 Act**).
27. The majority of RSLs in Wales are registered societies under the 2014 Act.
28. The Bill makes amendments to section 118 of the 2014 Act, to provide a regulation making power for the Welsh Ministers which allows for the application Part A1 (Moratorium) of the IA 1986 to registered societies who are RSLs and allows for necessary changes to be made to the housing legislation to take into account the availability of the moratorium under Part A1 (Moratorium) of the IA 1986 and to make provision for the interaction between the moratorium under Part A1 (Moratorium) of the IA 1986 and the other insolvency procedures available to the RSL (including a housing moratorium on the disposal of land under the 1996 Act).
29. This will allow the Welsh Ministers to ensure that the provisions within the Bill relating to the moratorium operate, as far as possible, in a way which is consistent for all types (legal forms) of RSL in Wales to ensure that there is consistency in the social housing sector across all types of legal entities. This will also allow the Welsh Ministers to allow RSLs which are registered societies to benefit from the some of the arrangements in the new Part A1 (Moratorium) of the 1986 Act, if they deem this appropriate. Further, this

will allow the Welsh Ministers to maintain their existing powers/functions to deal with RSL insolvencies as set out in the 1996 Act, in order to try and achieve the housing outcomes.

30. This regulation making power is subject to the negative procedure. This is so that, if it is deemed appropriate, regulations can be made quickly to provide for the way in which Part A1 (Moratorium) of the IA 1986 should apply to registered societies that are RSLs and to ensure that there is consistency in the social housing sector across all types of legal entities that are RSLs.

Charitable Incorporated Organisations (CIOs) - Schedule 3: Moratoriums in Great Britain: further amendments to the Bill (paragraphs 43-45 and 49)

31. The provisions in Part A1 (Moratorium) of the IA 1986 will generally apply to CIOs in England and Wales within the meaning of Part 11 of the Charities Act 2011 ("**2011 Act**") but Part A1 Moratorium) of the IA 1986 will not apply to CIOs who are RSLs.
32. There are currently no RSLs which are CIO's in Wales but there may be in the future and therefore, the power provides for future proofing.
33. Paragraph 45 of Schedule 3 to the Bill inserts a new section 247A into the Charities Act 2011 which gives a power to the Welsh Ministers to make regulations, made by statutory instrument, providing for Part A1 (Moratorium) of the IA 1986 to apply (with such modifications as may be specified in the regulations) to RSLs which are CIOs. The regulations may make provision in connection with the interaction between Part A1 (Moratorium) as applied by the regulations and any other insolvency procedure in relation to a CIO that is an RSL. An "insolvency procedure" includes the provision set out sections 39 to 50 of the 1996 Act.
34. This will allow the Welsh Ministers to ensure that the provisions within the Bill relating to the moratorium operate, in so far as they can in a way which is consistent for all types (legal forms) of RSL in Wales to ensure that there is consistency in the social housing sector across all types of legal entities. It will also allow the Welsh Ministers to allow RSLs which are CIOs to benefit from the some of the arrangements in the new Part A1 (Moratorium) of the 1986 Act, if deemed appropriate. Further, this will allow the Welsh Ministers to maintain their existing powers/functions to deal with RSL insolvencies as set out in the 1996 Act, in order to achieve the housing related outcomes noted above.
35. There is a requirement under the new section 247A(6) of the 2011 Act that the Welsh Ministers must consult such persons or bodies of persons as the Welsh Ministers consider appropriate before making any regulations under section 247A but the consultation duty does not commence for the first six months after section 42 of the Bill comes into force.

36. This regulation making power will be subject to the affirmative procedure (as it allows the Welsh Ministers to amend primary legislation by secondary legislation). However, it will be subject to the negative procedure for the first six months after Royal Assent, in order to facilitate urgent regulations should they be deemed necessary. This is so that regulations can be made quickly to provide for the way in which Part A1 (Moratorium) of the IA 1986 should apply to CIOs that are RSLs and to ensure that there is consistency in the social housing sector across all types of legal entity that are RSLs (clause 42(2)(c) of the Bill).
37. Consent is required for these provisions because they fall within the legislative competence of Senedd Cymru in so far as they relate to housing.

Reasons for making these provisions for Wales in the Corporate Insolvency and Governance Bill

38. The insolvency regime in the social housing sector operates differently than for entities in other sectors. There are additional insolvency procedures under the 1996 Act for RSLs which have different purposes/objectives (the main one being the protection of social housing stock/assets) than usual insolvency procedures.
39. The Welsh Government's policy intention behind the drafting instructions to include provisions for the Welsh Ministers within the Bill is set out in paragraph 18 above.
40. The Bill is intended to help all UK companies avoid insolvency and maximise their chances of survival during this period of economic uncertainty due to the COVID-19 pandemic. The Welsh Government considers that the housing (RSL) provisions fall within the legislative competence of the Senedd. The existence of existing RSL insolvency procedures in the 1996 Act means the potential conflicts in the differing schemes need to be able to be mitigated and that therefore the inclusion of appropriate powers for the Welsh Ministers in the UK Bill is appropriate.

Financial implications

41. Other than the staffing costs associated with producing the regulations in due course, it is not anticipated there are any new budgetary implications.

Conclusion

42. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most practicable and proportionate legislative vehicle to enable the provisions to apply in Wales and will allow the provisions to apply far sooner than could be achieved by separate legislation for Wales.

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