

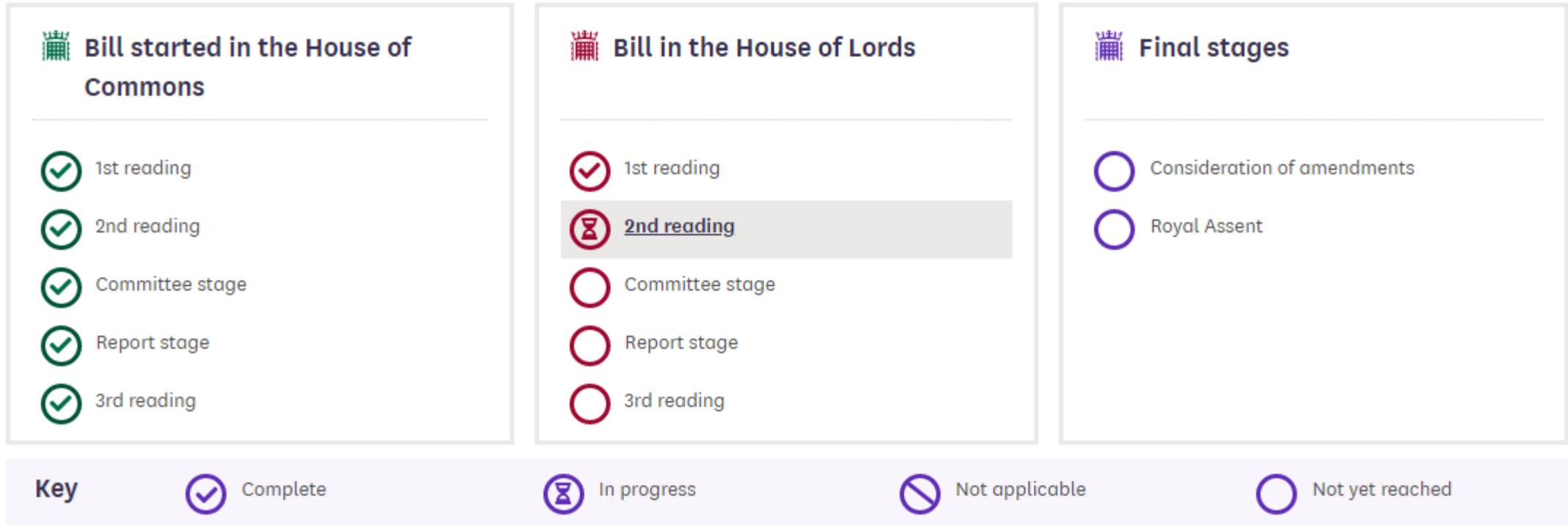
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Corporate Recovery and Insolvency

## **The Rating (Coronavirus) and Director Disqualification (Dissolved Companies) Bill**

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## Bill passage



# Dissolution Procedure

**Company dissolution is an easier, cheaper and quicker way of removing a company from the Companies House register than a liquidation process. To dissolve a company, directors have to arrange for:**

- The majority of directors to sign Form DS01**
- Send a £10 fee (but not from an account in the name of the company)**
- Companies House will publish a notice of proposed striking off in the London Gazette**
- If nobody objects for 2 months, the company is dissolved upon the publication of a further notice**

## **Abuse of dissolution (1)**

**-Dissolution is only available in specific circumstances, notably the company must not have traded within the last three months or changed its name in that period**

**-There is potential for the process to be misused whether intentionally or not**

**-The Insolvency Service receives numerous complaints that former directors have misused the dissolution process by certain practices**

**-The most common complaint is “Phoenixism” whereby a company is dissolved to escape its liabilities with the director then setting up a company in its place, often from the same location and with the same assets, to avoid the time and expense of liquidation, which would be more appropriate**

## **Abuse of dissolution (2)**

**-HMG has raised concerns that the dissolution process was being misused as a means of fraudulently avoiding repayment of Government backed loans given to support businesses during the Covid pandemic**

**-Directors may choose to dissolve a company rather than liquidate it to avoid an investigation into their conduct under Company Directors Disqualification Act 1986 (“CDDA”)**

**- “CDDA” provides powers of investigation and permits the Government to apply for a Court Order disqualifying a person from serving as a director for between 2 and 15 years**

# Shortcomings of existing powers to investigate and disqualify Directors

Currently “CDDA” powers of disqualification do not apply to companies which have been dissolved

Three stage process:

- Apply to Court to restore the company to the register
- Appoint a liquidator under s108 IA1986, or use CA 1985 to obtain information and documents from the company, in order to investigate the directors conduct
- Seek Disqualification Order under CDDA

But:

-cumbersome, expensive and time-consuming process

## **New Bill**

- Seeks to close the loophole by expanding the Governments powers of investigation and disqualification pursuant to “CDDA” to include former directors of dissolved companies**
- Will be retrospective**
- Provides that a Court Order for compensation can be made against a disqualified director whose conduct has caused loss to creditors of a dissolved company**
- Likely to become law as it has passed through Commons without amendment and with no MP’s speaking in opposition**
- Will be of interest to providers of Directors & Officers Liability Insurance**

## **How effective is the Act going to be?**

- Currently and in recent years the Insolvency Service issues disqualification orders against circa 1,200 directors per annum**
- In the quarter ended 30<sup>th</sup> June 2021 there are 371,705 companies in the course of removal or liquidation**
- There were over 2,000 companies that applied for strike off the day after obtaining a BBL**
- We strongly recommend directors seek professional advice before applying to strike a company off**