THE DEPUTY LEADER OF THE HOUSE OF LORDS

18th June 2020

Dear Lord Wallace of Tankerness and Lord Howarth of Newport,

Thank you for your contributions to the discussion on the Corporate Insolvency and Governance Bill. At Committee Stage on the 16th of June, you raised questions on the issue of retrospectivity within the Bill. Due to the shortened length of proceedings in the House, I was unable to answer these points fully at the time, but committed to write to you with further detail. Both questions have centred around the justification of retrospection within the Bill, and I am glad to have the opportunity to set out the Government's reasons for these measures below.

Restrictions on winding-up petitions have been introduced to assist companies and avoid aggressive debt recovery tactics from creditors. It is important to provide that the measure on the restriction of winding-up petitions became operational from the date of its announcement (rather than the date of Royal Assent), as if this had not happened, there would have been a risk of a rush of statutory demands and petitions as creditors sought to take advantage of them before this law came into effect. This would have significantly undermined the intended effect of the policy. Indeed, we are aware that statutory demands have already been issued against struggling companies in some cases, which makes this retrospection even more prescient.

To countermand this, the Government therefore announced its intention to change the law with retrospective effect on 25 April 2020. This announcement is available at https://www.gov.uk/government/news/new-measures-to-protect-uk-high-street-from-aggressive-rent-collection-and-closure. The legislation has been made retrospective from the start of 27 April, which was the start of the next working day. We expect that the majority of creditors will have acted responsibly and not placed any winding-up petitions after that point if the company's difficulties have been caused by the pandemic.

It is possible that a small number of creditors may not have acted responsibly, and may have sought to take advantage of the inevitable delay between the policy being announced and Parliament being able to consider and enact the legislation needed to give effect to that policy. In those cases, it is right that the affected company's position is restored and, if a creditor has acted irresponsibly, that they should in certain cases be required to contribute to the costs of undoing the inappropriate action they have taken.

I hope this addresses the concerns of both noble Lords. I will place a copy of this letter in the Library of the House.

Yours sincerely,

EARL HOWE

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