Committee for Enterprise, Trade and Investment

Report on the Insolvency (Amendment) Bill (NIA Bill 39/11-16)

Together with the Minutes of Proceedings of the Committee relating to the Report and the Minutes of Evidence

Ordered by the Committee for Enterprise, Trade and Investment to be printed on 3 March 2015

Membership and Powers

Powers

The Committee for Enterprise, Trade & Investment is a Statutory Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Assembly Standing Order 46. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Enterprise, Trade & Investment and has a role in the initiation of legislation.

The Committee has power to:

- Consider and advise on Departmental Budgets and Annual Plans in the context of the overall budget allocation;
- Approve relevant secondary legislation and take the Committee stage of relevant primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on matters brought to the Committee by the Minister of Enterprise, Trade & Investment.

Membership

The Committee has 11 members, including a Chairperson and Deputy Chairperson, and a quorum of five members.

The membership of the Committee is as follows:

Democratic Unionist Party	Paul Givan[1] William Humphrey[2] Gordon Dunne Paul Frew[3]
Green Party	Steven Agnew
Sinn Féin	Phil Flanagan (Deputy Chairperson)[4] Megan Fearon[5] Máirtín Ó Muilleoir[6]
Social Democratic & Labour Party	Patsy McGlone (Chairperson)[7] Fearghal McKinney[8]
Ulster Unionist Party	Danny Kinahan[9]

1 With effect from 16th September 2013 Mr Sydney Anderson replaced Mr Stephen Moutray. With effect from 1st December 2014 Mr Paul Givan replaced Mr Sydney Anderson

2 With effect from 27 February 2012 Mr Paul Givan replaced Mr Robin Newton. With effect from 21 May 2012 Mr Robin Newton replaced Mr Paul Givan. With effect from 16 September 2013 Mr Sammy Douglas replaced Mr Robin Newton. With effect from 6th October 2014 Mr William Humphrey replaced Mr Sammy Douglas

3 With effect from 24 October 2011 Mr Paul Frew replaced Mr David McIlveen

4 With effect from 02 July 2012 Mr Phil Flanagan replaced Mr Daithí McKay as Deputy Chairperson

5 With effect from 10 September 2012 Ms Maeve McLaughlin was appointed as a Member. With effect from 2nd December 2013 Ms Megan Fearon replaced Ms Maeve McLaughlin

6 With effect from 23 January 2012 Ms Jennifer McCann replaced Ms Sue Ramsey. With effect from 10 September 2012 Ms Sue Ramsey replaced Ms Jennifer McCann. With effect from 21 October 2013 Mr Mitchel McLaughlin replaced Ms Sue Ramsey. With effect from 6th October 2014 Mr Chris Hazzard replaced Mr Mitchel McLaughlin. With effect from 10th November 2014 Mr Máirtín Ó Muilleoir replaced Mr Chris Hazzard.

7 With effect from 23 April 2012 Mr Patsy McGlone replaced Mr Alasdair McDonnell. With effect from 07 September 2012 Mr Patsy McGlone replaced Mr Alban Maginness as Chairperson. Mr Maginness rejoined the Committee as a member from 10 September 2012.

8 With effect from 7th October 2013 Mr Fearghal McKinney replaced Mr Alban Maginness

9 With effect from 06 February 2012 Mrs Sandra Overend replaced Mr Mike Nesbitt. With effect from 4th July 2014 Mr Danny Kinahan replaced Mrs Sandra Overend

List of Abbreviations and Acronyms used in the Report

BIS	Department for Business, Innovation and Skills
CVL	Creditors' Voluntary Liquidation
DETI	Department for Enterprise, Trade and Investment
DSO	Departmental Solicitor's Office
FSA	Financial Services Authority
FSCS	Financial Services Compensation Scheme
ICAI	Institute of Chartered Accountants in Ireland
IP	Insolvency Practitioner
IVA	Individual Voluntary Arrangement
MVL	Members' Voluntary Liquidation
PWC	PriceWaterhouseCoopers
RPB	Recognised Professional Body
SIP	Statement of Insolvency Practice

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Executive Summary

Purpose

1. This Report details the Committee for Enterprise, Trade & Investment's consideration of the Insolvency (Amendment) Bill (the Bill).

2. The Bill is intended to update Northern Ireland insolvency legislation that was made before the advent of modern methods of electronic communications. The Bill addresses those procedures which, though relevant in the past, have become outdated and pointless and endeavours to make other procedures more efficient.

Principles of the Bill

3. The main principles of the Bill are:

- To establish that documents stored and transmitted electronically in the course of insolvency proceedings are as good and valid in law as paper documents, including communicating documents by displaying them on a website;
- To enable the use of means such as video and teleconferencing at meetings of creditors, members or contributors of companies;
- To enable liquidators and trustees to reach compromises over what sums they should accept;

4. The Committee engaged in a call for evidence from interested organisations and individuals, as well as from the Department of Enterprise, Trade and Investment as part of its deliberations on the Bill. Evidence from stakeholders indicated there was broad support for the Bill, although there were concerns raised over a number of provisions.

Committee consideration of Key Issues

5. The Committee had concerns in relation to the practicalities relating to the holding of remote meetings; the retention of the fast-track system for voluntary arrangement; repeal of the early discharge procedure; the requirement to consult the Lord Chief Justice about the making of orders; and the requirement for statutory demands to be in writing.

6. The Committee considered that key issues relating to the Bill were as follows:

- Transitional arrangements for the removal of the requirement for annual meetings;
- Provisions for Deeds of Arrangement as an insolvency procedure is repealed;
- Provisions relating to after-acquired property of a bankrupt relating to banks offering accounts to undischarged bankrupts;
- The introduction of the option of partial authorisation of insolvency practitioners; and
- The need for a robust code of conduct for insolvency practitioners;

7. Committee agreed to an amendment to Clause 11 of the Bill, Deeds of arrangement, as proposed by the Examiner of Statutory Rules. The Committee further agreed to the wording of the amendment to Clause 11 to be brought by the Department at Consideration Stage.

8. The Committee agreed to an amendment to Clause 13 of the Bill, After acquired Property of Bankrupt, following consideration of correspondence with the Chancery and Probate Committee. The Committee further agreed to the wording of the amendment to Clause 13 to be brought by the Department at Consideration Stage.

9. Following consideration of evidence on the need for a code of conduct for Insolvency Practitioners, the Committee agreed to the Department's proposal to bring a new Clause at consideration stage in order to make such provisions. The Committee considered the proposed clause and was content with the wording.

Introduction

10. The Insolvency (Amendment) Bill was introduced to the Northern Ireland Assembly on 7th October 2014. The Assembly debated the principles of the Bill in the Second Stage on 10th November 2014 when the Bill was passed to the Committee for Enterprise, Trade & Investment. The Committee sought and received approval of the Assembly in Plenary Session on to extend its consideration and scrutiny of the Bill to 13th March 2015.

11. The Bill contains 21 clauses and three schedules.

12. The Committee launched a call for evidence from 20th October 2014 to 1st December 2014.

13. In total six substantive written evidence submissions were received. These are included at Appendix 3. Officials from the Department of Enterprise, Trade & Investment and representatives from PriceWaterhouseCoopers (PWC) and the Institute of Chartered Accountants in Ireland (ICAI) gave oral evidence to the Committee.

14. During the Committee Stage of the Bill the Department informed the Committee that amendments will be needed to the text of the Insolvency (Amendment) Bill, mainly as a consequence of changes to legislation underway at Westminster.[1] These amendments were not yet drafted, therefore the agreement of the Committee to the clauses in the Bill is subject to the Committee's agreement to further amendments to be brought by the Department at Consideration Stage.

1 Appendix 4: Memoranda and Papers from DETI – Correspondence from DETI 12th December 2014

Summary of the Draft Insolvency (Amendment) Bill as Presented to the Committee for Enterprise, Trade & Investment in the Committee Stage

Clause 1: Attendance at meetings and use of websites

15. Clause 1 concerns attendance at meetings and use of websites.

Clause 2: References to things in writing

16. Clause 2 provides for references to things in writing to be treated as including reference to those things in electronic form.

Clause 3: Removal of requirement for annual meetings in a members' voluntary and a creditors' voluntary winding up

17. Clause 3 provides that if a members' voluntary liquidation lasts for longer than one year the liquidator has to produce a progress report on prescribed matters for each prescribed period and send a copy of it within such further period as may be prescribed to the members of the company and any other persons who are prescribed.

Clause 4: Requirements in relation to meetings under Articles 81 and 84 of the Insolvency Order

18. Clause 4 removes the requirement for notice of creditors' meetings in both members' and creditors' voluntary liquidations to be sent by post.

Clause 5: Individual voluntary arrangements: removal of requirement to submit a nominee's report to the High Court

19. Clause 5 allows that where the debtor has not sought protection from the High Court in the form of an interim order, a nominee no longer prepares a report to the High Court but prepares a report to the debtor's creditors. It provides for either reporting to the High Court or to the Creditors (where the debtor has not sought protection from the High Court in the form of an interim order) to be the event triggering the requirement for the nominee to summon a meeting of the debtor's creditors. The High Court is given power to direct otherwise but only in interim order cases. It is only in cases where a voluntary arrangement has been proposed in interim order cases that an interim order will exist to be discharged by the High Court.

Clause 6: Fast-track voluntary arrangements: notification of the Department

20. Clause 6 adds a requirement for the Official Receiver to notify the Department as well as report to the High Court whether a proposal by a bankrupt for a voluntary arrangement with the Official Receiver acting as nominee (a so-called "fast-track" voluntary arrangement) has been approved or rejected by the bankrupt's creditors.

Clause 7: Powers of liquidator exercisable with or without sanction in a winding up

21. Clause 7 empowers liquidators to reach compromises without having to seek sanction from the liquidation committee, the Court, a meeting of the company's creditors, or the members of the company by extraordinary resolution, as the case may be. Sanction will still be required to enter a compromise with creditors or others with a claim against the company.

Clause 8: Powers of trustee exercisable with or without sanction in a bankruptcy

22. Clause 8 empowers trustees to exercise powers to refer to arbitration or to compromise debts and claims due to bankrupts and to make a compromise or arrangement in respect

of any claim on any person in connection with a bankrupt's estate without having to seek sanction from the Court, the creditors' committee or the Department.

Clause 9: Definition of debt

23. Clause 9 separates the criteria governing admissibility of a liability in tort in bankruptcy from those applying in the case of company administration or winding up. It specifies the criterion governing whether any liability in tort is a bankruptcy debt. A bankrupt's liability in tort is treated as having arisen as a consequence of an obligation incurred at the time that the cause of action accrued. It establishes new criteria for deciding whether a liability in tort is provable in a company administration or winding up. It will be provable if the cause of action had accrued

Clause 10: Treatment of liabilities relating to contracts of employment

24. Clause 10 provides provision to repeal references in the Insolvency (Northern Ireland) Order 1989 to a form of holiday arrangement which is now illegal.

Clause 11: Deeds of arrangement

25. Clause 11 provides that Chapter 1 of Part 8 of the Insolvency Order which made provision for Deeds of Arrangement as an insolvency procedure is repealed. Subsection (2) gives the Department power to make orders in consequence of this happening.

Clause 12: Bankruptcy: early discharge procedure

26. Clauses 12 repeals a provision in the Insolvency Order that a bankruptcy will end within one year if the Official Receiver files a notice with the High Court stating that investigation is unnecessary or concluded.

Clause 13: After-acquired property of bankrupt

27. Clause 13 facilitates banks offering accounts to undischarged bankrupts. It prevents a trustee from taking action against certain persons who have dealt with after-acquired property in good faith and without notice of the bankruptcy. It prevents a trustee making a claim against a bank in circumstances where the bank has not been served with notice by the trustee specifically regarding the after-acquired property he or she wishes to claim, regardless of whether the bank has notice of the bankruptcy.

Clause 14: Authorisation of insolvency practitioners

28. Clause 14 amends Part 12 of the Insolvency Order to introduce a new regime allowing for the partial authorisation of insolvency practitioners. Currently, individuals who are authorised to act as an insolvency practitioner (IP) are authorised in relation to all categories of appointment. Under the new regime a person may be authorised to act only in relation to companies or only in relation to individuals.

Clause 15: Power to make regulations

29. Clause 15 gives the Department power to make regulations to give effect to Part 12 of the Insolvency Order. The absence of such a power in Northern Ireland resulted in the Department not being able to make provision which would have required IPs who are authorised by the Department to make returns showing details of continuous professional development undertaken.

Clause 16: Company arrangement or administration provision to apply to a credit union

30. Clause 16 makes it possible for the Department to make orders enabling societies registered under the Credit Unions (Northern Ireland) Order 1985 as well as societies registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 to enter a company arrangement or administration.

Clause 17: Disqualification from office: duty to consult the Lord Chief Justice

31. Clause 17 creates a requirement for the Lord Chief Justice to be consulted about the making of orders creating a right of appeal to a court in respect of discretionary decisions to disqualify bankrupts from offices or positions.

Clause 18: Interpretation

32. Clause 18 defines a number of terms used in the Act.

Clause 19: Transitional provisions, minor and consequential amendments and repeals

33. Clause 19 introduces Schedule 1 which makes transitional provisions.

Clause 20: Commencement

34. Clause 20 deals with commencement of the bill.

Clause 21: Short title

35. Clause 21 deals with the title of the bill.

Schedule 1: Transitional Provisions

36. This Schedule lists the transitional and saving provisions necessary to the Act.

Schedule 2: Minor and Consequential Amendments

37. This Schedule makes amendments to the Solicitors (Northern Ireland) Order 1976, the Insolvency (Northern Ireland) Order 1989, the Pensions (Northern Ireland) Order 2005 and the Insolvency (Northern Ireland) Order 2005.

Schedule 3 Repeals

38. This Schedule lists the repeals brought in by the Act.

Summary of Consideration

Clause 1: Attendance at meetings and use of websites

39. In a written submission PricewaterhouseCoopers LLC (PWC) agreed that remote attendance at meetings is a practical and helpful addition to existing arrangements, insofar as it will reduce cost and provide greater access to interested parties but has concerns relating to increased scope for creditors to challenge the validity of proceedings at a meeting.[2] In oral evidence, PWC stressed that the purpose is to bring consistency of approach. They believe there must be a mechanism for verifying that the person at the other end of a remote meeting is correctly identified as being the right person. The Institute of Chartered Accountants in Ireland (ICAI) believes this can be resolved by password-protected security.[3] PWC supported the concept of providing information via a website stating it would be particularly beneficial in cases where there are large numbers of creditors and would afford considerable efficiencies to the insolvency process. PWC believes that an industry standard for such websites would be beneficial and could also be addressed by an appropriate Statement of Insolvency Practice (SIP).[4]

40. The Department informed the Committee that, once the legislation is in place, there will be subordinate legislation to identify the practical implications and to determine what needs to be put in place to allow the new technology to be used. The Department is, as yet, unsure how this will work in practice as there are many things which will have to be put in place to facilitate electronic meetings such as safeguards, password protections and firewalls.[5] There is a requirement in Clause 1 for anyone proposing to hold remote meeting to ensure the identification of those attending and to ensure the security of any electronic means used to enable attendance. IPs are subject to monitoring by their recognised professional bodies (RPBs). These bodies seek to ensure that IPs are adhering to best practice.[6]

41. In relation to Article 208ZA(8), PWC believes adequate time will need to be built in to allow a suitable venue to be identified and creditors informed, PWC believes that these should be covered by an appropriate SIP. In oral evidence the Institute of Chartered Accountants in Ireland representative stated that logistical planning will be required which will require a minimum of two weeks.[7] Insolvency Service officials informed the Committee that there are requirements in existing legislation for periods of notice to be given for meetings. Those requirements will remain in place and will apply in the case of electronic meetings. They stated that some requirements are quite generous periods of time. Officials do not consider it appropriate to specify a time in the Bill because time periods for the individual requirements for meetings are specified elsewhere in the legislation, therefore the two could be in conflict.[8]

42. The Institute of Chartered Accountants in Ireland is in agreement with this clause and believes it will help to make the administration of insolvency cases easier by allowing for up-to-date methods of communication and eliminating unnecessary procedural requirements.[9]

43. Following consideration of the evidence the Committee was content with Clause 1 as drafted.

2 Appendix 3: PWC Written Submission

3 Appendix 2:PWC/ICAI Hansard

4 Appendix 3: PWC Written Submission

5 Appendix 2: DETI Hansard 13th January 2015

6 Ibid

7 Appendix 2: PWC/ICAI Hansard

8 Appendix 2: DETI Hansard 13th January 2015

9 Appendix 3: ICAI Written Submission

Clause 3: Removal of requirement for annual meetings in a members' voluntary and a creditors' voluntary winding up

44. It is intended that the requirement to hold a meeting to present progress reports in voluntary winding-up procedures will be replaced by a requirement to issue a report on progress. This will reduce the cost of holding meetings that are poorly attended or not of any benefit. If the resolution for voluntary winding up was passed before the day on which the law comes into place, the old rules apply. If it is after that, the new rules apply.[10]

45. PWC agreed that the removal of this requirement is a practical and helpful addition to existing arrangements as, in its experience, it is very rare for creditors or members to attend annual meetings and in very large cases, although creditors may attend the first annual meeting, numbers tend to reduce to zero with time. PWC believes the proposal should deliver cost efficiencies and the information presently laid at the meeting should instead be sent to the creditors/members as part of a proposed progress report.[11] The ICAI is also in agreement with this clause and considers that this will help to make the administration of insolvency cases easier by allowing for up-to-date methods of communication and eliminating unnecessary procedural requirements.[12]

46. Cavanagh Kelly noted that the proposals for transitional arrangements for the new system under Schedule 1 of the Bill will require that all open Members' Voluntary Liquidations (MVLs) and Creditors' Voluntary Liquidations (CVLs) will continue to require annual meetings to be held. Cavanagh Kelly states that, in practice, this will mean that IPs will need to operate both the legacy legislation and the amended legislation concurrently on their portfolios of cases. Cavanagh Kelly feels it would be more cost effective for the insolvency profession generally, and therefore result in improved returns to creditors, if the requirement for annual meetings was to be abolished for all MVLs and CVLs rather than only those commencing after the date on which the legislation comes into operation.[13] Cavanagh Kelly representatives informed the Committee that, although the proposed arrangements will require duplication of effort, the company does not see this as a major issue.[14] The Department is following the line taken in the GB legislation in relation to those transitional arrangements. The principle that applies in GB is that, where a procedure is already under way, the creditors and others involved will expect procedures to be conducted in accordance with the existing law and would consider it bad practice to be confronted by a different procedure than the one they had expected at the outset. The Department informed the Committee that it is considered bad law to apply new law to old cases.[15]

47. Following consideration of the evidence the Committee was content with Clause 3 as drafted.

Clause 6: Fast-track voluntary arrangements: notification of the Department

48. PWC believes Clause 6 has merit.[16] ICAI is in agreement with the Clause and believes it will help to make the administration of insolvency cases easier by allowing for up-to-date methods of communication and eliminating unnecessary procedural requirements.[17]

49. The Committee asked Department officials whether it was the intention of the Department to retain the fast-track system. The Department responded that it intended to retain the system for now but that the UK Small Business, Enterprise and Employment Bill 2014-15, currently progressing through Westminster, includes provision to repeal the fast-track system

10 Appendix 2: DETI Hansard 13th January 2015

11 Appendix 3: PWC Written Submission

12 Appendix 3: ICAI Written Submission

13 Appendix 3: Cavanagh Kelly Written Submission

14 Appendix 2: PWC/ICAI Hansard

15 Appendix 2: DETI Hansard 13th January 2015

16 Appendix 3: PWC Written Submission

17 Appendix 3: ICAI Written Submission

entirely and the Department hopes to repeal it in a future Insolvency Bill, to be passed during the lifetime of the next Assembly. Further, the Department stated that there has never been a case in Northern Ireland of a person availing themselves of the fast-track system.[18] The Committee asked DETI officials why it has been decided to wait until a future Insolvency Bill in the next Assembly to repeal the fast-track voluntary arrangements rather than including it in the current Bill. Officials responded that there are a large number of outstanding amendments to be made to insolvency law in Northern Ireland and it would be irrational to single out one particular provision from those and deal with it in the current Bill. They went on to state that there is no outstanding urgency attached to the abolition of fast-track voluntary arrangements.[19]

50. Following consideration of the evidence the Committee was content with Clause 6 as drafted.

Clause 11: Deeds of arrangement

51. PWC believe the new amendments have merit as this is a very old type of insolvency which has been superseded.[20] The ICAI is in agreement with this clause and considers that this will help to make the administration of insolvency cases easier by allowing for up-to-date methods of communication and eliminating unnecessary procedural requirements.[21] Cavanagh Kelly has no particular view on the repeal of provisions relating to Deeds of Arrangement.[22]

52. In his advice to the Committee on the Bill, the Examiner of Statutory Rules stated:

> *"Clause 11 contains a power to allow the Department to make orders subject to draft affirmative procedure amendments (including repeals) consequential upon the repeal of the provisions in respect of deeds of arrangement in Chapter 1 of Part 8 of the Insolvency Order. That seems to be appropriate, except that the Department might perhaps wish to amend clause 11 so that orders making consequential amendments and repeals in respect of primary legislation (provisions contained in an Act of Parliament or in Northern Ireland legislation as defined in the Interpretation Act (Northern Ireland) 1954) were subject to draft affirmative, while consequential amendments (and revocations) in respect of subordinate legislation were subject to negative resolution."*

53. In a response to the Committee on the issue, the Department stated that Legislative Counsel had agreed to alter the type of Assembly control required for orders made under Clause 11 of the Bill. Therefore draft affirmative procedure will only be required in the case of orders amending or repealing provisions in primary legislation. Negative resolution procedure will suffice in the case of orders amending or revoking provisions in subordinate legislation.[23] The Committee considered the wording of the amendment at its meeting on 24th February 2015.

54. Following consideration of the evidence the Committee was content with Clause 11 as amended and was content with the wording of the proposed amendment.

Clause 12: Bankruptcy: early discharge procedure

55. Department officials informed the Committee that only two people have ever been discharged early under the Northern Ireland provision. The Committee highlighted that, in relation to a person who is disqualified from holding certain positions for the period of time, early discharge may allow that person to take up a position in society such as in public service. The Department outlined the procedure that both people would have written to the Department requesting early discharge. There would have been a cost to the Department to

18 Appendix 2: DETI Hansard 11th November 2014

19 Appendix 2: DETI Hansard 13th January 2015

20 Appendix 3: PWC Written Submission

21 Appendix 3: ICAI Written Submission

22 Appendix 3: Cavanagh Kelly Written Submission

23 Appendix 4: Memoranda and Papers from DETI

administer it whereas waiting until they were discharged automatically would have resulted in no cost to the Department. The Department stated that early discharge was of very minor benefit to the individuals.[24]

56. The Department informed the Committee that England and Wales administered early discharge on a different basis to Northern Ireland wherein they did not wait for the individual to request early discharge but dealt with it on an automatic basis. An academic study, conducted in England, found that the cost of administering the scheme far outweighed any benefit to the bankrupts. The Department stated that it would be a very tiny minority of people who are bankrupt and are debarred from holding offices or positions.[25]

57. PWC agrees that discharge should be after 12 months, a reduction from 3 years to 12 months having already been enacted. Early discharge is an administrative burden that ultimately adds to the cost of administering the estate.[26] The ICAI is in agreement with this clause and believes it will help to make the administration of insolvency cases easier by allowing for up-to-date methods of communication and eliminating unnecessary procedural requirements.[27] Cavanagh Kelly welcomes the objective to remove the procedure for discharge from bankruptcy before the end of the first year. It has come across some situations where bankrupt individuals have expressed a desire to present an Individual Voluntary Arrangement (IVA) which would have provided an increased return to creditors, but have been prevented from doing so because they have received discharge from their bankruptcy debts. It feels it is important that discharge does not take place too quickly for this reason.[28]

58. Following consideration of the evidence the Committee was content with Clause 12 as drafted.

Clause 13: After-acquired property of bankrupt

59. The Department issued a reply to the Chancery and Probate Committee in relation to an issue it raised during the consultation period. The Committee for Enterprise, Trade & Investment requested and received a copy of the Department's response.[29] Having considered the response, the Committee wrote to the Chairperson of the Chancery and Probate Liaison Committee to ask if that committee is content with the Department's response to its concerns. The Chancery Office responded that the Honourable Mr Justice Deeny considered it best to consult the other members of the relevant Committee and would convene an extra-ordinary meeting for the purpose of discussing the Bill.[30] Following that meeting, the Chancery and Probate Committee wrote to the Committee stating that it is content with the Department's Response.[31]

60. The Consumer Council welcomed the proposal to give banks immunity from claims by trustees in respect of sums of money passing through a bankrupt's account unless there is a specific claim. The Consumer Council stated that currently, the majority of banks have a blanket ban on offering bank accounts to undischarged bankrupts, and only one bank offers this service to undischarged bankrupts if they submit an application, provided the consumer meets the relevant requirements and standard checks that are applied to other consumers. The Consumer Council believes banks should be able to change their policies to meet the

24 Appendix 2: DETI Hansard 11th November 2014

25 Ibid

26 Appendix 3: PWC Written Submission

27 Appendix 3: ICAI Written Submission

28 Appendix 3: Cavanagh Kelly Written Submission

29 Appendix 4: Memoranda and Papers from DETI: Letter sent to Chancery and Probate Liason Committee - 3 September 2012

30 Appendix 3: Chancery and Probate Committee Written Submission

31 Ibid

needs of consumers and demonstrate their flexibility and willingness to treat consumers fairly.[32]

61. PWC believes non-culpable bankrupts are in effect punished by a lack of access to mainstream financial products. Bankrupts may not be able to access bank accounts which in turn means they are not eligible for discounts available for paying utility bills and dealing with other day-to-day creditors by direct debit. PWC believes that there is a case for a debtor having controlled access to a basic bank account, even prior to discharge. Allowing a bankrupt to use mainstream banking facilities, albeit a basic current account without access to overdraft or credit facilities, would represent an important step in the process of financial rehabilitation, helping bankrupts to regulate their affairs and avoiding at least some of the costs attaching to disenfranchisements. While any facilities offered in this manner should be carefully managed to avoid abuse, PWC observes that legislating to afford bankrupts to access mainstream banking facilities does not necessarily mean that banks will agree to facilitate such access. They therefore recommend that consultation between the Department and banks is undertaken to ensure that facilities provided for bankrupts in law are also available in practice. PWC acknowledges that the outlined changes could make it more difficult for Trustees to pursue claims for after-acquired property but such actions by Trustees are considered rare.[33]

62. Stepchange debt charity warmly welcomes the provisions contained in Clause 13 to remove the potential liability of banks against a trustee in respect of after-acquired property. It states that access to basic transactional banking is a vital part of good financial health for households recovering from debt. It states that few banks are now willing to offer basic transactional banking which is a vital part of good financial health for households recovering from problem debt and states that this can cause difficulty for their clients. The banking industry has cited, as a reason for this refusal, those provisions in insolvency legislation that impose a potential liability on banks for after-acquired property passing through a bankrupt's account. By amending the legislation in Northern Ireland to remove this potential liability, StepChange believes Clause 13 removes the reason for banks to refuse to offer basic bank accounts to undischarged bankrupts. This will remove an unnecessary impediment to people recovering from serious debt problems. It states that, for these reasons, it strongly supports Clause 13.[34]

63. In response to the concerns expressed by Stepchange the Department informed the Committee that the intention of this proposal is to make banking available to everybody, but that ultimately it is the banks' decision to let people have a bank account or to allow bankrupts to have their own bank accounts. It is hoped that removing the risk and the potential for trustees to take action against a bank for after-acquired property will resolve the matter.[35]

64. The Institute of Chartered Accountants in Ireland welcomes this clause stating that it will now encourage banks to facilitate the provision of bank accounts for bankrupts.[36] Cavanagh Kelly supports the objective of ensuring that bankrupt individuals continue to have access to bank accounts.[37]

65. Mr Justice Deeny raised a number of drafting issues in his response to the Committee. The Committee agreed to forward these to the Department for comment. In its response to the Committee, the Department acknowledged the issues raised by Mr Justice Deeny and outlined how these have been addressed or will be addressed during consideration stage of

32 Appendix 3: Consumer Council Written Submission

33 Appendix 3: PWC Written Submission

34 Appendix 3: StepChange Written Submission

35 Appendix 2: DETI Hansard 13th January 2015

36 Appendix 3: ICAI Written Submission

37 Appendix 3: Cavanagh Kelly Written Submission

the Bill. The Department's response included the wording of an amendment to Clause 13 to be brought at consideration stage.[38]

66. Following consideration of the evidence the Committee was content with Clause 13 as amended and was content with the wording of the proposed amendment.

Clause 14: Authorisation of insolvency practitioners

67. Clause 14 includes provisions for the option for an IP to be authorised solely in a personal or corporate capacity whereas, under current legislation, it is only possible to be authorised for both. The Committee asked Department officials to outline the rationale behind the approach. The Department responded that the proposed changes will make it easier for people to become insolvency practitioners. They will not have to study both areas. For example, a debt advisor may wish to qualify as an IP and work for individuals but may not be interested in acting as an IP for companies. There would be no point to such a person studying and taking examinations in how to deal with company affairs. The Department believes that greater specialisation should also lead to greater expertise.[39]

68. In both written[40] and oral[41] evidence PWC and the ICAI raised a number of concerns in relation to partial authorisation of insolvency practitioners. Many of these concerns were supported by Cavanagh Kelly in its written evidence to the Committee[42] and all three questioned whether the proposals are in the public interest. The issues of concern are summarised below. All three organisations were against this proposal.

69. There is concern that any proposal to introduce two new licensing regimes for IPs would have a negative impact on businesses and individuals seeking financial advice. Businesses and individuals seeking financial advice need to know from the outset if an IP can help them. It was suggested that the distinctions between corporate and personal financial affairs may be blurred and therefore the IP should be competent and qualified in both corporate and personal insolvency. It is thought some clients may not disclose all relevant financial information at the outset of the process. It is believed that partial authorisation may have a negative impact on the quality of advice from IPs resulting in increased costs and delays.

70. There is concern that Clause 14 may result in greater cost to the taxpayer and the public as regulatory bodies will have additional costs associated with setting up monitoring systems. This will be passed on to IPs through their fees, resulting in a lower dividend to the public.

71. Reservations were expressed as to how partnerships would be dealt with under a partial authorisation regime. It is thought that a personal licence would be insufficient to deal with a partnership as some partnerships are complex. Similarly, it is believed that a practitioner with only a personal licence may not have the necessary skill-set to deal with the insolvency of a high net worth individual with complex funding arrangements. Cavanagh Kelly provided details to the Committee of research carried out by R3 (the Association of Business Recovery Professionals) and a number of recognised professional bodies into the potential costs and benefits from partial authorisation.[43] R3 states that the draft Bill determines that a person who is partially authorised may not act in relation to partnerships and this will rule out many IPs, who undertake such work, from obtaining a partial licence.

72. It is thought that the uptake of partial licences would be limited and would not increase competition. It is felt that the proposal risks undermining the World Bank UK ranking of 7th best in the world in speed and returns to creditors. There have been redundancies in the

38 Appendix 4: Memoranda and Papers from DETI- Correspondence from DETI 12 February 2015

39 Appendix 2: DETI Hansard 11th November 2014

40 Appendix 3: PWC and ICAI Written Submissions

41 Appendix 2: PWC/ICAI Hansard

42 Appendix 3: Cavanagh Kelly Written Submission

43 Ibid

sector recently and an IP with a partial licence will not, it is believed, be attractive to a firm that wants its practitioners to do both.

73. In the event that it is decided to proceed to implement these proposals, PWC believes that, in order to obtain a "personal licence", it should be essential to demonstrate knowledge of corporate insolvency and vice versa, even if the examination for partial qualification is undertaken at a lower level than for a full licence.

74. In oral evidence, PWC representatives conceded that not every IP is an expert in both and they employ people who specialise in corporate insolvencies and others who specialise in personal insolvencies. There are occasions when a particular specialist is referred to.[44]

75. DETI Insolvency Service informed the Committee that there is no requirement to choose to practice in either corporate or personal insolvency cases. There are three examinations for full authorisation: two in corporate insolvency; and one in personal insolvency. Candidates can choose to do either or both.[45]

76. Quoting from the Bill, officials informed the Committee that under proposed Article 349A, 'full authorisation':

> *"…means authorisation to act as an insolvency practitioner in relation to companies, individuals and insolvent partnerships."*

77. Proposed Article 350 states:

> *"The Department may by order declare a body which appears to it to meet the requirements of paragraph (4) to be a recognised professional body which is capable of providing its insolvency specialist members with full authorisation or partial authorisation."*

78. Therefore the option exists to recognise a professional body that can provide insolvency practitioners with either full or partial authorisation. The Department went on to inform the Committee that partial authorisation does not exist under existing law but if a body has been recognised under existing law to grant full authorisation, they will, under Clause 14(7) of the Bill, continue to be recognised for the purpose of providing full and partial authorisation.[46]

79. If there is any doubt about whether a particular case fits into one or other category, a short interview with the person concerned should establish at the facts of the case and whether there is a partnership involved or potential company issues. The Department considers it highly unlikely that a case would proceed to any significant degree before it was realised that the IP was not qualified to meet the individual's circumstances. The Department conceded that it could happen if an individual did not, for whatever reason, volunteer all the information that they should.[47]

80. Following a request for clarification from the Committee, the Department contacted Cavanagh Kelly and PricewaterhouseCoopers who replied confirming that they both understand that full authorisation will continue to be available to IPs as well as the option of being partially authorised to take only company or individual cases.[48]

81. In answer to concerns expressed in relation to the introduction of partial authorisation, the Department responded that it has no alternative except to go along with what is being done in GB; stating that Northern Ireland cannot opt out of bringing in partial authorisation, because there is a requirement to comply with the EU Services Directive. The UK would be in breach of that directive if Northern Ireland did not bring in partial authorisation. Someone

44 Appendix 2: PWC/ICAI Hansard

45 Appendix 2: DETI Hansard 13th January 2015

46 Ibid

47 Ibid

48 Appendix 4: Memoranda and Papers from DETI

who is partially authorised in GB under what will be the Deregulation Act would be entitled to practice on the same basis in Northern Ireland. Therefore, DETI must have a scheme to allow for partial authorisation here.[49]

82. Cavanagh Kelly questions whether the proposed amendments are required at the present time to ensure compliance with Article 10(4) of the EU Services Directive. While the legislation in England and Wales has been drafted and is currently at Committee Stage in the House of Lords, Cavanagh Kelly believes that, at the date of the submission of its written evidence, there was no part of the UK where partial authorisation was in operation. They state the operation of insolvency legislation is a devolved matter and requested that the Committee consider whether the particular circumstances of Northern Ireland would give rise to a public interest argument under Article 10(4) for not introducing partial authorisation in this jurisdiction.[50]

83. Cavanagh Kelly considers that this proposed change should be the subject of separate legislation, following a full public consultation, and would be more appropriately dealt with as part of a Deregulation Bill (as is the case in England and Wales) rather than being dealt with as part of this Bill.[51]

84. Article 10(4) of the EU Services Directive states:

> *"The authorisation shall enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory, including by means of setting up agencies, subsidiaries, branches or offices, except where an authorisation for each individual establishment or a limitation of the authorisation to a certain part of the territory is justified by an overriding reason relating to the public interest."*[52]

85. The Department informed the Committee that legal advice from the Departmental Solicitor's Office (DSO) is that, under the Directive, if the legislation has been changed in one part of a jurisdiction, every part of that jurisdiction should follow suit.[53]

86. The Committee was content that Article 10(4) of the EU services Directive applies and that Northern Ireland is required to introduce partial authorisation.

87. Following consideration of the evidence the Committee was content with Clause 14 as drafted.

Clause 17: Disqualification from office: duty to consult the Lord Chief Justice

88. The Committee asked Department officials why Clause 17 is considered necessary and if the requirement for the Lord Chief Justice to be consulted would impact on processing times. The Department responded that the Clause relates to the bar on people holding various offices and provisions if they are declared bankrupt. There is discretion as to whether a person is allowed to hold an office or position. If a person is barred they have a right of appeal and the Department is empowered to make orders that that right of appeal can be to a court. Therefore, as the courts have an interest, it is deemed essential that the Lord Chief Justice should be consulted about the making of any order which would provide for a right of appeal to a court, not least because the Lord Chief Justice would have an interest in ensuring that the appeal was to an appropriate court i.e. to a county court or to the High Court.[54]

89. The Clause will have no impact on processing times. The only situation where there would be communication with the Lord Chief Justice would be on the making of an order, a piece of

49 Ibid

50 Appendix 3: Cavanagh Kelly Written Submission

51 Ibid

52 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0123&from=EN

53 Appendix 2: DETI Hansard 13th January 2015

54 Appendix 2: DETI Hansard 11th November 2014

subordinate legislation, providing for a right of appeals to the court. Appeals by individuals to court would not involve the Lord Chief Justice. It is only the legislation providing for the appeal to the court that has to be subject to scrutiny by the Lord Chief Justice.[55]

90. PWC considers the new clause sensible.[56] The ICAI fully supports Clause 17.[57] Cavanagh Kelly has no particular view on the objective relating to the Lord Chief Justice being consulted about the making of orders creating a right of appeal to the courts in respect of discretionary disqualification from office as a consequence of bankruptcy.[58]

91. Following consideration of the evidence the Committee was content with Clause 17 as drafted.

Schedule 1: Transitional Provisions

92. Issues relating to transitional arrangements in Schedule 1 have been considered under Clause 3.

93. Following consideration of the evidence the Committee was content with Schedule 1 as drafted.

Schedule 2: Minor and Consequential Amendments

94. Paragraphs 4, 7 and 8 of Schedule 2 make provision for statutory demands to be in writing. The Committee asked the Department to outline the reasons for this and to provide details of the current position. The Department responded that it is a clarification. The statutory demand is an important document informing the person that they are at risk of being made bankrupt or that the company is at risk of being wound up if payment is not tendered within a three week period. That document has to be served personally. The Department stated that it has always been understood that statutory demands have to be in writing, but the legislation was vague. It is to make it more certain and concrete.[59]

95. Cavanagh Kelly supports the objective to correct the anomaly whereby individuals other than insolvency practitioners could be authorised to act as nominees or supervisors in voluntary arrangements.[60]

96. Following consideration of the evidence the Committee was content with Schedule 2 as drafted.

55 Ibid

56 Appendix 3: PWC Written Submission

57 Appendix 3: ICAI Written Submission

58 Appendix 3: Cavanagh Kelly Written Submission

59 Appendix 2: DETI Hansard 11th November 2014

60 Appendix 3: Cavanagh Kelly Written Submission

Committee consideration of Other Issues

A Code of Conduct for Insolvency Practitioners

97. At the second stage debate in the Assembly, Mr Jim Allister QC, MLA asked the Minister if there is a case for the Insolvency (Amendment) Bill to make statutory provision for a code of conduct in respect of insolvency practitioners as there seems to be a deficit of supervision, control, accountability and regulation of how IPs conduct themselves.

98. The Committee raised the issue with the Department. Officials responded that there is no provision in the Bill for a code of conduct. However, in GB, provision is included in the Small Business, Enterprise and Employment Bill going through Westminster. Officials informed the Committee that they intend to recommend to the Minister that, in future legislation, a regulatory objective be put in place. That will require the regulated professional bodies to ensure that a number of objectives and principles are put in place to regulate insolvency professionals. This would include requirements for appropriate training; ensuring consistent outcomes; providing high-quality services; acting transparently and with integrity; considering the interests of all creditors in any particular case; promoting the maximisation of the value of returns; and protecting and promoting the public interest. The Department stated that those issues will be enshrined in legislation through the Westminster Bill and it is their intention they be enshrined in a future Insolvency Bill.

99. On 12th December 2014 the Minister wrote to inform the Committee that provisions for a statutory code of conduct for IPs will be included in the current Bill by way of an amendment at consideration stage.[61] In oral evidence Insolvency Service officials agreed to share the amendment with the Committee for review prior to the completion of the Committee report and to consider any comments made by the Committee.[62]

100. In oral evidence insolvency practitioner representatives stated that the monitoring of regulatory bodies is so strict currently that, if it became statutory, it would not pose a problem.[63]

101. The Department provided the Committee with the text of the amendment[64] and provided a further oral briefing to the Committee on the matter.[65] Department officials informed the Committee that the recognised professional bodies have two main functions, firstly, to authorise IPs and, secondly, to monitor their performance against regulatory objectives.

102. The Department outlined that the new clause will not create a code of conduct but takes, what the Department considers to be, a more effective route to policing the conduct of insolvency practitioners. The Clause includes penalties which will apply to RPBs if they do not maintain a satisfactory standard of regulation. The Department will also have the power to intervene directly by applying to the court for action to be taken against an IP. The Department believes that the system has been put in place in an adequate manner in GB without the need for legislation. The matter does not affect any party outside of Government but is internal to the operation of the Westminster Department of Business, Innovation and Skills. It is considered possible for the Department to establish an administrative procedure and control the actions of its staff without having to enshrine the procedure in legislation.

103. There are two levels at which the process will operate, namely at RPB level and at Government level.

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61 Appendix 4: Memoranda and Papers from DETI – Correspondence from DETI 12 December 2014

62 Appendix 2: DETI Hansard 13th January 2015

63 Appendix 2: PWC/ICAI Hansard

64 Appendix 4: Memoranda and Papers from DETI – Correspondence from DETI 12 February 2015

65 Appendix 2: DETI Hansard 3rd February 2015

104. At RPB level the RPB will carry out monitoring inspections of their IPs. Any complaints against an IP will be made to the RPB. The RPB will carry out a review and investigation of the circumstances. The RPB will be able to impose a range of sanctions up to and including the removal of authorisation. It will be the responsibility of each RPB to put in place the regulatory objectives by which IPs authorised by them are licenced.

105. At Government level there will be an annual programme of inspection whereby every recognised RPB is inspected on a regular basis. This will be undertaken by the Insolvency Service in GB and by the Northern Ireland Insolvency Service. The Department will have very clear enforcement powers against an RPB should that RPB fail to meet requirements. There will be a graduated and tailored range of sanctions set down in the legislation.

106. Following consideration of the evidence the Committee was content that the proposed new clause be included in the Bill at consideration stage.

Backlog in Insolvency Cases

107. The Committee asked Department officials about a current backlog in the system and whether more could be done to address the backlog given the economic downturn. Department officials responded that the current legislation will probably not have a large impact on the number of cases coming through the Department or its ability to administer more quickly. No legislative means have been identified to change this but the Department is constantly looking at its processes and reviewing best use of resources to speed up cases. Staff numbers have increased from around 50 to over 100 since the start of the recession. In the same period the number of cases has more than trebled and continues to increase. The number of cases in trading bankruptcies and corporate winding-up has levelled off in the last number of months, but the number of personal bankruptcies continues to increase. Temporary staff have been brought in which helps, and a new IT system should help processing times.[66] PWC informed the Committee that they do not think that there is a backlog with the provision of insolvency services either in Northern Ireland or further afield. It was stated that there is nothing specific in the Bill that will significantly accelerate the process and that it was not, in any case, necessary.[67]

108. PWC's response prompted the Committee to seek clarification from the Department around where the backlog lay. In response, the Department stated that, at present, when an insolvency order is made, the Official Receiver conducts initial investigations and identifies whether the insolvent person has any assets likely to be realised. If it seems that assets will be realised, the case is passed to the private sector. If there are no assets, there are no fees to be realised, and the case is taken on by the Official Receiver and administered by the Department. The Department informed the Committee that the economic downturn has been the main factor in the creation of the increase in the number of insolvencies in recent years.[68] In its response, at Appendix 4, the Department outlined the reasons for the delay in dealing with cases where it is not economically viable for a private sector IP to take on the administration of a case.[69]

109. Following consideration of the evidence the Committee was content.

66 Appendix 2: DETI Hansard 11th November 2014

67 Appendix 2: PWC/ICAI Hansard

68 Appendix 2: DETI Hansard 3rd February 2015

69 Appendix 4: Memoranda and Papers from DETI- Correspondence from DETI 12th February 2015

Electronic Signature

110. The Committee asked Department officials about the likelihood that an electronic signature will suffice in the future as the Minister had stated in the Second Stage debate in the Assembly that there will be a set of rules made to accompany this legislation which will provide for the authorisation of signatures by electronic means. Department officials responded that, as part of the legislation, a set of rules will be introduced in subordinate legislation which will allow for and define what can be used to formally sign off a document.[70]

111. Following consideration of the evidence the Committee was content.

Original Clause Containing Provisions in relation to Bank Deposits Covered by the Financial Services Compensation Scheme.

112. The original draft of the Bill which came to the Committee during pre-legislative scrutiny, included a clause which referred to bank deposits covered by the Financial Services Compensation Scheme. This will now be included in a statutory instrument which the treasury plans to make under the European Communities Act.

113. The Committee asked Department officials, in the event that a financial institution becomes insolvent, individual customers will be compensated up to £85k and the FSCS reimbursed before Treasury can claim any further funds. What is not clear is, whether Treasury can claim against the remaining funds in preference to customers who hold deposits in excess of £85k.

114. At the meeting the Department stated that the customer would be at risk of losing any deposit in excess of £85k unless the liquidator could sell off the bank's assets and loans to raise funds to pay part of what the customer would otherwise have lost. The scheme is administered by the FSA on a UK-wide basis. The Treasury sets the policy on a UK-wide basis. Whenever a financial institution becomes insolvent, the Treasury becomes a preferred creditor. The FSA recompenses the person to £85k. Whenever the institution is wound up, its assets will be identified and then sold off. Therefore, the preferred creditors have the first call on any moneys. The Treasury would be one of the preferred creditors in that case along with the other secure creditors.[71]

115. The matter has been taken out of the Insolvency Bill, it will be dealt with in a statutory instrument on a UK-wide basis. It will provide for the financial services scheme to have first recourse to the sums paid out by way of compensation to customers which are up to £85k. Further provision is now being included in that statutory instrument. It will give a certain priority to customers who have had deposits of more than £85k. They come in after the financial services compensation scheme in respect of the moneys they have had on deposit.[72]

116. Following consideration of the evidence the Committee was content.

Speed of the Bill through the Assembly

117. The Committee asked Department officials why the Bill has not passed through the House more rapidly as Northern Ireland has to comply with the EU directive, as has every other EU Member State. The Department responded that an infraction letter has been issued to the UK about the issue of non-compliance with the EU Services Directive. That issue is being dealt with by the Department for Business, Innovation and Skills (BIS). It has negotiated a date in 2016 by which, if it complies with the directive, no further action will be taken by the EU. The Act should be in operation by that date and that will ensure compliance.[73]

118. Following consideration of the evidence the Committee was content.

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70 Appendix 2: DETI Hansard 11th November 2014

71 Appendix 2: DETI Hansard 11th November 2014

72 Ibid

73 Ibid

Clause by Clause Scrutiny of the Bill

Clause 1: Attendance at meetings and use of websites

Clause 2: References to things in writing

Clause 3: Removal of requirement for annual meetings in a members' voluntary and a creditors' voluntary winding up

Clause 4: Requirements in relation to meetings under Articles 81 and 84 of the insolvency Order

Clause 5: Individual voluntary arrangements: removal of requirement to submit a nominee's report to the High Court

Clause 6: Fast-track voluntary arrangements: notification of the Department

Clause 7: Powers of liquidator exercisable with or without sanction in a winding up

Clause 8: Powers of trustee exercisable with or without sanction in a bankruptcy

Clause 9: Definition of debt

Clause 10: Treatment of liabilities relating to contracts of employment

119. The Committee for Enterprise, Trade & Investment is content with clauses 1 to 10 as drafted.

Clause 11: Deeds of arrangement

120. The Committee for Enterprise, Trade & Investment is content with Clause 11 as amended and is content with the wording of the proposed amendment.

Clause 12: Bankruptcy: early discharge procedure

121. The Committee for Enterprise, Trade & Investment is content with Clause 12 as drafted.

Clause 13: After-acquired property of bankrupt

122. The Committee for Enterprise, Trade & Investment is content with Clause 13 as amended and is content with the wording of the proposed amendment.

Clause 14: Authorisation of insolvency practitioners

Clause 15: Power to make regulations

Clause 16: Company arrangement or administration provision to apply to a credit union

Clause 17: Disqualification from office: duty to consult the Lord Chief Justice

Clause 18: Interpretation

Clause 19: Transitional provisions, minor and consequential amendments and repeals

Clause 20: Commencement

Clause 21: Short title

123. 123. The Committee for Enterprise, Trade & Investment is content with clauses 14 to 21 as drafted.

Schedule 1: Transitional Provisions

Schedule 2: Minor and consequential Amendments

Schedule 3: Repeals

124. The Committee for Enterprise, Trade & Investment is content with schedules 1 to 3 as drafted.

Long Title

125. The Committee for Enterprise, Trade & Investment is content with the long title as drafted.

List of Appendices

- Correspondence from the Minister regarding the Insolvency (Amendment) Bill – December 2014
- Response from DETI to Committee query on the extent of any backlog in relation to insolvency cases
- Response from DETI to comments made by Mr Justice Deeny

Appendix 5 – Research Papers

- NIAR 386-14, Insolvency (Amendment) Bill

Appendix 6 – List of Witnesses

- Department of Enterprise, Trade and Investment
- Institute of Chartered Accountants Ireland
- PricewaterhouseCoopers

Northern Ireland Assembly

Appendix 1

Minutes of Proceedings of the Committee Relating to the Report

11 November 2014
Room 29, Parliament Buildings, 10.00am

Present: Mr Patsy McGlone (Chairperson)
Mr Phil Flanagan (Deputy Chairperson)
Mr Steven Agnew
Mr Sydney Anderson
Mr Gordon Dunne
Ms Megan Fearon
Mr Paul Frew
Mr William Humphrey
Mr Danny Kinahan
Mr Fearghal McKinney
Mr Máirtín Ó Muilleoir

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Angela McParland (Assistant Assembly Clerk)
Mr Christopher Jeffrey (Clerical Officer)
Mr Peadar Ó Lamhna (Bursary Student)

10:15am The meeting began

4. Oral briefing from DETI: Insolvency (Amendment) Bill

10:18am The representatives joined the meeting.

10:30am Fearghal Mc Kinney left the meeting.

10:55am Danny Kinahan joined the meeting.

Members received an oral briefing from Mr Richard Monds, Director, Insolvency Service, and Mr Jack Reid, Deputy Principal, Insolvency Services.

Key issues discussed included: outline of the bill and key provisions, licencing matters, code of conduct for insolvency practitioners, appeal mechanism to the Lord Chief Justice, the use of electronic signatures and the fast track system.

Agreed: to add to the list of those asked to give written evidence: The Law Society of Northern Ireland; The Institute of Chartered Accountants; and The Institute of Chartered Accountants of Scotland.

10:58am The representatives left the meeting.

10:58am Owing to a Remembrance Service within Parliament Buildings, the meeting was suspended.

11:08am The meeting resumed with all members present apart from Mr Fearghal Mc Kinney and Mr Danny Kinahan.

Mr Patsy McGlone

Chairperson
Committee for Enterprise, Trade and Investment

18 November 2014

[EXTRACT]

9 December 2014
Senate Chamber, Parliament Buildings, 10.00am

Present: Mr Patsy McGlone (Chairperson)
Mr Phil Flanagan (Deputy Chairperson)
Mr Steven Agnew
Mr Gordon Dunne
Ms Megan Fearon
Mr Paul Frew
Mr Paul Givan
Mr William Humphrey
Mr Danny Kinahan
Mr Fearghal McKinney
Mr Máirtín Ó Muilleoir

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Angela McParland (Assistant Assembly Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Mr Christopher Jeffrey (Clerical Officer)
Mr Peadar Ó Lamhna (Bursary Student)

Apologies: None

10:15am The meeting began.

5. Oral Briefing: Insolvency (Amendment) Bill

11:15am The representatives joined the meeting.

Members received an oral briefing from Mr Sean Cavanagh, Chairperson, Insolvency Technical Committee of the Institute of Chartered Accountants in Ireland and Partner, Cavanagh Kelly, Mr Stephen Cave, Partner, PricewaterhouseCoopers and Member of the Insolvency Technical Committee of the Institute of Chartered Accountants in Ireland and Mr Gareth Latimer, Senior Manager, Business Recovery Services, PricewaterhouseCoopers.

Key issues discussed included: Issues with Clause 14 of the Bill, regulation of insolvency practitioners, dual licensing, grandfathering, issues with Clause 3, requirements to hold a meeting once per year, verification issues with regards meetings, issues with Clause 13, bankrupts having access to bank accounts, partial authorisation.

12:30pm The representatives left the meeting.

Agreed: to receive an oral briefing from the Department following recess to obtain its views on the issues raised during the briefing.

Mr Patsy McGlone

Chairperson
Committee for Enterprise, Trade and Investment

13 January 2015

[EXTRACT]

13 January 2015
Room 29, Parliament Buildings, 10.00am

Present: Mr Patsy McGlone (Chairperson)
Mr Phil Flanagan (Deputy Chairperson)
Mr Steven Agnew
Mr Gordon Dunne
Ms Megan Fearon
Mr Paul Frew
Mr Paul Givan
Mr William Humphrey
Mr Danny Kinahan
Mr Fearghal McKinney
Mr Máirtín Ó Muilleoir

In Attendance: Mr Jim McManus (Assembly Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Mr Christopher Jeffrey (Clerical Officer)

Apologies: None

10:23am The meeting began.

5. Oral Briefing from the Department of Enterprise, Trade and Investment: Insolvency (Amendment) Bill

10:30am The officials joined the meeting

10:30am Máirtín Ó Muilleoir joined the meeting.

10:32am Phil Flanagan joined the meeting.

Members received an oral briefing from Departmental Officials regarding the Insolvency (Amendment) Bill.

Key issues discussed included: the main purpose of the Bill, full and partial authorisation and the amendment relating to the Statutory Code of Conduct.

10:36am Paul Givan left the meeting.

11:06am Máirtín Ó Muilleoir left the meeting.

11:09am William Humphrey left the meeting.

11:16am Megan Fearon left the meeting.

11:19am The Officials left the meeting

Agreed: to considered correspondence received from a member of the public at the next meeting.

Agreed: to write to the Department asking for clarification that PricewaterhouseCoopers and Cavanagh Kelly fully understand the position regarding full and partial authorisation.

Agreed: to write to the Department asking that the Committee receive a copy of the amendment regarding the Statutory Code of Conduct as soon as it is available.

Agreed: to write to the Department asking for comment on advice received from the Examiner of Statutory Rules.

Mr Patsy McGlone

Chairperson
Committee for Enterprise, Trade and Investment

20 January 2015

[EXTRACT]

27 January 2015
Senate Chamber, Parliament Buildings, 10.00am

Present: Mr Patsy McGlone (Chairperson)
Mr Phil Flanagan (Deputy Chairperson)
Mr Steven Agnew
Mr Gordon Dunne
Mr Paul Frew
Mr Paul Givan
Mr William Humphrey
Mr Danny Kinahan
Mr Máirtín Ó Muilleoir

In Attendance: Mr Jim McManus (Assembly Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Mr Christopher Jeffrey (Clerical Officer)

Apologies: None

10:08am The meeting began.

5. Insolvency (Amendment) Bill

11:15am Máirtín Ó Muilleoir left the meeting

Members considered a clause by clause table of the Bill.

Agreed: the Committee is content to await information in regards to the code of conduct.

Members considered correspondence from the Royal Courts of Justice in regards to the Bill.

Agreed: to include the correspondence from the Royal Courts of Justice as evidence in the Committee report.

Members considered correspondence from the Chancery and Probate Committee in regards to the Bill.

Agreed: to forward the correspondence from the Chancery and Probate Committee to the Department for comment.

Agreed: to write to the Department asking for clarification on the extent of any backlog there is in relation to insolvency cases, and if this only applies to cases being administered by the Department where no assets or fees are to be realised.

Mr Patsy McGlone

Chairperson
Committee for Enterprise, Trade and Investment

3 February 2015

[EXTRACT]

3 February 2015
Room 29, Parliament Buildings, 10.00am

Present: Mr Patsy McGlone (Chairperson)
Mr Phil Flanagan (Deputy Chairperson)
Mr Gordon Dunne
Mr Megan Fearon
Mr Paul Frew
Mr William Humphrey
Mr Danny Kinahan
Mr Fearghal McKinney
Mr Máirtín Ó Muilleoir

In Attendance: Mr Jim McManus (Assembly Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Mr Christopher Jeffrey (Clerical Officer)
Mr Peadar Ó Lamhna (Bursary Student)

Apologies: None

10:14am The meeting began

5. Oral briefing from DETI: Insolvency Amendment Bill

10:15am The representatives joined the meeting.

Members received a briefing from Mr Richard Monds, Director, Insolvency Service and Mr Jack Reid, Deputy Principal, Insolvency Service

10:24am Danny Kinahan joined the meeting.

10:25am Phil Flanagan left the meeting.

10:31am Máirtín Ó Muilleoir joined the meeting.

10:34am Fergal McKinney joined the meeting.

Key issues discussed included: A proposed new clause on Insolvency Practitioner Regulation being included in the Bill, a wider spectrum of sanctions available to DETI against Insolvency Practitioners, an update on work done by the Department since the last briefing on the Bill to the Committee.

10:37am The representatives left the meeting

Agreed: to forward a copy of the proposed new clause and a copy of the Hansard of the briefing to Mr Jim Allister QC MLA.

Agreed: to include the correspondence from the Department in the Committee report.

Agreed: Members are content that the issues raised under Clause 11 and Clause 14 have been addressed.

Mr Patsy McGlone

Chairperson
Committee for Enterprise, Trade and Investment

10 February 2015

[EXTRACT]

17 February 2015
Room 29, Parliament Buildings, 10.00am

Present: Mr Patsy McGlone (Chairperson)
Mr Phil Flanagan (Deputy Chairperson)
Mr Steven Agnew
Mr Gordon Dunne
Ms Megan Fearon
Mr Paul Frew
Mr Paul Givan
Mr William Humphrey
Mr Danny Kinahan
Mr Fearghal McKinney
Mr Máirtín Ó Muilleoir

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Angela McParland (Assistant Assembly Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Mr Christopher Jeffrey (Clerical Officer)
Mr Peadar Ó Lamhna (Bursary Student)

Apologies: None

10:09am The meeting began.

6. Insolvency (Amendment) Bill: Scrutiny of the Bill

Members considered a Departmental response to the Committee's queries in relation to the Honourable Mr Justice Deeny's comments on the Insolvency Bill and the backlog of insolvency cases. The Committee also considered a copy of the proposed amendment to Clause 13 to be brought by the Department at consideration stage.

The Committee noted that the advised amendments from the Examiner of Statutory Rules to Clause 11 will not be available until the following week.

Agreed: to defer formal clause by clause consideration until next week when the Committee will have received the text of the amendment to Clause 11 from the Department.

Mr Patsy McGlone

Chairperson
Committee for Enterprise, Trade and Investment

24 February 2015

[EXTRACT]

24 February 2015
Room 29, Parliament Buildings, 10.00am

Present: Mr Patsy McGlone (Chairperson)
Mr Phil Flanagan (Deputy Chairperson)
Mr Gordon Dunne
Mr Paul Frew
Mr William Humphrey
Mr Danny Kinahan
Mr Fearghal McKinney
Mr Máirtín Ó Muilleoir

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Angela McParland (Assistant Assembly Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Mr Christopher Jeffrey (Clerical Officer)
Mr Peadar Ó Lamhna (Bursary Student)

Apologies: Mr Steven Agnew

10:09am The meeting began.

7. Insolvency (Amendment) Bill: Preliminary View

Members noted that the Committee had previously considered the clauses in the Bill in detail and had raised a number of queries on the Bill which had been responded to by the Department. The Committee noted that the Department had agreed to bring amendments to Clause 11 and Clause 13 of the Bill.

Members noted the Department's response to the Committee's query on Clause 11 following the comments made by the Examiner of Statutory Rules.

Agreed: members were content with the proposed amendment to Clause 11.

Agreed: members agreed to move immediately to formal clause-by-clause consideration of the Bill.

8. Insolvency (Amendment) Bill : Formal Clause-by-Clause Consideration

12:06pm Paul Frew left the meeting.

The Committee formally scrutinised, clause-by-clause, the Insolvency (Amendment) Bill and agreed the following:

Provisions relating to communication

Clause 1: Attendance at meetings and use of websites

Clause 2: References to things in writing

Question put and agreed: that the Committee is content with Clauses 1-2, as drafted.

Requirements relating to meetings

Clause 3: Removal of requirement for annual meetings in a members' voluntary and a creditors' voluntary winding up

Clause 4: Requirements in relation to meetings under Articles 81 and 84 of the Insolvency Order

Question put and agreed: that the Committee is content with Clauses 3-4, as drafted.

Reports in individual voluntary arrangements

Clause 5: Individual voluntary arrangements: removal of requirement to submit a nominee's report to the High Court

Clause 6: Fast-track voluntary arrangements: notification of the Department

Question put and agreed: that the Committee is content with Clauses 5-6, as drafted.

Powers of liquidator and trustee

Clause 7: Powers of liquidator exercisable with or without sanction in a winding up

Clause 8: Powers of trustee exercisable with or without sanction in a bankruptcy

Question put and agreed: that the Committee is content with Clauses 7-8, as drafted.

Miscellaneous

Clause 9: Definition of debt

Clause 10: Treatment of liabilities relating to contracts of employment

Question put and agreed: that the Committee is content with Clauses 9-10, as drafted.

Clause 11: Deeds of arrangement

Question put and agreed: that the Committee is content with Clause 11, as amended and is content with the wording of the proposed amendment.

Clause 12: Bankruptcy: early discharge procedure

Question put and agreed: that the Committee is content with Clause 12, as drafted.

12:08pm Paul Frew re-joined the meeting.

Clause 13: After-acquired property of bankrupt

Question put and agreed: that the Committee is content with Clause 13, as amended and is content with the wording of the proposed amendment.

Clause 14: Authorisation of insolvency practitioners

Clause 15: Power to make regulations

Clause 16: Company arrangement or administration provision to apply to a credit union

Clause 17: Disqualification from office: duty to consult the Lord Chief Justice

Question put and agreed: that the Committee is content with Clauses 14-17, as drafted.

Supplementary

Clause 18: Interpretation

Clause 19: Transitional provisions, minor and consequential amendments and repeals

Clause 20: Commencement

Clause 21: Short title

Question put and agreed: that the Committee is content with Clauses 18-21, as drafted.

Schedules 1-3

Schedule 1: Transitional provisions

Schedule 2: Minor and consequential amendments

Schedule 3: Repeals

Question put and agreed: that the Committee is content with Schedules 1-3 as drafted.

Long Title

Question put and agreed: that the Committee is content with the Long Title, as drafted.

Agreed: to consider the draft report and final report of the Bill at next week's meeting.

Mr Patsy McGlone

Chairperson
Committee for Enterprise, Trade and Investment

3 March 2015

[EXTRACT]

3 March 2015
Room 29, Parliament Buildings, 10.00am

Present: Mr Patsy McGlone (Chairperson)
Mr Phil Flanagan (Deputy Chairperson)
Mr Steven Agnew
Mr Gordon Dunne
Ms Megan Fearon
Mr Paul Frew
Mr Paul Givan
Mr William Humphrey
Mr Danny Kinahan
Mr Fearghal McKinney
Mr Máirtín Ó Muilleoir

In Attendance: Mr Jim McManus (Assembly Clerk)
Ms Angela McParland (Assistant Assembly Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Mr Christopher Jeffrey (Clerical Officer)
Mr Peadar Ó Lamhna (Bursary Student)

Apologies: None

10:07am The meeting began.

6. Insolvency (Amendment) Bill: Draft Report and Final Report

The Committee formally scrutinised each paragraph of the draft report.

Agreed: that the Executive Summary at paragraphs 1-9 stands part of the report.

Agreed: that the Introduction at paragraphs 10-14 stands part of the report

Agreed: that the Summary of the draft Bill as presented to the Committee at Committee Stage at paragraphs 15-38 stands part of the report.

Agreed: that the Summary of Consideration of the Bill at paragraphs 39-96 stands part of the report.

Agreed: that the Summary of Consideration of Other Issues of the Bill at paragraphs 97-118 stands part of the report.

Agreed: that the Clause-by-Clause Scrutiny of the Bill at paragraphs 119-125 stands part of the report.

The Committee formally scrutinised each appendix of the final Bill report.

Agreed: that the following papers should be appended to the Committee's report:

Minutes of proceedings

Minutes of evidence (Hansards)

Written submissions

Memoranda and papers from DETI

Research Papers

List of witnesses

Agreed: Chairperson to approve an extract from today's minutes which reflect the read-through of the Report.

Agreed: to lay the Report in its entirety in the Assembly Business Office after today's meeting.

Mr Patsy McGlone
Chairperson
Committee for Enterprise, Trade and Investment

10 March 2015

[EXTRACT]

Appendix 2

Minutes of Evidence

27 September 2012

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)
Mr Phil Flanagan (Deputy Chairperson)
Mr Steven Agnew
Mr Paul Frew
Ms Maeve McLaughlin
Mr Stephen Moutray
Mr Robin Newton
Ms Sue Ramsey

Witnesses:

Mr Reg Nesbitt	*Department of Enterprise,*
Mr Jack Reid	*Trade and Investment*

1. **The Chairperson**: We have with us today Reg Nesbitt, director of insolvency services, and Jack Reid, deputy principal of insolvency services. You are both very welcome. Included in our pack are the paper from the Department on the outcome of the policy consultation; a briefing from the Committee Clerk that gives a background summary of the contents; and a departmental briefing and covering brief on the policy proposals that are included in the legislation and were previously considered by the Committee on 8 March. Can you just give us a bit of an oversight? Then, if members want clarification or further expansion, I am sure that you will be happy to take questions.

2. **Mr Reg Nesbitt (Department of Enterprise, Trade and Investment)**: Congratulations to you on achieving the Chair. The Committee has asked to be advised of the outcome of the consultation on proposals to amend insolvency legislation.

3. It is our practice to keep insolvency legislation in parity with that applying in England and Wales. That saves people in one jurisdiction who need to take insolvency proceedings against an individual or company in the other jurisdiction having to acquaint themselves with a different system of legislation. We note that some of those who responded to the legislation voiced their approval of the principle of parity. For example, the Insolvency Practitioners Association said in its response that it supported the concept of bringing greater uniformity between the two jurisdictions. Grant Thornton saw efficiency savings resulting from the alignment of the law that our proposals would achieve.

4. We find ourselves in a position of needing an Assembly Act to implement changes in line with those made by the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 that came into operation in England and Wales in April 2010. There are three major changes aimed at modernising the administration of insolvencies by permitting greater use of electronic communications. The first is to establish that documents stored and transmitted in electronic form are as good and as valid in law as paper ones. The second is to enable office holders in insolvency proceedings to communicate information by displaying it on websites and giving those entitled to see it a password to view it. The third is to make possible the holding of virtual meetings of creditors or company members.

5. A number of minor changes will be made to procedure. For example, the requirement for liquidators and members in creditors' voluntary liquidations to call meetings of company members and creditors each year to present an annual account will be replaced with the requirement to send them an annual progress report that includes a receipts and payments account. The provision for deeds of arrangement, which is a procedure that has fallen into disuse, will be repealed, largely because the individual voluntary arrangement (IVA) procedure has succeeded it.

6. We consulted approximately 460 organisations and individuals, and 17 responses were received. Five did not make any comment on the policy, and the attitude of the other 12 respondents was generally favourable. The Crown Solicitor and the Chancery and Probate Liaison Committee stated concerns about one of the minor proposals that would have altered the procedure to secure the approval of creditors to a debtor's proposal to enter into an individual voluntary arrangement. The proposed alteration was to no longer require the chairman of the creditors' meeting to report the result to the court. The Crown Solicitor and the liaison committee pointed out to us that the court needs to know the result if there is a bankruptcy petition pending against a debtor. We are in correspondence with them to agree on how the matter should be settled. It looks as if we will simply withdraw that particular proposal.

7. Four respondents raised concerns about the impact of the proposals on people without access to computers, especially elderly people and those living in rural areas. Our policy is that it is right to give those who prefer to communicate using modern electronic means the right to do so. It would be foolish and wrong to try to hold back progress and deny ourselves the benefit that can flow from using up-to-date communications technology. Respondents mentioned speed, efficiency and reduced cost. The Chartered Accountants Regulatory Board pointed out in its response that permitting virtual meetings by teleconferencing and video conference will encourage greater creditor involvement in the insolvency process. KPMG stated that the proposal to allow information to be communicated by website will prove beneficial to the environment in respect of the carbon footprint.

8. It is also our policy that those who need or prefer to communicate using traditional paper-based methods should still be able to do so. The safeguards built into the English legislation that we intend to replicate should achieve that result. It will be possible to send documents by email only if the intended recipient agrees to that means of communication. There will be a requirement for those entitled to see a document displayed on a website to be notified that they have the right to ask for a paper copy free of charge.

9. A physical meeting will have to be held instead of a virtual one if 10% or more of the creditors by value want it. We feel that what we are proposing will accommodate and serve the needs of those who prefer to use IT to communicate and those who prefer more traditional means.

10. **The Chairperson**: Thanks very much for that. One point of clarity: there was the one about the notification to the court. Are you seeking to address that issue? The courts had concern that they needed to be formally notified in the event of bankruptcy.

11. **Mr R Nesbitt**: Yes. Usually, the courts really have no involvement in IVAs. Up to now, we have been notifying the courts of the results. We did not see any point in notifying them about a result if the courts were never involved. However, if someone has taken out an IVA, which is usually done through a private sector practitioner, a creditor could apply to the courts to have him made bankrupt. Therefore, it is useful for the courts to know that they have the result of that creditors' meeting on the IVA proposal.

12. **Mr Newton**: It is just a small point, but you said that 10% of creditors could call a creditors' meeting. That is a very small percentage. That could be one or two persons.

13. **Mr R Nesbitt**: Creditors' meetings are very poorly attended. Empirical evidence shows that creditors are just not really interested in attending meetings.

14. **Mr Newton**: To get their money back.

15. **The Chairperson**: They just want their money.

16. **Mr R Nesbitt**: Exactly. You then have to look at who controls most of the

creditors. Normally, you will find that it is HMRC, financial institutions or a major supplier. That 10% really falls into a very small category of people who will not be able to influence the outcome at all. You may get an individual who wants to attend those creditors' meetings just to make a noise but actually does not influence the outcome at the end of the day. Therefore, we are saying that if 10% want the meeting, we will give it to them.

17. **The Chairperson**: So, we are quite agreed on the course of action. OK, thanks very much for that.

11 November 2014

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)
Mr Phil Flanagan (Deputy Chairperson)
Mr Steven Agnew
Mr Sydney Anderson
Mr Gordon Dunne
Ms Megan Fearon
Mr Paul Frew
Mr William Humphrey
Mr Danny Kinahan
Mr Fearghal McKinney
Mr Máirtín Ó Muilleoir

Witnesses:

Mr Richard Monds *Insolvency Service*
Mr Jack Reid

18. **The Chairperson (Mr McGlone)**: Briefing the Committee today are Mr Richard Monds, director of the Insolvency Service; and Mr Jack Reid, deputy principal with the Insolvency Service. You are very welcome to the Committee. Thank you for attending. If you want to give us a brief overview, we can then move into questioning from members.

19. **Mr Richard Monds (Insolvency Service)**: Thank you very much, Chair. The Committee was last briefed on 27 September 2012. Since then, there have been changes to the draft Bill, which has delayed its passage through the Assembly. The Minister has written to the Committee on a number of occasions to update you on the developments and additional issues that have caused the delay. Thank you for this further opportunity to give an oral update on the latest developments. My colleague Jack Reid will now provide a short update on the main developments since the Committee was last briefed in 2012.

20. **Mr Jack Reid (Insolvency Service)**: When we last briefed you back in September 2012, the intention was that the Bill would basically replicate measures contained in the GB Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010. There was only one additional measure for Northern Ireland, and that was a repeal of the legislation relating to deeds of arrangement. Provision to repeal the GB Deeds of Arrangement Act 1914 has now been included in the Deregulation Bill, which is in progress at Westminster. The upshot would have been a Bill, the primary purpose of which was to provide legal authority for the use of electronic communications in insolvency proceedings and which would have also altered certain specific insolvency procedures to make them more streamlined and efficient. The Bill has since been expanded considerably to take account of legislative developments in GB. One is the ending of early discharge from bankruptcy. Bankruptcy has never been a one-day event. The making of a bankruptcy order is followed by a period of time during which the person in respect of whom the order has been made is said to be bankrupt. The period ends with their discharge from bankruptcy. During the period of their bankruptcy, the person is subject to certain restrictions. For example, they are not allowed to take credit for more than £500 or to trade in a name other than that in which they were judged bankrupt without disclosing their bankruptcy.

21. Under the Insolvency (Northern Ireland) Order 1989, which is the main piece of primary legislation applying to insolvency, the bankruptcy period was set at three years when it was first enacted. It was reduced to one year by the Insolvency (Northern Ireland) Order 2005. In consequence, most bankrupts in Northern Ireland are automatically discharged from their bankruptcy on the first anniversary of being made bankrupt, provided that they have not been made subject to a bankruptcy restrictions order in consequence of having been found to be culpable in their

own bankruptcy. Discharge releases them from the restrictions that applied during the period of their bankruptcy.

22. However, article 253 of the Insolvency (Northern Ireland) Order 1989, as substituted by article 12 of the Insolvency (Northern Ireland) Order 2005, went further. Paragraph 2 of the substitute article provided that a bankrupt could be discharged before the first anniversary of his or her bankruptcy if the official receiver filed a notice with the High Court stating that investigation of the bankrupt's conduct and affairs was unnecessary or concluded. Clause 12 of our Bill repeals paragraph 2. That is in line with the repeal of the corresponding provision in the legislation applying in England and Wales by the Enterprise and Regulatory Reform Act 2013. The corresponding provision was repealed because, on evaluation, the early discharge scheme was found to be costing a disproportionate amount to administer, with little or no benefit for bankrupts through being discharged on average only three or four months before they would have gained their automatic discharge.

23. Northern Ireland's early discharge provision was never implemented on the same scale as in England and Wales. In Northern Ireland, for resourcing reasons, the provision was only implemented when a bankrupt specifically asked for it, and only two people have ever been discharged early under the Northern Ireland provision.

24. A second major change to our Bill since we last briefed you effects major reform to the licensing system for insolvency practitioners in line with provision included in the Westminster Deregulation Bill, which is currently being dealt with in the House of Lords. An insolvency practitioner has to be licensed or, to use the proper term, "authorised". It is a criminal offence to act as an insolvency practitioner without being authorised. Two licensing systems currently exist for insolvency practitioners. They can be authorised either by a competent authority or by a recognised professional body. There has only ever been one competent authority in Northern Ireland — DETI itself — and just two of Northern Ireland's insolvency practitioners are authorised by it. The remainder — over 50 — are authorised by one of seven recognised professional bodies.

25. Repeal of the provision for licensing by competent authorities has been included in the Bill at subsection 5 of clause 14. Repeal will result in all licensing and regulation of insolvency practitioners being undertaken by the recognised professional bodies. It will result in all insolvency practitioners being alike, subject to the more graduated disciplinary regime operated by the recognised professional bodies. The only disciplinary measures available to the Department are withdrawal of an insolvency practitioner's authorisation — which, in most cases, would be too draconian — or the issue of a non-binding improvement notice.

26. A second element of the reform to the authorisation system is introduction of partial authorisation for insolvency practitioners, also by clause 14. Current legislation allows only for authorisation as an insolvency practitioner to take any kind of case. That means that anyone who wants to become an insolvency practitioner has to qualify in both corporate and individual insolvency, even though they may have no intention of ever taking cases of one type or the other.

27. The Bill will make it easier to become an insolvency practitioner in the future by making it possible to be authorised to either take only individual or only corporate cases. We think that that will open up the market to more people becoming insolvency practitioners, and that that should both drive up the quality of the service that is provided to clients and bear down on the cost.

28. We consulted the insolvency profession about that measure —

29. **The Chairperson (Mr McGlone)**: Sorry to interrupt, but do you have much more to go through? In the efficiency of what we are doing, it would have been helpful

if we had had that paper in advance of the meeting — I know that you have put a lot of work into it — and then we could have asked you questions on the back of it. Can you synopsise the main points, please?

30. **Mr Reid**: Some who responded to the consultation disagreed that that measure would be of benefit. They thought that it would lead to a loss of general knowledge in the profession and that it would become too specialised. We feel that specialisation would lead to benefits and that, in any case, we are obliged to follow suit with what England is doing to comply with the EU directive. If a person is partially authorised in GB, it will be essential for them to be able to operate on the same basis in Northern Ireland.

31. I was also going to mention that bankrupts can encounter problems accessing bank accounts. A measure has been put into the Bill that will facilitate them in doing so and encourage banks to offer bank accounts to them. We have also put in an amendment to ensure that it will be possible for legislation to be made to allow all credit unions, and not just those that are registered as industrial and provident societies, to enter administration or a voluntary arrangement.

32. Finally, it is our intention to ask our Minister to table some minor technical amendments at Consideration Stage. Those will reflect changes that have been made in the Deregulation Bill as introduced. They will not impinge on policy.

33. **The Chairperson (Mr McGlone)**: Thanks very much for that.

34. There is one issue that emerged yesterday; Mr Allister raised it. The Committee will probably intend to go into that in a bit more detail. In fact, the complainant or the person he referred to may well give evidence to the Committee. We will come back to that and see how you intend to rectify that. Can you give me any indication that the issue he raised will be covered?

35. **Mr Monds**: We are certainly well aware of the specific individual case. I think that Mr Allister's point was in relation to establishing a code of conduct in future for insolvency practitioners. There is no provision in the Bill to cover those sorts of things. However, the Small Business, Enterprise and Employment Bill is going through Westminster, and it is within that Bill. We intend to recommend to the Minister that, in future legislation that we would cover, a regulatory objective be put in place. That will require the regulated professional bodies to ensure that a number of objectives and principles are put in place to regulate insolvency professionals, such as training persons properly; ensuring consistent outcomes; providing high-quality services; acting transparently with integrity; considering the interests of all creditors in any particular case; promoting the maximisation of the value of returns; and protecting and promoting the public interest.

36. Those issues will be enshrined in legislation through the Westminster Bill. It is our intention to recommend to the Minister that those should also be enshrined in a future insolvency Bill.

37. **The Chairperson (Mr McGlone)**: I do not know the details of that, and we will come back to it again. If we take the insolvency practitioner concerned, who would, for want of a better word, regulate that person or make sure that they properly practice and —

38. **Mr Monds**: That insolvency practitioner was one of the ones who was authorised by the Department. As Jack said, we have the powers as the competent authority to authorise insolvency practitioners, as well as the regulated professional bodies. Currently we regulate two insolvency practitioners. This Bill will remove our authorisation powers so that, in the future, insolvency practitioners will only be authorised by the seven regulated professional bodies. That will allow them to have a range of disciplinary measures that can be taken against insolvency practitioners. At present, the Department can only take away an insolvency practitioner's licence. There is no middle ground, so sometimes that is an overly draconian

approach, whereas the regulated professional bodies have a number of measures that they can put in place against insolvency practitioners.

39. **The Chairperson (Mr McGlone)**: Thanks for that. Obviously we will come back to it in more detail when we get the detail.

40. **Mr Flanagan**: Thanks for the presentation. Is there a backlog in the system at the minute?

41. **Mr Monds**: In insolvency cases?

42. **Mr Flanagan**: Yes.

43. **Mr Monds**: At present, we have around 3,500 live cases in the Insolvency Service.

44. **Mr Flanagan**: How long will it take to process all those if we do not change things?

45. **Mr Monds**: At present, a number of cases will be passed out to insolvency practitioners. The residual ones, which are the ones with no assets attached, will remain with the official receiver to process. The current legislation probably will not have a large impact on the numbers of cases coming through to us. In the case of workload, it probably will not have any effect on the amount of cases we have or our ability to administer those more quickly. It deals more with specific technical issues, so it will not impact on the workloads.

46. **Mr Flanagan**: So this piece of legislation will not speed up the process?

47. **Mr Monds**: At present, it is unlikely to. I think that I am right in saying that it will not reduce the numbers of insolvencies coming through, nor will it speed up the Department's processes in processing those particular cases. We are at the mercy of the number of companies and individuals coming through the courts.

48. **Mr Flanagan**: Are there any changes that the Department can make to speed up the process? I do not mean reducing the numbers going through the process, because that is outside your direct responsibility.

49. **Mr Monds**: Absolutely.

50. **Mr Flanagan**: Is there any way that you can speed up the process and deal with the significant backlog that exists through legislative or other policy changes?

51. **Mr Monds**: Through legislative means, there are no real intentions, and nor have we identified any specific ways, but within the service we are constantly restructuring and re-looking at our processes to try to speed up cases and get them put through as quickly as we can.

52. **Mr Flanagan**: Can you give us an example of something you have done to change the process so that things can be done quicker?

53. **Mr Monds**: We have restructured within the organisation. Now, rather than each examiner dealing with a case from one end to the other, we have set up specific functional units. For example, because of the credit crunch, a lot of properties came through, so we set up a specialised properties team to deal exclusively with properties. That maintains that expertise within one unit; all the properties are dealt with in one specific area. We also split up the work so that each examiner will have a case worker assigned to them. That means that two people can look at the various elements of each case to speed up the process. We were obviously doing specific pieces of work.

54. **Mr Flanagan**: Is the process constantly under review to find better ways of doing things?

55. **Mr Monds**: Absolutely. We are constantly looking at different ways, including moving staff. For instance, the profiles of insolvencies have changed over the years. The numbers of trading and company bankruptcies are going down, but the numbers of consumer bankruptcies are increasing, so we are constantly looking at putting more resource to the areas where more insolvency cases come through, to ensure that we tackle the cases as and when they come in.

56. **Mr Flanagan**: What are the staff numbers in the Insolvency Service like? Have they significantly increased since the start of the recession and the numbers started to go up?

57. **Mr Monds**: Yes. Since the start of the recession, the numbers in the Insolvency Service have increased from around 50 to just slightly over 100. In the same period, the numbers of insolvencies have more than trebled, so whilst the numbers of staff have increased significantly, the numbers of cases have gone up by a larger percentage. Indeed, they continue to increase. The numbers of cases in trading bankruptcies and corporate winding-up have levelled off in the last few months, but the numbers of personal bankruptcies continue to increase.

58. **Mr Flanagan**: What efforts have you made to try to get additional staff members to help to deal with the backlog?

59. **Mr Monds**: As I said, the numbers of staff have increased, but, obviously, with the current public sector difficulties and the financial situation, it is more and more difficult to get numbers in. We have brought in some temporary staff to help to bring down the backlogs in the short term, and that has been helpful. We are trying to work within our current headcount more efficiently and more effectively. We are putting in a new IT system at the moment, which will, hopefully, also aid the processing time for insolvency cases and help us to get the backlog down.

60. **Mr Flanagan**: In terms of clause 12 and the repeal of the provision for the early discharge from bankruptcy, we have been told that it is a procedure that is little used. I think that two people have been discharged early.

61. **Mr Monds**: That is right.

62. **Mr Flanagan**: You will appreciate that probably none of us round the table is an expert in the insolvency process. I would be interested to find out why those two individuals were given early discharge and what the benefits were. Have you information on those two cases, without going into personal details, of what the benefits were of those cases being discharged early to the Insolvency Service and to the individuals in question?

63. **Mr Monds**: Jack, do you have any information?

64. **Mr Reid**: I do not have any information on the two individuals specifically. However, the reason why they would have been discharged early is because they would both have written into the Department and requested early discharge. I do not see that there would have been any benefits to the Department through their early discharge; in fact, there would have been a cost to the Department in administering it, whereas if they had waited until they were discharged automatically, as the majority of bankrupts do, then that would have happened without any cost to the Department. There would have been a very minor benefit to the people themselves, in that they would have been discharged perhaps three or four months before their normal discharge, which would have been on the first anniversary of their bankruptcy. Those benefits are minimal, because the restrictions that a person is under when they are bankrupt are on taking credit without disclosing the fact that they are bankrupt, and they are not allowed to trade under any name other than that on the bankruptcy order without disclosing to those that they do business with the fact that they are bankrupt. Those are not major benefits, because, if anyone applies to a bank, for example, for credit, they are going to be asked whether they have been bankrupt in the past, so they will have to declare it anyway. So no, I do not see that there is any significant gain to the individuals concerned.

65. **Mr Flanagan**: The thing is that you are disqualified from holding certain positions for a period of time.

66. **Mr Reid**: That is correct, yes.

67. **Mr Flanagan**: Giving people the opportunity to get out of that early may allow them to take up a certain position in society, and some of those positions are ones that we actually hold.

68. **Mr Reid**: Yes.

69. **Mr Flanagan**: So there are some benefits to people but, if you have been declared bankrupt and there is a penalty of being disqualified for a year, it is strange that people can opt out of it by merely requesting permission from the Department to do so. You referred to the fact that an awful lot more people in England and Wales availed themselves of that opportunity and that it was run differently over there. Have you had any discussions with colleagues over there to see what the benefits were for people over there — or the benefits to the system?

70. **Mr Reid**: We have seen plainly in the documentation relating to the repeal of early discharge provisions in England and Wales that they administered it on a different basis to us. They did not wait until people wrote in or applied for early discharge; they dealt with it on an automatic basis. If investigation of a bankruptcy was deemed to be unnecessary or if it had been carried out and concluded, which in most cases would be where it has been found that there was no irregularity, the Secretary of State for Trade and Industry, as it is in England and Wales — it is not the Department — would have applied to the court for the person to be discharged from their bankruptcy early. The Secretary of State would have done that on his own initiative without waiting for the person to request it. An academic study was conducted in England of the benefits of the scheme, and it was found that the costs of administering it far outweighed any benefit to the bankrupts.

71. You mentioned people who would be debarred from holding offices or positions. That would be a very tiny minority of the people who are bankrupt.

72. **The Chairperson (Mr McGlone)**: Thank you for that. Members, we have to be conscious of the time. We have questions that we have to elicit from the Department, so let us make best use of the time. Otherwise, I will have to use the hammer.

73. **Mr Agnew**: Thank you, gentlemen. At the suggestion of the Minister of Justice, an amendment has been made to include a requirement for the Lord Chief Justice to be consulted about making any order creating a right of appeal to a court. Given especially the time context that we have just discussed, why was that considered necessary? What would its impact be on processing times?

74. **Mr Reid**: It would have no impact on processing times. It is included for a different reason. It relates to the bar on people holding various offices and positions if they are bankrupt. In some cases, there is not an automatic bar on a person holding a position if they are bankrupt, but their situation could be looked at. There is a discretion as to whether they should be allowed to hold an office or position, and that discretion can obviously be exercised in order either to bar the person or not to bar them. A provision was inserted into the 1989 Order by the 2005 Order to provide for the exercise of that discretion to be subject to a right of appeal, and the Department is empowered to make orders that that right of appeal can be to a court. So the legal system — the courts — have an interest. That is why it is deemed essential that the Lord Chief Justice should be consulted about the making of any order which would provide for a right of appeal to a court, not least because he would have an interest in ensuring that the appeal was to an appropriate court, whether to a County Court or to the High Court.

75. **Mr Agnew**: You said that it would not have an impact on processing times. Maybe this is just my misunderstanding of it, but presumably that aspect of the process is deemed to be relatively quick. If that is the assumption, on what basis is it made? Writing to the Lord Chief Justice seems to me to be an extra piece of administration.

76. **Mr Reid**: The only situation in which there would be communication with the Lord Chief Justice would be on the making of an order, that is, a piece of subordinate legislation, providing for a

right of appeal to the court. The actual appeals to the court themselves would not involve the Lord Chief Justice; that is an event which would happen only very rarely. It would only happen in the instance where someone's position on a particular board was in jeopardy because of the fact that they had been made bankrupt. That will not happen very often, but it could happen. It is to cater for that situation that if, for example, the discretion were exercised against the person being allowed to remain — for example, on a health board — that person can appeal to a court; but, if they make that appeal, there will be no recourse to the Lord Chief Justice. It is only the legislation providing for the appeal to the court has to be subject to scrutiny by the Lord Chief Justice. So that is a one-off event.

77. **Mr Agnew**: OK. Apologies for my lack of understanding.

78. **Mr Dunne**: Thank you very much, gentlemen, for coming in to make your presentation. My questions are fairly short, unlike the questions of some other members. I want to ask about the fast-track voluntary arrangements. In paragraph 11 of your document you mention them; is the intention to retain that system?

79. **Mr Reid**: In the meantime, yes. However, the Small Business Bill, which is currently progressing through Westminster, includes provision to repeal the fast-track system entirely. Likewise, we hope to repeal it in a future insolvency Bill, hopefully to be passed during the lifetime of the next Assembly.

80. **Mr Dunne**: The fast-track system is currently administered by the Official Receiver. Is that right?

81. **Mr Reid**: It is; but there has never been a case in Northern Ireland of a person availing themselves of it.

82. **The Chairperson (Mr McGlone)**: Excuse me, Gordon. Mr Reid, is the Bill that you referred to the UK Small Business, Enterprise and Employment Bill 2014-15?

83. **Mr Reid**: That is it, yes.

84. **The Chairperson (Mr McGlone)**: That is the one. OK. Thank you.

85. **Mr Dunne**: My last point is something that was raised yesterday in the Chamber. Our understanding is that the sign-off of legal documents is generally done in hard copy. Is there a likelihood that that will change, and that an electronic signature will suffice?

86. **Mr Monds**: As part of the primary legislation, a set of rules will be introduced in secondary legislation. I think that I am right in saying that those rules will allow for and define what can be used to formally sign off a document.

87. **Mr Reid**: They will provide for electronic documents to be authenticated as genuine, yes. A document or information given, delivered or sent in electronic form is sufficiently authenticated if the identity of the sender is confirmed in a manner specified by the recipient or, where no such manner has been specified by the recipient — that will likely be the case in the majority of cases — if the communication contains or is accompanied by a statement of the identity of the sender and the recipient has no reason to doubt the truth of that statement.

88. **Mr Dunne**: It would be the case then?

89. **Mr Monds**: It would be, yes.

90. **Mr Dunne**: The electronic signature will be acceptable.

91. **Mr Reid**: Yes.

92. **Mr Frew**: Paragraphs 4, 7 and 8 of schedule 2 to the Bill make provision for statutory demands to be in writing. Is that just a tidying-up of the writing? What is the present circumstance?

93. **Mr Reid**: Yes, that is a clarification. The statutory demand is an important document informing the person that they are at risk of being made bankrupt or that the company is at risk of being wound up if payment is not tendered within a three-week period. That document has to be served personally. So, it would not be appropriate for it to

be served electronically. That is to clarify that it needs to be in writing.

94. **Mr Frew**: So it is a written demand. What are the current arrangements? Is that changing the arrangements or is it just tightening up the wording?

95. **Mr Reid**: It has always been understood that statutory demands have to be in writing, but the legislation was vague on the point. It is to make it more certain and concrete.

96. **Mr Ó Muilleoir**: Go raibh maith agat. Gentlemen, we talked about what the original clause 14 removed, and we are now saying that, if a financial institution becomes insolvent — God forbid that that would happen — the compensation to the customer is £85,000, as I understand it.

97. **Mr Reid**: Yes.

98. **Mr Ó Muilleoir**: What about someone who has more than that on deposit? What happens to the additional money? Is there compensation for that?

99. **Mr Reid**: No.

100. **Mr Ó Muilleoir**: So that is lost.

101. **Mr Reid**: The person would be at risk of losing any deposit in excess of £85,000. The only hope that they would have of getting their money back would be if the liquidator could sell off the bank's assets, loans and so on to raise funds to hopefully pay part of what the customer would otherwise have lost.

102. **Mr Ó Muilleoir**: Why did they come to the figure of £85,000?

103. **Mr Reid**: The scheme is administered by the Financial Services Authority on a UK-wide basis. It is not the responsibility of the Insolvency Service, and I could not speak for the scheme.

104. **The Chairperson (Mr McGlone)**: Can you clarify the Treasury's role in regard to having call on the moneys or anything like that?

105. **Mr Reid**: Sorry, on what?

106. **The Chairperson (Mr McGlone)**: On the £85,000. What is the Treasury's role in all that?

107. **Mr Monds**: The Treasury sets the policy on a UK-wide basis. Whenever a financial institution becomes insolvent, the Treasury would become a preferred creditor because of the £85,000. The Financial Services Authority would recompense the people their £85,000 and then, to get that money back, the Treasury would be the preferred creditor.

108. **The Chairperson (Mr McGlone)**: That is an interesting question. If anybody is over the £85,000 mark, who has the first call on the money?

109. **Mr Monds**: Whenever the institution is wound up, its assets will be identified and then sold off. Therefore, the preferred creditors have the first call on any moneys. The Treasury would be one of the preferred creditors in that case along with the other secure creditors.

110. **The Chairperson (Mr McGlone)**: Is it one of the preferred or the preferred?

111. **Mr Monds**: One of the preferred creditors.

112. **Mr Reid**: The matter has been taken out of the Insolvency Bill; it will be dealt with in a statutory instrument on a UK-wide basis. It will provide for the financial services scheme to have first recourse to the sums paid out by way of compensation to customers, which are up to £85,000. Further provision is now being included in that statutory instrument. I do not have it in front of me, but, as I recall, it addresses what you are speaking of; it will give a certain priority to customers who have had deposits of more than £85,000. As I said, I would like to check that before I say it definitively. They come in after the financial services compensation scheme in respect of the moneys they have had on deposit.

113. **Mr Humphrey**: Thank you very much for your presentation. In terms of the backlog that we have reached, you said to Mr Flanagan that the economic downturn has a major role in that.

Has the response been inadequate in terms of reaching the backlog? Given the economic downturn, could this not have been seen, and could we not have put more practitioners in the field to address it?

114. **Mr Monds**: At present, when an insolvency order is made, the Official Receiver will carry out initial investigations. His office will identify whether the person who has become insolvent has any assets that are likely to be realised. If it looks as though assets will be realised, we will pass those out to a private sector insolvency practitioner so that they can realise the assets and take their fee from those assets as part of their work. However, if the insolvent or bankrupt person does not have any assets, there are no fees to be realised, and so the case is taken on by the Official Receiver and administered by the Department. We are really at the mercy of the nature of the cases that come across our desk every day. The majority up to now have been cases where there have been no assets, largely because of negative equity in property. We are unable to pass those out to insolvency practitioners, so they will be kept in-house. We will administer those ones, and that is where the —

115. **Mr Humphrey**: So, there are no cases that could have been passed to the private sector?

116. **Mr Monds**: The cases where assets have been identified will be passed out to private sector insolvency practitioners, and —

117. **Mr Humphrey**: I am asking you whether more could have been done. Are you basically saying that, because the Official Receiver had to be appointed and that it had to be retained in the Department, that could not happen?

118. **Mr Monds**: Insolvency practitioners are under no obligation to take the cases. If there is no way for them to derive a fee from the case, they will not take them. Those are then administered by us.

119. **Mr Humphrey**: Obviously, the economy is strengthening. Are we beginning to see the backlog being addressed?

120. **Mr Monds**: As I said, we are constantly looking at our processes, procedures and structures in the Insolvency Service. Over the last few months, the numbers of bankruptcies and companies winding up have levelled off and are starting, thankfully, to go down a little bit. That has allowed us to get the backlog down. The backlog is still there, but it has levelled off. We are hopeful that, over the coming short to medium term, we will get that down.

121. **Mr Humphrey**: Very briefly, Mr Reid, if we have to comply with the EU directive, as every other member state has to, why has the Bill not passed through the House quicker? Other regions of the UK and other member states would have been through this.

122. **The Chairperson (Mr McGlone)**: If you do not have detail —

123. **Mr Reid**: An infraction letter has been issued to the UK about the issue of non-compliance with the services directive. That issue is being dealt with by the Department for Business, Innovation and Skills (BIS). It has negotiated a date by which, if it complies with the directive, no further action will be taken by the EU. That date is in 2016. All being well, the Act should be in operation by that date, and that will ensure compliance.

124. **The Chairperson (Mr McGlone)**: We have a very brief question from Mr Anderson, and we need a brief answer.

125. **Mr Reid**: I will do my best.

126. **Mr Anderson**: The Department's briefing paper refers to provision:

"to create the option of being authorised as an insolvency practitioner to act solely in personal or corporate insolvencies".

127. **You have already mentioned capacity. The paper also states**:

"Under current legislation, it is only possible to be authorised to take both".

128. What was the thinking behind that approach?

129. **Mr Reid**: The thinking is to make to easier for people to become insolvency practitioners. They will not have to study both areas. Someone, for example a debt adviser, might like to qualify as an insolvency practitioner and do more things for individuals but may not be interested in acting as an insolvency practitioner for companies. What would be the point in them being required to study and take examinations in how to deal with company affairs? That is the thinking behind it. Greater specialisation should also lead to greater expertise.

130. **Mr Anderson**: I have one other very quick point. There are two insolvency practitioners in Northern Ireland. Should practitioners opt for one area or the other, it may create the risk of a lack of provision in the future. Is there a need for further regularisation?

131. **Mr Reid**: That is a misunderstanding. There are more than two insolvency practitioners in Northern Ireland. There is in excess of 50 insolvency practitioners in Northern Ireland.

132. **The Chairperson (Mr McGlone)**: How many are registered with DETI?

133. **Mr Monds**: Just two.

134. **Mr Reid**: Two. That is where the number comes from.

135. **Mr Anderson**: Is there a need for further regularisation of those practitioners?

136. **Mr Reid**: We have no alternative except to go along with what is being done in GB. We cannot opt out of bringing in partial authorisation, because we have to comply with the EU directive. The UK would be in breach of that directive if we did not bring in partial authorisation. If we did not, someone who was partially authorised in GB in what will be their Deregulation Act would be entitled to practice on the same basis in Northern Ireland. We need to have a scheme to allow for partial authorisation here.

137. **The Chairperson (Mr McGlone)**: Thank you very much for that. I have two wee things to decide, and members can then go to the remembrance service. If the officials are content, will they respond in writing to any further queries we have? Are members content to add the Law Society of Northern Ireland, the Institute of Chartered Accountants in England and Wales and the Institute of Chartered Accountants of Scotland to the list of those who will provide written evidence? Are they further content to ask them to include information about the issue that was raised by Mr Allister at last week's meeting?

Members indicated assent.

9 December 2014

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)
Mr Phil Flanagan (Deputy Chairperson)
Mr Steven Agnew
Mr Gordon Dunne
Ms Megan Fearon
Mr Paul Frew
Mr William Humphrey
Mr Danny Kinahan
Mr Fearghal McKinney
Mr Máirtín Ó Muilleoir

Witnesses:

Mr Sean Cavanagh	*Institute of Chartered Accountants in Ireland*
Mr Stephen Cave	*Pricewaterhouse-Coopers*
Mr Gareth Latimer	

138. **The Chairperson (Mr McGlone)**: With us today are Mr Sean Cavanagh, chairperson of the insolvency technical committee (ITC) of the Institute of Chartered Accountants Ireland (ICAI) and partner at Cavanagh Kelly; Mr Stephen Cave, partner in PricewaterhouseCoopers and a member of the insolvency technical committee of the Institute of Chartered Accountants Ireland; and Mr Gareth Latimer, senior manager of business recovery services in PricewaterhouseCoopers (PwC). Thanks very much for coming today. You are very welcome indeed. We look forward to hearing from you and, indeed, to pursuing and maybe drilling down a bit deeper into some of the issues that you raised in your submission. The Committee has already received your detailed submission, so members have read what you had to say. I do not know who is fronting this bit initially. Is it you, Sean? That is grand. You will have the opportunity to make your opening statement. Then we will have the question-and-answer session with members. If you are happy enough to go with that, please go ahead.

139. **Mr Sean Cavanagh (Institute of Chartered Accountants in Ireland)**: Yes, indeed, Mr Chairman. Thank you.

140. I want to briefly introduce myself. I am a partner at Cavanagh Kelly, which is a firm of insolvency practitioners and chartered accountants. I lead our insolvency department. We have five offices. We really welcome the opportunity to come here today. I just want to let the Committee know as well that, as the Chairman advised, I also chair the insolvency technical committee of the Institute of Chartered Accountants in Belfast. That represents all members in Northern Ireland.

141. We welcome the opportunity to be here with you this morning. I do not intend to go through all 14 clauses, suffice it to say that we welcome virtually all the submissions and legislation bar one clause, which is clause 14.

142. Some clauses concern objectives that we particularly welcome. The first concerns modernisation of communication methods, which I think you have all debated and which are well known. The second is on meetings, and the third, which I welcome particularly, is on facilitating banks to provide bank accounts for bankrupts, which, again, I understand was the subject of quite a bit of debate.

143. The one clause that we have issue with is clause 14, which really concerns the partial authorisation of insolvency practitioners. Our difficulty with that is that we do not see it as being in the public interest. We see it as causing greater cost to the taxpayer and the public at large, because if these provisions go through, the regulatory bodies will incur greater costs for monitoring and setting up systems for monitoring. That, in turn, will be passed on to insolvency practitioners through their fees, which in turn will mean

less dividend to the public. We have a problem with that.

144. On a technical side, we also have a problem, in that, first, we do not see that there would be a great appetite for this in Northern Ireland. In our practice, we work across both corporate and personal insolvency. It is not even clear to a lot of individuals who come to us whether the solution to their insolvency issues would be to follow a personal or a corporate route. Some people will have been directors of companies, and we find that out only later on. Some people may well have been a partner in some particular business or other. Therefore, in our opinion, if the Bill goes through and this clause goes through the way that it is, there will be situations where there is partial authorisation — for example, when someone is authorised to take only personal work and they find that there is corporate work — and they find that they will not be able to take the case, basically. We really see a problem here. I think that the word "overlap" has been used in submissions up to now. There is great overlap, as we call it, between personal and corporate work. That is our particular problem with this clause. I will be happy to give you firm examples of that in practice that we have had to deal with in our everyday work.

145. The final thing that I will raise with the Committee is that the clause on partial authorisation in the GB legislation, which of course kicked off in 2010 and later in 2012, has not, as yet, been enacted. I understand that it will be enacted some time in 2015. It is interesting that, even in GB, no strong case was made for the enactment of that legislation. Therefore, when we looked to see whether we could find some items that would help us to support the Committee and that made a compelling case for its adoption, we could not find any. So, we are struggling both from the point of view of our personal experience and practice in Cavanagh Kelly and from the point of view of looking for external evidence of why this is necessary.

146. My final point will be that we think that this is designed maybe for what we would call the consumer debt category of activity. The consumer debt category of activity, I understand, does not involve us. It does not involve a lot of recognised professional bodies (RPBs), which are professional regulatory bodies. So, we do not know. I think that it will be regulated separately in GB, so we could be dealing with a different kind of scenario.

147. Therefore, as far as we can see the situation in Northern Ireland, we do not see that there will be any big appetite or interest in this. Those are the three main points with which we have a problem. Apart from that one clause, clause 14, we are very supportive of the rest of the legislation. There is a lot of positivity coming out of this.

148. **The Chairperson (Mr McGlone)**: Right then. Thanks very much, Mr Cavanagh. I know from my personal experience of the professionalism of your firm. There is no doubting that.

149. To get back to partial licensing, we are kind of in the realms of hypothesis. You do not know how it works. In England, they do not know how it works, because it is not in yet. We put to the Department what the driver was for us. You may be aware of what it said. It informed the Committee that it is obliged to follow what has been done in England to comply with the EU services directive. Under the conditions for granting of authorisation, the directive states at article 10(4) that:

"The authorisation shall enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory".

150. Without getting into politics, in this instance, that is coming from Westminster. It continues:

"including by means of setting up agencies, subsidiaries, branches or offices, except where an authorisation for each individual establishment or a limitation of the authorisation to a certain part of the territory is justified by an overriding reason relating to the public interest."

151. The Department cited that legislation, and it cited it as the reason why it has been brought in over in Britain. Going back over to you basically, I do not know of any:

"overriding reason relating to the public interest."

152. **Mr Cavanagh**: Certainly, I have points to make on that, but Stephen Cave is happy to take that point on board.

153. **Mr Stephen Cave (PricewaterhouseCoopers)**: Just to comment on that, we have discussed this at length both in the insolvency technical committee and the profession generally. Whilst we are supportive of everything else on this and believe that safeguards could be put in place, fundamentally, I think that it is a matter of public interest. That is because, particularly given the nature of our economy over here and the existence of the small to medium-sized enterprises (SME), quite often when an individual is sitting in —

154. **The Chairperson (Mr McGlone)**: Bear in mind that this says:

"an overriding reason relating to the public interest."

155. There will be SMEs in Britain — in Scotland, England and Wales — so I think that it would need to be a quite exceptional reason. Stephen, you are a man who is well practised in this stuff, so you know what I am talking about.

156. **Mr Cave**: That is a fair point. However, the issue is about providing the right advice to the business at hand, and the difficulty is that, if you are licensed purely to practice personal insolvency and the person is sitting in front of you, you often do not know, in that first interaction or those first several interactions, whether that is going down a personal insolvency line, a corporate one or, as is often the case, a mix of the two. However, I take your point, Mr Chair.

157. **The Chairperson (Mr McGlone)**: One issue has cropped up. If this is not going to apply in a lot of cases, why do you worry about it?

158. **Mr Cavanagh**: I agree with that. This is not going to apply in a lot of cases, but, at the same time, if the legislation comes in, the RPBs will be obliged to provide the framework for dealing with requests for partial authorisation. That will mean that there will be a cost that will be passed on to the consumer. My understanding is that, as the legislation outworks through GB, a lot of the consideration is on the amount of savings that will be achieved. That, in my opinion, is part of the public interest, but I could be wrong.

159. **The Chairperson (Mr McGlone)**: Let us come back to "an overriding reason". That is the reason that the Department has given to us, and I am seeking to tease it out. I am trying to pick up on this. I think that, in your evidence, you said that there are not going to be that many cases where this will apply. You are the accountant, so if that is the case, there will not be an awful lot of money involved in monitoring it.

160. **Mr Cavanagh**: No, but there will be money involved in setting up the procedures for monitoring it. That is where the expense will be. My understanding was that, in the earlier consultation, there was a figure of £2,500 that the Chartered Accountants Regulatory Board (CARB), which is the regulatory body for the Institute of Chartered Accountants, calculated. With respect to the Committee, £2,500 will not establish the requisite monitoring systems to set that up. However, I take your point that there may not be a big take-up.

161. However, at the same time, even if there are only three or four, some system will have to be set up. Indeed, in some cases it will perhaps require dual visits by RPBs to firms like ours, for example. If we had a partial licensee, someone is going to have to regulate that and to regulate the cases that are taken on. It is going to be complicated. As you know, the regulatory bodies all regulate all the insolvency firms in Northern Ireland.

162. **The Chairperson (Mr McGlone)**: This is my point: if your argument is that it will apply only in a limited number of cases, or a few cases, by logic it will be

complicated but only for a few cases. You are all seasoned practitioners, and you have dealt with the multiplicity of complexities in these things. That is why you are here today. I am just trying to get where exactly the consistency of the argument is coming from. If it is going to be complex, it will be so for a few cases, so a huge magnitude of stuff will not be coming in your direction.

163. **Mr Cavanagh**: No. Being frank and honest about it, Stephen and I have debated this in our practices, and I have debated it. We are conscious, Mr Chairman, that you are using the phrase "an overriding interest". If human rights legislation and the desire to follow the legislation as it outworks in GB have to be followed, we would reluctantly have to concede that that extra dimension of overriding that requirement is difficult to deal with.So, I am conscious of and understand your views, Mr Chairman.

164. It is interesting that, in GB, as I alluded to, there was nothing in the consultation or in the submissions from the Institute of Chartered Accountants in England and Wales (ICAEW) or, indeed, the Institute of Chartered Accountants of Scotland (ICAS) that indicated that they could find in favour of it.

165. **The Chairperson (Mr McGlone)**: I appreciate that, but the Department is citing EU legislation and EU services directives. I am trying to be devil's advocate.

166. **Mr Cavanagh**: Of course.

167. **The Chairperson (Mr McGlone)**: Obviously, like so many of these items, read-across and compliance are almost a given.

168. I want to tease something out a bit further. Again, we are into the realms of hypotheses, but your hypothesis is given with you wearing the experienced, seasoned hat of what you do. You said that partial authorisation would have a detrimental impact on the quality of advice and on the prospects of recovering money from debtors. In that realm of what might happen, will you give us an indication of how you see that creating difficulties in that area?

169. **Mr Cavanagh**: Yes. At a practical level, when we are doing individual voluntary arrangements (IVAs), we find that we have, for example, a husband and wife. You have a debtor situation. You will have a person who owes money, for example, in relation to a personal guarantee or in relation to a debt that was incurred while they were in their guise as a director of some company. When you are actually dealing with that at the coalface, you find that the partially licensed person who is licensed to carry out only personal work has to say to that debtor, "I can't act for you." They have to get someone who is experienced in corporate work who understands what a director is, what the concerns are, what the company issues concerning directors are or, more particularly, what the corporate issues surrounding personal guarantees are. That is an actual coalface, practical point. There will be situations where we have to say that to them. As it pertains at the moment, being duly qualified means that we can deal with those cases there and then seamlessly and have no issue. That debtor is not disadvantaged in any way, whereas someone who is only personally licensed is not going to be aware of the company, of the ramifications for directors, what it means for the directors disqualifications unit (DDU) or what it means for so many other parts of legislation. So, in our opinion, the debtor in that instance could be disadvantaged.

170. **The Chairperson (Mr McGlone)**: I will draw an analogy. To pluck an example out of the air, someone might require specialist advice in marital law and licensing law. You could go to the practitioner who does one and you could go to the one who does the other, and that would not really present a difference or a problem to people.

171. **Mr Cavanagh**: I do not think that the two analogies are exactly comparable. We call this the "overlap". For example, in my opinion, marital law and licensing law are more distinct —

172. **The Chairperson (Mr McGlone)**: Sorry; I am just pulling that out of the air. If you want things done, you go to somebody who knows what they are doing. In your case, your argument is, "Well, we can handle it all here." What if you go along to someone, you discuss the case with them — I am trying to get to the bottom of this — and they say, "Well, I deal only with corporate issues. You have to go to somebody to deal with your personal matters"? That could be grand, and even a small company could say, "I don't deal with that, but he or she deals with it". What is wrong with that?

173. **Mr Cavanagh**: I can answer that only by saying that, at the coalface in our practice, which is representative of a lot of the insolvency work that is carried out in Northern Ireland, there are still very many situations where there is an — forgive me for using the word again — overlap of disciplines between the personal and the corporate. People come in looking for debt advice. There can often be situations where, if we are doing an IVA, we would advise them to go down certain corporate routes. Perhaps they could form a limited company, for example. The personal practitioner is going to say, "I can't answer that question".

174. **The Chairperson (Mr McGlone)**: Can I just tease it out a stage further? I am getting a bit of a picture at the moment. Say, for example, I am partially authorised and you are partially authorised, and we have a working arrangement. I do corporate and you do personal, or whatever it might be. Somebody might come to me, and I will say, "Sorry, I don't do personal, but Sean is good at it", and that working arrangement is there. What is wrong with that?

175. **Mr Cavanagh**: In theory, there would be nothing wrong with it, except that, again, you would be adding another layer of cost, because the corporate specialist is going to have to come in. If you are dealing with one person who has both disciplines in his academic armoury, he is able to handle that question there and then, whereas in the situation that you just outlined, we would have to bring another person in. So, that would add another layer of cost to the exercise.

176. **Mr Cave**: I think that the practical, logistical arrangements to deal with those types of situation are not insurmountable. As to your point, I think the reality, in whatever analogies we use, is that, within an initial one-hour consultation with a business in financial stress, you often cross back and forth across those areas many times. So, I do not think that the practical arrangements for dealing with that are insurmountable, but I think that it presents practical issues.

177. **The Chairperson (Mr McGlone)**: I was going to come to this, but since you are taking me there, I presume that you have in your firm people who specialise in corporate and others who specialise in personal.

178. **Mr Cave**: Yes.

179. **The Chairperson (Mr McGlone)**: Not everybody is an expert in everything.

180. **Mr Cave**: That is correct, and there are occasions when you refer to a particular person who specialises in personal bankruptcy, whether they are actually a licensed insolvency practitioner in that area, and where you can bring in the relevant disciplines. Where your analogy is concerned, there may be a tax situation when you need to bring in a tax person. You call on those specialists as and when they are needed. The concern that we are referring to is in bringing that together if, through the analogy, you are sitting at the far side of the table, often in a distressed situation because you have perhaps run out of cash and you need advice to quickly and efficiently deal with that across that spectrum. That is the concern, but we do not believe that it is insurmountable.

181. **The Chairperson (Mr McGlone)**: You are good at what you do. That is why you are doing what you are doing where you are doing it. Surely the market will determine whether someone is pretty shabby at their job. They are not going to go to them, even if there are, as you say, a limited number of cases where

those partial licences will be issued or operable. I am just trying to get to the nub of the issue.

182. **Mr Cavanagh**: That is a very fair point indeed. We operate in a market-dictated environment; there is no question about that. The only fear we have is that, if a debtor comes for advice and some element of the solution to their problems lies in having some knowledge of corporate law, that debtor, as I indicated, is going to be slightly disadvantaged. The debtor, sadly, will not be aware, unless they find out later, that there were other options that, had they been able to consider, could have left them in a better position.

183. **The Chairperson (Mr McGlone)**: PwC raised an issue about grandfathering. Will you elaborate a wee bit more on how that operates? What is that concept?

184. **Mr Cave**: Going back some 20 years-plus, before the introduction of formal examinations across a range of disciplines to allow someone to become a licensed insolvency practitioner and to take formal appointments, there was a system whereby, provided that their experience record was signed off, they did not have to formally sit exams, so they were grandfathered in to that system. There is a mix of practitioners still in the market: those who have sat the formal examinations to become qualified, such as myself; and those who were grandfathered in.The point is that we have absolutely no issue with people who were grandfathered in, continue to practise in that space and who have had that as, if you will excuse the expression, their day job, as against those who were perhaps out of the market for quite some time doing many, varied and totally diverse things. Post the recession that we are hopefully now out of, they have effectively reapplied to get their licence back. It seems that, while we have a debate about authorisation and people having to go through and achieve a competency, that does not sit right in that framework.

185. **The Chairperson (Mr McGlone)**: Are there many insolvency practitioners who have qualified in that way?

186. **Mr Cave**: Who are still practising?

187. **The Chairperson (Mr McGlone)**: Yes, people who have inherited that role.

188. **Mr Cave**: There is probably a handful; no more than that.

189. **The Chairperson (Mr McGlone)**: OK. Thanks very much for that.

190. **Mr Frew**: My questions relate to PwC more than those of the other contributors here today. They are to do with clause 1 with regards to having a single physical location and being able to modernise it and use technology in order to get a forum or meeting in place whereby all the creditors and players in it can hear and communicate with one another, albeit even if they are not in the same room. The PwC response talks about the sorts of problems that could arise as a result of rules not being sufficiently prescriptive. To use your term: you talk about statements of insolvency practice (SIPs). Can you give us some detail of what you mean by that? What do you see as being something that would be fit for purpose?

191. **Mr Cave**: I will clarify the point, Mr Frew. First, we are hugely supportive on the whole of modernising, to use your term, which is, I think, a good one, the approach and ultimately trying to make this more efficient and, indeed, more cost-effective for creditors in situations. The points of concern were again around practical application: how you deal with a situation in which somebody says that their link to get into that meeting did not work. How do you verify that it is actually Mr Frew, who is purported to be a creditor of the business, on the other end of the phone, videoconference or whatever? Again, it is a layer beneath, hence why we referred to the statements of insolvency practice, which often sit, as best practice standards, beneath the legislation to make sure that there is consistency of approach around how a particular practitioner and their firm implements that.

192. **Mr Frew**: I take your point about the difficulties there. Technology fails from time to time: you may be about to have a very important meeting and then something goes wrong. Is there any way that you can guard against that? This seems to be a very good idea and the way forward, but is there any way that you know of that can get around that problem? If you have items that will resolve this issue and take away the concern, how would you put that in the Bill?

193. **Mr Cave**: That is a fair point. I think that, because we have not got into that space as yet, there is an element of that needing to evolve. There needs to be consistency on how practices approach that, because one particular firm's systems and how it deals with that may be totally different from another. It is about how you bring consistency of approach so that the creditors see that. I think that it can all be managed and dealt with and, in some ways, to use an analogy, it is no different from someone who was stuck in traffic and did not attend the meeting when they were supposed to attend. You have the option there to adjourn the meeting. Similar principles can be adopted in practice to deal with that, because it would be hugely beneficial in moving things forward in the modern age.

194. **Mr Cavanagh**: An analogy with that is that, nowadays, with meetings held, for example, at a lot of what I would call very high-end auctions, you might have someone in Malta, Venezuela or Australia, and you have to be absolutely certain, because you may be dealing with several hundred million pounds, that there is a mechanism there for making sure that the guy on the other end of that phone is who he says he is, otherwise you would be out a lot of money. I envisage that technology will go down that route of ensuring that there is a password for each particular case that will be unique to each case.

195. **Mr Frew**: I understand. That brings with it the security of making sure that all the characters and players —

196. **Mr Cavanagh**: Password-orientated security will end up solving that, in my opinion.

197. **Mr Frew**: With regard to technology, it is vital that everyone at the meeting, whether they are there or remotely there, hears and communicates with everyone. A phone call, surely, will not cut it; it will need more advanced technology.

198. **Mr Cavanagh**: Both Stephen and we use videoconferencing for a lot of our ordinary corporate meetings. I am sure all members are aware that that has come a long, long way. I just finished a case last week with a client in Bangalore, in India. There was no problem whatsoever with overcoming all the normal difficulties. That technology is with us today and why we welcome the legislation.

199. **Mr Frew**: An issue is also raised in the PwC report around the amount of time needed to sort out the logistics: to identify a venue, inform the creditors of the venue and so on. You talk about sufficient time. In your eyes, what is sufficient time to organise that? I know it is logistics, but it is just so that we get it right.

200. **Mr Cave**: It will vary from case to case depending on the spread of your creditors. To follow on from Sean's analogy: in a situation where you have a lot of foreign creditors and perhaps different time zones are involved, that will require more logistical planning. Typically, in our world, that is a minimum of two weeks. Under the existing legislation, the notice period will range from two to four weeks for any given meeting. Within a similar time frame is more than sufficient to do what is needed. We need to make sure, in the practical implementation of this, that it is consistently applied; hence the reference to perhaps a statement of insolvency practice around it. Indeed, without doing my own firm an injustice, to make sure that the small one-person practitioner firm is not being ousted from the market, for want of a better phrase, because they feel that they cannot make the investment in the technology, it is about how we get

something that moves it all forward but, by the same token, continues with the competitive and proper landscape that is there for insolvency practitioners.

201. **Mr Frew**: Is this open to abuse with regard to delaying?

202. **Mr Cave**: Anything is open to abuse, as we all see in cybercrime and the use of technology. There is an element of evolution in all this and we need to stay close to the situation to see how it is working and then adopt it. However, the legislation should provide the framework umbrella, as opposed to changing the legislation, and, within that, the statements of insolvency practice and guidelines can be tweaked as needs be to try to eliminate any such activities.

203. **Mr Cavanagh**: I want to make a very practical point on that, Mr Frew. You are absolutely correct in your observation. On the issue of electronically transferring dividend payments — this is getting down to the coalface — you could hit a wrong number. Banking legislation will have to be brought into the modern world to cope with the likes of that where there is an issue of fraudulent payment or a payment made by a simple clerical error. We are entering into a completely new world. Some of us are already there, but, essentially, a lot of people are just going to have to be a lot more careful.

204. **Mr Frew**: I want to change tack now and talk about the regulation, or the lack of regulation, with regard to insolvency practitioners. If I was to say that we should have, in the Bill, more effective supervisions and regulation of insolvency practitioners, what would you say about that?

205. **Mr Cavanagh**: I will take that question, Mr Frew. Wearing my hat as chair of the insolvency technical committee, I work closely with the CARB, which is the regulatory body for the Institute of Chartered Accountants Ireland. I work very closely as well with bodies across the water. I submit to the Committee that the insolvency profession — this is accepted; it is not just my observation — is one of the most highly regulated in the world. And I mean the world. The OECD data that has come out finds that, in the UK, the insolvency profession is the sixth best. Do not ask me what the other five are, please — *[Laughter.]*

206. **The Chairperson (Mr McGlone)**: As long as they are not partially licensed.

207. **Mr Cavanagh**: Maybe so. There is a very strict and robust monitoring regime. It is highly regulated by an ethics committee. All insolvency practitioners have to sign up. On the monitoring visits, they are compliant with strict ethical guidelines that are monitored every year.

208. I could literally take half an hour and go through it and bore you to tears with the details of where we are. We have moved on in the modern world. If there are problems or shortcomings in the quality of advice that emerges from monitoring reports, our committee will act. Those reports are published and in the public domain. Believe you me that any people inside our profession who fall sort of certain standards are brought to book. I am pleased to see that government recognises that generally in its reports.

209. The Insolvency Service is the overarching body that monitors the monitoring bodies. The IPs have the monitoring bodies — the RPBs, as I call them. The layer on top of that is the Insolvency Service, which is obviously government and also monitors. Those are not paper exercises but actual visits. In England, and also in Northern Ireland, the Insolvency Service carries out monitoring of the RPBs.

210. **Mr Frew**: I take the point, and you have every right to defend your profession. I have absolutely no problem with that, and I take what you say that you could spend half an hour on that.

211. Yet with all that, we still hear of cases of people being oppressive and unfair to clients, and the assets of a business being used to pay money to people who were not even creditors. If the profession is, as you suggest, heavily regulated, how can things like that still

happen and no penalty be incurred by the practitioner?

212. **Mr Cavanagh**: I am aware of a reference to that. Perhaps, Mr Frew, you are referring to something that was discussed, apparently, at one of these previous meetings. I did not check this out, but I understand that the person concerned was certainly not a part of the RPBs that I would be directly concerned with. Clearly, that person had to be authorised somewhere in the process, so I am not for one moment minimising that comment or trying to brush it under the carpet. Therefore, obviously, I cannot make any comment in relation to that case.

213. **Mr Frew**: No, I understand.

214. **Mr Cavanagh**: There is always a chance. I do not think that any system is ever perfect. It would be remiss of me not to say that, on the monitoring visits, some members do fall short.

215. Stephen made this point. We started, in the past few years, a system called SIPs, statements of insolvency practice, which you mentioned earlier. Those SIPs are more than just persuasive; they are guidelines that all our members have to adhere to. I think there are 17 in place at the moment covering nearly every aspect of work. That is why I could go down into a level of detail. On the monitoring visits, our members have to adhere to those statements of insolvency practice. That does not take away from the fact that you are alluding to: one case where obviously those standards were not adhered to.

216. **Mr Frew**: Would you support a statutory provision for a code of conduct for insolvency practitioners and/or even a continual professional development (CPD) programme?

217. **Mr Cavanagh**: We have a CPD programme. We are already there, Mr Chairman. We have a certain number of hours. It is very strictly regulated. I am talking about the RPB that Stephen and I are part of. There are seven RPBs. Maybe this Committee is not aware that there are seven RPBs. I agree with you. I would be one for an absolutely level playing field across all RPBs, which maybe is —

218. **Mr Frew**: Is it a statutory provision, though?

219. **The Chairperson (Mr McGlone)**: Is there statutory provision for one?

220. **Mr Cavanagh**: Well, it is heading that way.

221. **The Chairperson (Mr McGlone)**: I am well aware that there is internal one for your profession. What about a statutory provision?

222. **Mr Cavanagh**: I would not have a problem with that. I submit, Mr Chairman, that, really and truly, the monitoring of our bodies is so strict at the moment that, if that became statutory, it would not cause a problem.

223. **The Chairperson (Mr McGlone)**: OK. Thank you for that.

224. **Mr Dunne**: Thank you very much, gentlemen. I will be brief, because you have been here for some time. Clause 3 refers to the removal of requirement for annual meetings in relation to voluntary liquidation and creditors. What is your opinion on that?

225. **Mr Cave**: I will deal with that first, Mr Dunne. I think that that is a catch-up with the modern age in a lot of ways. If we were to survey the number of creditors who actually attend those annual meetings, you would find that you tend to get quite a good representation at perhaps an initial meeting, understandably, because people want to know whether they are going to get any money back, when that will be and perhaps put things on the table, such as, things they want investigated. Thereafter, there is a statutory requirement in liquidation processes to convene annual meetings. In doing that, there is time occupied and cost. Between us all, you ultimately often have no representation at those meetings or perhaps, at best, one or two people. So, it is about giving a facilitation so that the creditors still have a voice but

removing the actual necessity to go through the formality of a meeting.

226. **Mr Dunne**: Would transitional arrangements be put in place for the changeover?

227. **Mr Cave**: Yes. I think that the proposal is that that will continue to apply to anything that is in force before that is enacted, but there will not be the requirement to do that in new cases.

228. **The Chairperson (Mr McGlone)**: Sean, I think that your practice raised the issue of the transitional —

229. **Mr Cavanagh**: We did. We saw this, again, as an unnecessary cost. You are quite right, Mr Chairman. If this is enacted, it will only apply to new cases that start when the legislation comes through, say, in 2015. For a lot of our cases, we will be required to operate two parallel systems, two parallel sets of working papers: one for cases that are currently in progress and will continue for the next few years; and another for new cases where that is not required. That is the reason why we made that point. So, there is a duplication of energies required there, which is just a pity. I suppose, if the legislation could be worded in such a way that it applied to all extant cases, that would save us the bother. However, we do not see it as a huge issue. We are used to such things.

230. Let me say, just as an aside, that — Stephen and I were speaking about this before we came in — because the rules in GB often lag behind the rules in Northern Ireland — these are the rules that follow the legislation — we are used to operating parallel systems. So, to an extent, whilst we would like to have it done away with, it is not going to be a deal-breaker or a big issue.

231. **Mr Dunne**: So, the loss of the AGM would not be significant. In many ways, it is about communication.

232. **Mr Cavanagh**: It would actually save money; it would be of benefit. The cost of setting up such a meeting, of sending out, say, 400 notices for an AGM and no one turns up, can be a bit frustrating to say the least.

233. **Mr Dunne**: Thanks, gentlemen.

234. **Mr McKinney**: Thank you for your submission. I want to look at clause 13, specifically around PwC's written submission. Obviously, it makes provision for bank accounts but that does not mean that people will get bank accounts, so you have suggested that there should be a conversation between the Department and the banks. Is that the right way forward?

235. **Mr Cave**: Just to clarify the question, Mr McKinney: are you asking whether it is right to have the ability for discharged bankrupts or bankrupts to have bank accounts, or to have interaction with the banks?

236. **Mr McKinney**: I mean interaction with the banks.

237. **Mr Cave**: The point was made in the context of such situations that you are supposed to recover from bankruptcy. Bankruptcy is not for life. You need to encourage people to start again, to go again. That is an important part. We were referring to the practical implementation, where we can legislate for the fact that, as a bankrupt, you are allowed a bank account, but we need the banks to buy into that. It was around how you make that work most efficiently in practice through engagement with the banking community so that you appreciate that that is there, it is educated about that and it is applying it.

238. **Mr McKinney**: Would a conversation between the Department and the bank achieve that outcome?

239. **Mr Cave**: It is a fair question.

240. **Mr McKinney**: Sometimes, when we have conversations with the Department, we do not achieve anything.

241. **Mr Cave**: It is about education. It is often the fact that, on the ground, they assume that, because you are bankrupt, you cannot have a bank account. That is not the case. There is perhaps a piece between the Department and — dare

I say it — the insolvency profession around the education and awareness piece for the banks.

242. **Mr McKinney**: That sounds loose. If you are looking to achieve an outcome —

243. **Mr Cavanagh**: It is interesting that, also emerging, funnily enough, as part of the regulatory regime, is a set of protocols. There is an IVA protocol. The British banking federation can come through that. Today, we cannot get bank accounts open for bankrupts, but if it were included as part of a protocol that the banking federation had to buy into, we could point to the banker in question at the coalface and say, "You are not adhering to your own protocol". I suggest that that could be a practical way forward.

244. **Mr McKinney**: How would you inject that into the protocol system?

245. **Mr Cavanagh**: You would make it part of the protocol. There is an IVA protocol at the moment, but it is for only IVAs. We are talking about bankruptcies. There is not a bankruptcy protocol, but it could be brought in as part of —

246. **Mr McKinney**: It would be a "shall" or "must" as opposed to a "may" or "could".

247. **Mr Cavanagh**: Correct. We, in our practice, feel very strongly about that point — not to cut across Stephen — because we find that a phenomenal number of people in rural environments cannot get bank accounts opened. How can you function?

248. **Mr Cave**: If we turn that question around and ask, "What stops the banks opening a bank account for bankrupt at the moment?", it is inevitably the internal lawyer, who thinks, rightfully so, that there is a potential challenge to whatever that bank transacts; pounds in and out of that account. The trustee in bankruptcy can potentially attack that. It would be great if we could build in that education, but I think of the hurdles to potentially get there. I genuinely believe that, if the legislation clearly pointed out when it applies to the internal legal departments of the banks, that would, effectively, deal with the issue.

249. **Mr McKinney**: Yes, but I think that this conversation is taking place in the context of the liability being removed, as is suggested by the legislation. That is one piece of the work that you would expect to open the door, but it appears that there is another piece of work to be done. You are talking about educating, and you are talking about protocol. I am trying to work out where the authority lies. Is it in a protocol? Is it in guidance? Is it in the legislation?

250. **Mr Cavanagh**: Stephen and I addressed this issue as we were waiting to come in. Not all that long ago, there were meetings between the committee that I chair and the bankers on an annual basis. The reason for that was the same reason why we meet the Insolvency Service; it was precisely to address practical issues such as that, so that we could say to the bankers, "Look, this is not working. The bankers out at the coalface are not actually implementing this protocol or whatever". If we, in ITC, could go back to the days when we met the banking people in Northern Ireland, that would be a simple answer to it; it is literally about getting round a table and saying, "Would you please ask the guys out at the branch offices to go and operate this system?".

251. **Mr McKinney**: Do we need more assurance, Chair? Does it sound —

252. **The Chairperson (Mr McGlone)**: Just on that very point, StepChange suggested that the proposals in the Bill would remove liability from banks in instances of bankrupts or potential bankrupts.

253. **Mr Cavanagh**: Yes, that is true. There was always a problem with the definition of what we call, to use our technical jargon, after-acquired property.The problem was that we, as licensed insolvency practitioners, would come after the bank and say that some of those credits and moneys have come into the bank account. The bank would merely say that it would not enter into this situation at all. The only way around

that was for insolvency practitioners to say that we would not take any action against a bank when it was operating a bank account in good faith, and that would prevent an IP from taking any legal challenge against a bank. The key phrase is "in good faith", because I am sure that members understand that, if a clear case of fraud is being perpetrated, the insolvency practitioner still has to challenge that transaction.

254. **Mr McKinney**: Does removing the liability from the banks and having the "in good faith" proviso remove liability fully?

255. **Mr Cavanagh**: The assumption is that fraud will happen only once in a blue moon, so we hope so.

256. **The Chairperson (Mr McGlone)**: Obviously, good faith and fraud do not go hand in hand. If it is fraud, it is illegal, so liability would follow from that.

257. **Mr Cavanagh**: Yes. To take Mr McKinney's point, the good faith clause should bring the banks back to the table. My short answer is: that will work.

258. **Mr McKinney**: I am thinking that the good faith part comes in after the fact, whereas we will want bank accounts to be opened before the fact. How do you do that?

259. **Mr Cavanagh**: I am hoping that the banks see the legislation, see it on the statute book and realise that the opportunity for insolvency practitioners to come after them will not be there unless some highly exceptional event occurs that would enable them to say that they will allow bankrupts to operate bank accounts from here on in. Credit unions do it. We do not understand why there should be a fear on the part of the banks. I think that it should be all right. I am positive and hopeful on that.

260. **Mr Humphrey**: Thanks very much for your time and your presentation. I want to return to clause 14, which you said in your evidence, Mr Cavanagh, is the one that you have most concern about. The Chairman made a point about the terminology used: "throughout the national territory". Effectively, you represent the Institute of Chartered Accountants in Ireland. Have you had conversations with your sister organisations in the rest of the UK about that?

261. **Mr Cavanagh**: No, Mr Humphrey. I chair ITC, but I may have forgotten to mention one additional word: I chair ITC North. The Institute of Chartered Accountants has two insolvency committees, one in Dublin and one in Belfast. Obviously, I chair the one that deals with Northern Ireland legislation. We exchange minutes of meetings and relay them, but we largely cope with the Northern Ireland legislation on its own, and it is self-contained.

262. **Mr Humphrey**: That is my point, because "national territory" refers to the United Kingdom holistically as a unit, because the legislation is being handed down from Europe. I accept that you are part of the Irish institute. What I mean is: have you spoken to your sister organisations in Scotland, Wales or England, if they exist? The same will apply to them.

263. **Mr Cavanagh**: Yes it will, and this is where I have a difficulty. The desire to ensure that there is a level playing field for all practitioners in the UK means that I almost find myself defeating my own argument. It is a dilemma that you have to face, and you have to weigh the balance as to which is the greater need. My dilemma has been, on the one hand, the practical problems that I have, and, on the other hand, the ability to allow someone from Plymouth, Norwich or Sheffield to be able to operate in Belfast. I do not have a problem with that; that is a requirement. If there is other legislation — for example, human rights legislation or this EU-wide directive — I have to defer to that. We wanted to come here today to make our case for the practical outworking of it as opposed to —

264. **Mr Humphrey**: Would it not be an idea to speak to your equivalents in other parts of the UK?

265. **Mr Cavanagh**: I spoke to our homologues in Scotland, and they struggled with the same idea. If people are aware of the Scottish legislation, they will know that Scotland has an even bigger problem because of deeds of arrangement legislation that do not apply anywhere but Scotland.

266. **The Chairperson (Mr McGlone)**: The advantages of devolution.

267. **Mr Humphrey**: The point of the EU directive is to create a level playing field across the United Kingdom, presumably so that you do not have the anomalies that you are talking about that apply in Scotland because of more in-depth legislation. Mr Cave, you represent PricewaterhouseCoopers. You are a national, international and global company. Internally in your organisation, do you have experience of how the other constituent parts of the UK are dealing with this issue?

268. **Mr Cave**: Yes, but I will go back to Mr Cavanagh's point that, whilst the legislation has been passed in GB, from an enactment and in-practice point of view, we cannot find situations where it has come into play. We do not know the outflow of that at this stage. It is an absolutely valid point about liaison. That happens regularly in the insolvency operation group in our firm. Nobody has yet seen that put to the test. Ultimately, in our firm, we are saying that there are nuances of particular geographies. Ultimately, can it all work under one umbrella? It can, although, in some ways, it struggles to reconcile — this goes back to Sean's point — why, in UK legislation, we always seem to have a two- or three-year time lag for implementation. It almost leads you to take it on a composite basis, and, if there were something overriding, to use the word that was used earlier, relating to this geography, you would opt out — dare I say it — from that perspective as opposed to every time there is this lag. I can see both sides. That point is well made, Mr Humphrey.

269. **Mr Humphrey**: I accept your point that we sometimes take longer to implement legislation, but, equally, more recently, we have been leading the field in some other areas. Nevertheless, we have to keep coming back to the point that it is an EU directive. You talked about an opt-out. Effectively, your being uncomfortable with clause 14 comes down to the fact that you have to convince people that there should be an opt-out for Northern Ireland. The difficulty is that, because it is an EU directive — tragically, some 86% of our laws emanate from Europe — we then have to negotiate or try to secure an opt-out. Being realistic, if other parts of the UK have not been able to get that opt-out, how will we be able to do it?

270. **Mr Cave**: I refer back to my earlier point and the final paragraph of the PwC submission. As Sean said, to defer to that European directive, this will not break the system. There were simply considerations about some of the practical implications that are relevant to the nuances of our business environment in Northern Ireland. I accept that you could paint that into other geographies and regions. It is not that it fundamentally means that implementing partial authorisation would break the system. It would simply defer to the final paragraph. If, in that situation, an RPB gives somebody a personal insolvency licence — that goes back to the point about regulation — we need to be sure that the person or business in distress is getting the best possible advice across the board. I think that it can be dealt with.

271. **Mr Humphrey**: Good luck in trying to convince people that it can be dealt with.

272. **Mr Cavanagh**: I have a final comment on that, Mr Humphrey. We are talking about a market-led environment. If I want to do IVAs in Scotland, I have no choice but to tool up and organise myself for deeds of arrangement, otherwise I just cannot practise there; it is as simple as that. Those are market forces. That is Scottish law saying that, if you want to operate in our environment, you work according to the rules that we have set out. They have rules that are completely applicable only in Scotland.

273. **Mr Humphrey**: I think that that is the issue. You cannot have an uneven playing field on this issue — if that ever exists anywhere. If you are being disadvantaged for practising in Scotland, which is obviously a larger nation in the UK, that falls down with regard to the EU directive.

274. **Mr Cavanagh**: Correct.

275. **Mr Humphrey**: Either it applies universally across the kingdom or there are opt-outs. That is the basis on which you need to go forward.

276. **Mr Flanagan**: Thanks for your presentation and patience. I will ask a very simple question. What does "partial authorisation" mean to somebody who knows nothing about insolvency practice?

277. **Mr Cavanagh**: If this goes ahead, an insolvency practitioner can apply for a licence to take on personal insolvency cases only or corporate cases only, dealing with companies. We may see this sometimes when people operate with consumer debt for very small debtors who have only £10,000 or £15,000 of debt. They are not involved in the everyday work that Stephen and I do. Part of me thinks that this legislation will deal partly with those people who want to operate in a very limited personal field. We have a problem when individuals are also directors or have bigger cases and financial issues. That is when this legislation is a problem. For the small ones — the people who have small debts and so on — it is different. Those are what I call small consumer debts. Those people are being dealt with largely by Citizens Advice and so on. We think that it might be aiming at that kind of licence.

278. **Mr Cave**: If the business in question has "limited" at the end of its name, it requires a corporate insolvency practitioner. If it does not — if it is Stephen Cave trading as ABC — it is personal. To go back to an earlier comment, our world often overlaps, but, effectively, it is right: if you do not have "limited" — I am partially authorised and can practise personal insolvency — I can advise you. If you end up bankrupt, I can do your bankruptcy. What I cannot do is become an administrator or liquidator of your limited company.

279. **Mr Flanagan**: Right. The debate on partial authorisation is confusing me, and there is also the constitutional question. Do the two issues overlap here, or what is the story? There is all this talk about the national territory. Is that linked to partial authorisation, or are they two separate issues?

280. **Mr Cavanagh**: They are two separate issues.

281. **Mr Flanagan**: Does the EU services directive state that, if you want to provide insolvency services here, you have to do it all over Britain, too?

282. **Mr Cavanagh**: You have to be able to carry out that function all over Britain.

283. **Mr Flanagan**: Except when it is justified by an overriding reason relating to the public interest?

284. **Mr Cavanagh**: Yes. Our analogy is that if, in GB, someone comes from Manchester and has a personal insolvency licence — this is my interpretation of the legislation — by operation of this EU law, if they say that they want to apply to do work in Belfast, they cannot do it because we would not have the equivalent to GB legislation if we decided to have one and worked on what we call a dual licensing basis. That is the problem with the law.

285. **Mr Flanagan**: Are you saying that somebody in Manchester who is registered to do only personal insolvency would not be allowed to come over here and do personal insolvency?

286. **Mr Cavanagh**: No, because the way in which the law works here at the moment is that, when you are a licensed insolvency practitioner, you are licensed to do both personal and corporate work.

287. **Mr Flanagan**: Would that restrict somebody from Manchester offering personal work?

288. **Mr Cavanagh**: It would if they had a personal-only licence. The GB legislation has not gone ahead yet. If it goes

ahead in spring 2015, which apparently is scheduled, and if that person in Manchester had a personal-only licence, he or she could not operate here.

289. **The Chairperson (Mr McGlone)**: The can, however, operate at the minute.

290. **Mr Cavanagh**: They can at the moment, and there is no problem about that.

291. **Mr Flanagan**: William tried to blame all this on the EU. That is dead on; they can try. The briefing paper clearly states that DETI believes that specialisation would lead to benefits. I think that we would all agree with that. In some cases, it may be useful to have a specialised insolvency practitioner. I presume that, in your practice, you have people who specialise in corporate cases and people who specialise in personal cases.

292. **Mr Cavanagh**: We do.

293. **Mr Flanagan**: I appreciate that there is a difference between an individual and an organisation. I accept the Department's point that specialisation could lead to benefits, but I also accept your point that having a practice that can do everything under the one roof makes sense. That makes sense with a small business owner, a farmer or somebody who also has corporate interests as well. Has anybody tried to put forward the logic of the fact that there is a stretch of water between here and Britain as an overriding reason relating to the public interest as to why the directive may not need to be applied here? Has any logic been put forward as to why you think that we can get a derogation from the question of the national territory? That is where we need to go.

294. **Mr Cavanagh**: With respect, it is outside my competency to comment on that matter. In our submission, we concentrated on the practical outworkings of where we see that. I keep referring to the point about the very small consumer debt cases, and, apart from those, a lot of the other cases involve both. We see an advantage in having the dual system. In simple language, our view is: if it's not broken, don't fix it.

295. **Mr Flanagan**: I hear you, Sean, but we need a solution. I understand what you are saying about the implications. What if the law were worded in such a way that it offered the existing dual system and the specialisms that DETI has proposed? What if there were three types of licences: one for individual, one for corporate and a dual licence? What is your opinion of that?

296. **Mr Cavanagh**: In principle, I would not have any objection to that. I feel that the dual licence is a huge advantage. As I outlined, in our work, we find that having a dual licence is a very distinct advantage. CARB carried out a check and found that there was not a big appetite for individual-only licences among its membership of current IPs. I want to be fair, and there might be an appetite for a specialism in the world of small consumer debt. Indeed, I would not have the competency to deal with small consumer debt, and a specialism would be an advantage if someone came in with an issue like a lot of social security debt. We would submit that that is a very small if not minuscule field, and it is not the field that we deal with. However, we cannot say that it does not exist.

297. **Mr Flanagan**: Can you think about the proposition I have put to you, maybe talk to some of your members and come back to us?

298. **Mr Cavanagh**: Yes; fine.

299. **Mr Flanagan**: Maybe we could tease that out. We have to find a solution that meets everybody's needs: meets the needs of people here but complies with legislation and with what DETI wants to achieve.

300. **Mr Cavanagh**: That is the triple system that you referred to.

301. **Mr Flanagan**: I think that we could tease that solution out more.

302. Your answer to my last question has answered my next one, but I will ask it anyway. Is your opposition to clause 14 commercial to protect your firm, or is it based on the needs of citizens and people here?

303. **Mr Cavanagh**: Absolutely not. I would hope that the Committee recognises that, whilst I am representing Cavanagh Kelly, we consider that it will add an extra layer of cost that the public will ultimately pay for. I say that without hesitation on behalf of the insolvency profession.

304. **Mr Cave**: I second that, Mr Flanagan. I will go with the theme of "if it ain't broke, don't fix it" and say that a lot of licensed insolvency practitioners have done exams and hold licences to do corporate and personal work. They then choose, for commercial or other reasons, to specialise in personal insolvency work or, more commonly, corporate work.

305. From the firm's point of view, I second what Sean says. The system caters for someone who gets their licence, becomes competent across the piece and then specialises. I will go back to the legal example: it is similar to someone qualifying as a lawyer and then deciding to specialise in matrimonial law.

306. **Mr Flanagan**: The rationale for changing the Insolvency (Amendment) Bill is to do with the length of time it has taken and the huge demand for services. Do you think that the Bill will do enough to address that issue?

307. **Mr Cave**: Could you perhaps clarify that?

308. **Mr Flanagan**: I will rephrase the question, maybe in proper English. There is a huge demand for insolvency services at the minute. We have been told that the Bill aims to streamline that to deal with the backlog and make it easier for people to get through the process. Do you think that the Bill will achieve that?

309. **Mr Cave**: I will touch on that. I do not think that there is any backlog with the provision of insolvency services, specifically in the Province or wider afield. There is nothing specific in the Bill that will hugely accelerate the process, although, just to clarify, I do not think that there is a need to accelerate it.

310. **Mr Flanagan**: My final question is about the Tomlinson report. Are you aware of it?

311. **Mr Cavanagh**: Yes.

312. **Mr Cave**: Yes.

313. **Mr Flanagan**: That deals with the work of RBS's global restructuring group (GRG). Businesses were put under pressure by RBS, and good and viable firms were forced into liquidation so that the bank could make more money. Do you have any evidence that that was happening here? No evidence was produced that it was, but claims were made. Through your work, do you have any evidence that any of that activity was happening here?

314. **Mr Cave**: I can comment only on my specific knowledge and the cases that I have been involved with, whether with that specific institution or more widely in the banking sector. I would say no. While people will hold different views about the circumstances and the reasons why something went into insolvency, more than 80% of cases in the last six or seven years — that is not an exact scientific figure — have been property-related failures. You will always have two sides to a story, but, to answer your question, I have certainly not come across any circumstances that would apply to the parameters and criteria you outlined.

315. **Mr Flanagan**: What about you, Sean?

316. **Mr Cavanagh**: I second that. We have direct experience of working on reconstructions and corporate reconstructions. We have no evidence that anything along the lines of the activity you outlined, or that was outlined in the Tomlinson report, was paramount in achieving an overall result.

317. **Mr Flanagan**: Have you worked with RBS?

318. **Mr Cavanagh**: We have worked with the Ulster Bank. We have also done a lot of work with GRG. We have been heavily involved with GRG and the Ulster Bank.

319. **Mr Cave**: It might be helpful to paint a picture for the Committee. The commonly held view is that an insolvency situation

is driven by the bank and that you are appointed by the bank and act for it. To clarify, and speaking from my personal situation, we will on occasion take instructions from a bank to look at its options, but likewise, in many situations in recent years, we have acted on the corporate side and have tried to facilitate a restructuring with the bank to avoid insolvency. So I have seen it from both sides of the equation.

320. **Mr Flanagan**: Are there any changes that could be made to the proposed legislation to protect good and viable businesses from being forced into liquidation or insolvency to make banks or other financial firms more money?

321. **Mr Cavanagh**: Sorry, what was the last part of your question?

322. **Mr Flanagan**: It was about protecting good and viable firms from being forced into insolvency in a drive to make more money for the banks.

323. **Mr Cavanagh**: The CVA process is designed to prevent the insolvency process kicking in. We are involved in many CVAs, and I have operated them. That process is there, and there is no need for any extra layer. That process is in place at the moment through that legislation.

324. **Mr Cave**: I agree. I do not think that anything else needs to be introduced in the Bill. I will add the caveat that I do not believe that businesses are being forced into insolvency. There is sufficient room within the parameters of the legislation and the guidance under which practitioners operate to achieve viable restructures. The biggest challenge to that, although it has got better, is people in the business community seeking professional help at an earlier stage whilst many options are open.

325. **The Chairperson (Mr McGlone)**: Gentlemen, thank you very much for your time and for coming along. I have one final question. Stephen, I listened very carefully when you spoke about the difference between personal and corporate. People may tell you that they are a limited company when they clearly are not. If you were to take the route of partial authorisation, would a five-minute conversation not very clearly and quickly determine whether you are the wrong person or the right person to deal with it?

326. **Mr Cave**: Theoretically, yes is the straightforward answer to your question, Mr Chairman. However, I accept that you could pull this in any region in terms of the nuances. Personal guarantees were a massive issue, particularly in the Province, associated with property debt. There was the impact of that on a limited company and trying to walk through from the point of view of a director's responsibility, and a personal situation with a personal guarantee in the background is a clear overlap of those two worlds. However, yes is the straightforward answer to your question. It can be difficult enough to get that out within that time period.

327. **The Chairperson (Mr McGlone)**: People should know whether they have a limited company or not.

328. **Mr Cavanagh**: Yes, I think so. However, I support Stephen in this: they are not aware of the fact that they have other involvements or that they have involvement with not just limited companies but with partnerships —

329. **Mr Cave**: Partnerships are very important.

330. **Mr Cavanagh**: — and that is another problem.

331. **The Chairperson (Mr McGlone)**: I am conscious of the pressures on your time and certainly on mine. I have to go to another meeting. You have devoted a lot of time to this, and I thank you for your involvement in other issues. You have been very helpful on other occasions.

3 February 2015

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)
Mr Phil Flanagan (Deputy Chairperson)
Mr Gordon Dunne
Mr Paul Frew
Mr William Humphrey
Mr Danny Kinahan
Mr Fearghal McKinney
Mr Máirtín Ó Muilleoir

Witnesses:

Mr Richard Monds *Insolvency Service*
Mr Jack Reid

332. **The Chairperson (Mr McGlone)**: With us today are Mr Richard Monds and Mr Jack Reid. It is good to see you both again. Thank you for your help in clarifying quite a few issues for us; that has been very useful. Do you want to make an opening statement to the Committee on where we are in the round?

333. **Mr Richard Monds (Insolvency Service)**: I do not have an awful lot to add, Chair, to what we said at our most recent meeting a couple of weeks ago. In the interim, we responded to a last-minute question about partial authorisation. There seemed to be a little bit of clarification required, which we provided to the Minister. I think that they have communicated the matters that were raised then with you. At last week's meeting, we have had further clarification about the backlogs in the service and a couple of matters relating to Justice Deeny's comments on the draft legislation. We are preparing a response to that, which will be issued to you from the Minister in due course. That is the up-to-date situation.

334. **The Chairperson (Mr McGlone)**: It would be helpful to Members if you outlined the detail of the new clause you are introducing.

335. **Mr Monds**: Jack, do you want to say a few words about that?

336. **The Chairperson (Mr McGlone)**: Tell us how it will work.

337. **Mr Jack Reid (Insolvency Service)**: Is that the clause about regulation and the regulatory bodies?

338. **The Chairperson (Mr McGlone)**: The regulatory objectives and the like.

339. **Mr Reid**: The clause has been included to address the concerns that were raised by Mr Jim Allister. It will not create the code of conduct for insolvency practitioners (IPs) that he was after; it takes a different and perhaps more effective route to regulating or policing their conduct. Regulatory objectives will be put in place that the regulatory professional bodies will be required to adhere to in their regulation of insolvency practitioners. There will also be penalties that will apply to the recognised professional bodies (RPBs) if they do not maintain a satisfactory standard of regulation. The Department will also have the power to intervene directly by applying to the court for action to be taken against an insolvency practitioner, if a recognised professional body is dilatory in doing so.

340. **The Chairperson (Mr McGlone)**: Grand. That appears to cover quite a bit of it. Will you talk me through the process? The regulatory objectives in clause 14A and article 350C are to have a system that:

"(i) secures fair treatment for persons affected by their acts and omissions;

(ii) reflects the regulatory principles; and

(iii) ensures consistent outcomes".

341. Who makes sure that that happens? Do you have to wait until someone lodges a complaint with you? In that case, you will not be aware of it until something goes off the rails.

342. **Mr Reid**: Not necessarily.

343. **Mr Monds**: It will be the responsibility of the recognised professional bodies to ensure that the regulatory objectives are put in place by which the insolvency practitioners whom they authorise must abide. The Northern Ireland Insolvency Service and the Insolvency Service in Great Britain will carry out regular monitoring of the recognised professional bodies by going into an organisation and looking at what monitoring functions are carried out and how they do them. We do this on a rolling basis in partnership with our colleagues across the water. There is an annual programme of inspection whereby every recognised professional body is inspected every couple of years to ensure that they have in place appropriate, suitable and robust processes and procedures for monitoring the insolvency practitioners whom they regulate and authorise. That is the monitoring process.

344. **The Chairperson (Mr McGlone)**: Just talk me through this. I am trying to narrow this down to a problem situation, where either the insolvency practitioner has overlooked something or dealt with matters unprofessionally or shoddily. What is the process then? In other words, how do you discover that other than by doing an audit? Are these just spot checks? Obviously, you do not go into every insolvency practitioner.

345. **Mr Monds**: We carry out monitoring reviews of the recognised professional bodies. They authorise individual IPs, of which there are hundreds around the country. There are seven recognised professional bodies responsible for authorising IPs.

346. **The Chairperson (Mr McGlone)**: Who checks that the work is being done properly?

347. **Mr Monds**: The recognised professional body will carry out monitoring inspections of their insolvency practitioners.

348. **The Chairperson (Mr McGlone)**: On a spot-check basis.

349. **Mr Monds**: I am not entirely sure, but I imagine that they do so regularly, and there are reviews.

350. **The Chairperson (Mr McGlone)**: I am not saying that this is a huge problem, but it has been highlighted. A member of the public, for example, may draw a case to your attention by saying, as in the case highlighted by Mr Allister: "We have been really badly treated here and are out of pocket substantially". What is the process for drawing it to the Department's attention under this proposed new clause?

351. **Mr Monds**: Initially, the complaint would be made to the recognised professional body. In the case that Mr Allister referred to, the recognised professional body was the competent authority that licensed that IP. Under this legislation, the Department will no longer be responsible for licensing or authorising IPs. We will just carry out the monitoring of the recognised professional bodies. Any complaints against an insolvency practitioner will be made to the recognised professional body, which will carry out a review and investigation of the circumstances. They will be able to impose a range of sanctions, including and up to removing authorisation.

352. **The Chairperson (Mr McGlone)**: I have one final question before I hand over to Paul. Some of those regulatory and professional bodies are not based here. How do you work cross-jurisdictionally?

353. **Mr Monds**: I think that five of the bodies operate in both —

354. **Mr Reid**: Six of the seven are recognised in both jurisdictions. They are recognised by the Secretary of State in Great Britain and by DETI in Northern Ireland. If someone in Northern Ireland has a complaint about the way in which their case has been dealt with by an insolvency practitioner who is licensed by an RPB operating in Northern Ireland, they would make their complaint to that recognised professional body in the first instance.

355. **The Chairperson (Mr McGlone)**: What happens if the response of the professional body is inadequate or not

up to standard? Does the Department kick in then?

356. **Mr Reid**: That would have to be looked into. That is outside statute law: it is procedural. In Great Britain, a system has been established to deal with the issue that you raise. There is a facility to make all complaints about the conduct of insolvency practitioners directly to the Insolvency Service, which screens them to decide whether they have merit. If they have merit, the service refers them to the recognised professional body. Again, I am not entirely certain, but I imagine that they can monitor the recognised professional body to ensure that it takes adequate action. All recognised professional bodies are required to have a complaints procedure in place.

357. **The Chairperson (Mr McGlone)**: I will ask the inevitable question: why not incorporate something like that into the Bill?

358. **Mr Reid**: The system has been put in place in an adequate manner in GB without legislation. It does not affect anyone outside government: it is internal to the operation of the Department of Business, Innovation and Skills in England. It should be possible for a Department to establish an administrative procedure and control the actions of its own staff without having to enshrine the procedure in legislation.

359. **Mr Frew**: After your questions, Chair, and the answers, I am more confused than ever. What is the difference between regulatory functions and regulatory objectives and the code of conduct?

360. **Mr Reid**: In broad terms, the professional bodies carry out the functions. The regulatory bodies have two main functions, one of which is to authorise consultancy practitioners to license them to do their jobs. The other function is to monitor their performance to see whether they are doing their jobs satisfactorily. The objectives will be the standards against which the monitoring will be performed.

361. **Mr Frew**: So if something goes wrong or a client or customer feels wronged, DETI will have a monitoring role with no real enforcement powers or teeth.

362. **Mr Reid**: DETI will have very clear and powerful enforcement powers against the regulatory professional body — it could not be more powerful — if it does not perform its function and adequately address complaints from the public.

363. **Mr Frew**: Can you illustrate what those functions are? What are those powers, in simple terms, and when they will be applied? We have seen it so many times in the public sector when there is a complaints process. It is simply a process whereby, when you get to the end of it, the complainant will not be satisfied, and the problem has been smothered or suppressed. Someone gets a rap on the knuckles, says that they are sorry and that it will not happen again, and we all move on. How can you assure the Committee that that will not be the case in any complaints procedure and that DETI's powers will be used to the full and that there will be an appetite to bite? Can you explain exactly what those powers will be?

364. **Mr Reid**: I am not sure that the scenario you describe is necessarily the fault of the presence or absence of powers in legislation. It is a matter of the culture of the organisation whether it utilises the powers that are in the legislation. I can assure you that this new provision in the Bill creates an extensive range of powers. They range from a public reprimand for recognised professional bodies that are not adequately discharging their function of supervising the conduct of insolvency practitioners right up to withdrawal of their recognition. Financial penalties can also be imposed on them.

365. If someone makes a complaint to a recognised professional body, and that person feels that their complaint has not been adequately dealt with by that body, they will be able to make a complaint to the Department. In turn, it will be for the Department's insolvency practitioner control unit to look into the complaint as to whether it was valid or the recognised professional body had

dealt with the complaint properly and had taken effective action against the insolvency practitioner concerned.

366. If DETI considers that the recognised professional body has fallen short in taking that action, these sanctions, which are set down in legislation, will be available to be put into effect against the body. They are a graduated and tailored range of sanctions, unlike what was available to the Department in the case of the insolvency practitioner whose conduct gave rise to this issue. The problem with that insolvency practitioner was that the Department had only one sanction available to it, which was to be able to withdraw the person's authorisation as an insolvency practitioner. Obviously, that was a draconian measure because it would remove his livelihood. It was ultimately taken in this case, but there were concerns about that person over a period of years although nothing sufficient to warrant the extreme measure of withdrawing his licence.

367. **Mr Frew**: So this amendment has a wider spectrum of sanctions.

368. **Mr Monds**: Yes, we can do more things.

369. **Mr Frew**: That means that you will bite more often if there is wrongdoing, and you will not be de-incentivised from taking action because you have only one tool.

370. **Mr Monds**: That is right. In the case that we are talking about, given that the only sanction we had was to remove his livelihood, there was a lot that we had to go through to be assured that that was the right action. We can do a number of things now. We can issue a direction to force the body to act in a certain way, financial penalties can be put in place, or we can issue a reprimand. We can do those things, right up to the removal of a licence or authorisation. There is a graduated number of things that we can go through in a series of stages.

371. It is hoped that these things will not be needed; even last week, we got notice of someone in GB who had been struck off because of wrongdoing in the past. It happens, but the more remedies we have to action against complaints, hopefully the more people will be aware that more low-level action is being taken as part of a range of sanctions.

372. **Mr Reid**: There is an implicit threat against the recognised professional bodies to keep them on their toes. That is what is termed in GB at Westminster as a backstop power, which they hope will not have to be used but is there if it is needed. It means that all the recognised professional bodies could be swept away and replaced with one single regulator of insolvency practitioners. That implicit threat will help to keep them on their toes when it comes to regulating their members effectively.

373. **Mr Frew**: That is very useful. Is there anywhere in the world that has the same process and procedure?

374. **Mr Reid**: We are replicating GB legislation. GB has people who carry out policy research, and I am aware that they explore what is being done in other parts of the world. However, because they carry out that procedural examination and arrive at the conclusion that it would be desirable to take these measures, we do not replicate that in Northern Ireland. From my reading, I believe that there are similar measures in Australia, but I am not 100% certain of that.

375. **Mr Frew**: That is very useful. Thank you.

376. **Mr Dunne**: Thanks very much, gentlemen, for coming in again. Who sets the standards that the bodies are regulated against?

377. **Mr Reid**: To a degree, the legislation sets them. That is the purpose of having regulatory objectives. Those will be the standards. The standards will be to have:

"a system of regulating persons acting as insolvency practitioners that —

(i) secures fair treatment for persons affected by their acts and omissions;

(ii) reflects the regulatory principles; and

(iii) ensures consistent outcomes;

(b) encouraging an independent and competitive insolvency-practitioner profession whose members —

(i) provide high quality services at a cost to the recipient which is fair and reasonable;

(ii) act transparently and with integrity; and

(iii) consider the interests of all creditors in any particular case;"

378. Those will be the standards that will ultimately fall on insolvency practitioners to observe because the recognised professional bodies will be monitoring them to ensure that those standards are met.

379. **Mr Dunne**: Who establishes them? Do you have an input into them? Does DETI have an input into the standards?

380. **Mr Reid**: These standards correspond to standards that are included in the Westminster Small Business, Enterprise and Employment Bill. A very detailed code of conduct is already in effect that applies to insolvency practitioners, which prescribes all actions that they are to take in administering cases. That is the Insolvency Rules (Northern Ireland) 1991. Those are some of the most draconian measures applying to a profession that I have ever seen. The insolvency profession is far more heavily regulated than, for example, the medical, dental or veterinary professions. In fact, criminal sanctions are laid down for certain matters in those rules — for example, penalties for not filing returns on time — and some things could lead to the person being fined or imprisoned.

381. **Mr Dunne**: Why did the case that has been highlighted locally fall down? Was that because of the application of the regulations?

382. **Mr Reid**: I think that it was the fault of the person, not the absence of a code of conduct or rules. If a car drives through a red traffic light, it is not the fault of the traffic lights. There is no point in putting a second set of traffic lights in place, because the culprit is the driver. In that case, the culprit was the insolvency practitioner.

383. **Mr Monds**: As I mentioned, we had only one sanction against the person and could either find for or against him. If we found something sufficient to remove his licence, the bar of getting the evidence is so high that it would have taken a long time to assemble it. You also have to give the person the opportunity to come back on the matters, and there is an appeals process. It is a long drawn-out process to get to that point.

384. With the new legislation, graduated actions can be taken. That will hopefully bring them into line before we have to take the nuclear option of removing someone's licence.

385. **Mr Reid**: The system worked. A review of that person was carried out, and an insolvency practitioner from Scotland was brought in to carry out a review of that person's conduct. The Department commenced proceedings to have him disqualified from acting as an insolvency practitioner, and that would have happened had he not resigned.

386. **Mr Dunne**: Does DETI have an audit programme of the regulatory bodies?

387. **Mr Monds**: Yes. We carry out regular monitoring of all the regulated professional bodies. For those regulated professional bodies that operate in GB and Northern Ireland, we carry out joint monitoring with our GB colleagues.

388. **Mr Dunne**: How do you carry that out if the office is not in Northern Ireland?

389. **Mr Monds**: Our staff go to the office wherever it is and spend a few days going through the books, interviewing staff and reviewing their processes and procedures. They pick a sample of cases to ensure that the regulated professional bodies are carrying out scrutiny of the insolvency practitioners to ensure that they are abiding by their —

390. **Mr Dunne**: It is really a compliance audit.

391. **Mr Monds**: Yes.

392. **Mr Dunne**: Is that programmed?

393. **Mr Monds**: Yes, on a regular basis.

394. **Mr Dunne**: Do you also look at local practitioners? Do you visit them and do audits?

395. **Mr Monds**: The Department is responsible for authorising only one insolvency practitioner at the moment, and we carry out a detailed review of that individual. With the passing of the legislation, the Department will not be a competent authority to authorise and will no longer authorise any insolvency practitioners directly. All authorisations will be carried out by one of the seven recognised professional bodies, and we will no longer carry out reviews of the insolvency practitioners whom we are authorising.

396. **Mr Dunne**: It would be done through the regulatory bodies.

397. **Mr Monds**: Yes.

398. **The Chairperson (Mr McGlone)**: No other member has anything further to add. Thanks very much for your time and for clarifying those issues for us.

Appendix 3

Written Submissions to the Committee

Cavanagh Kelly Written Submission

CHARTERED ACCOUNTANTS
SPECIALIST TAX ADVISORS
BUSINESS RECOVERY &
INSOLVENCY ADVISORS

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BELFAST
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Our Ref: JJC/GG/BH

25 November 2014

Dear Sirs

Re: Insolvency (Amendment) Bill – Call for Consultation Responses

We refer to the above Bill and thank you for inviting consultation responses in relation to same. Cavanagh Kelly is a firm of Chartered Accountants and Licensed Insolvency Practitioners with offices across Northern Ireland, and was formed in 2003. We have 3 partners and approximately 75 staff. Of these, 3 are licensed insolvency practitioners and around 10 specialise in insolvency work. Our firm deals with a wide range of insolvency cases, frequently involving consideration of issues relating both to personal and company insolvency.

We welcome the Assembly's introduction of legislation to mirror the impact of the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010, which has had a positive impact in England and Wales since its introduction. We hope that the necessary modifications to the Insolvency Rules (Northern Ireland) 1991 can be effected quickly so that these reforms may be introduced in practice. We note that the transitional arrangements as outlined in the Bill will require that all open MVLs and CVLs will continue to require annual meetings to be held. In practice, this will mean that insolvency practitioners will need to operate both the legacy legislation and the amended legislation concurrently on their portfolios of cases. It would be more cost effective for the insolvency profession generally, and therefore result in improved returns to creditors, if the requirement for annual meetings could be abolished for all MVLs and CVLs rather than only those commencing after the date on which the legislation comes into operation.

We welcome the second objective to remove the procedure for discharge from bankruptcy before the end of the first year. We have come across some situations where bankrupt individuals have expressed a desire to present an IVA which would have provided an increased return to creditors, but have been prevented from doing so because they have received discharge from their bankruptcy debts. It is important that discharge does not take place too quickly for this reason.

We have no particular view on the third objective, the repeal of provisions relating to Deeds of Arrangement, or the fourth objective relating to the Lord Chief Justice being consulted about the making of orders creating a right of appeal to the courts in respect of discretionary disqualification from office as a consequence of bankruptcy.

We have no objection to the part of the fifth objection doing away with authorisation of insolvency practitioners by competent authorities. In relation to the part of the fifth objective

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*Authorised to act as an Insolvency Practitioner by

dealing with to authorisation of Insolvency Practitioners, we oppose this change and would question whether partial authorisation would be beneficial and in the public interest in the context of Northern Ireland. We note that we have previously indicated in a consultation response to the Department of Enterprise, Trade and Investment that we were supportive of the idea of partial authorisation. Since that time, we have considered in detail the research carried out by R3 and a number of RPBs into the potential costs and benefits from partial authorisation, as well as the draft legislation, and as a result we no longer support this initiative.

We note that the vast majority of cases we deal with involve a range of personal, partnership and company insolvency issues. We consider that partial authorisation may have a detrimental impact on the quality of advice on offer to debtors, and on the prospects for recovering money from creditors in some insolvency cases. We note that the operation of the proposed Article 349B in practice will be inherently cumbersome and is likely to add complexity, cost and delay to the administration of insolvency cases. It is unrealistic to expect IPs to know prior to their appointment whether there may be partnership issues in a case, and therefore it is likely that in many cases the costs and delays associated with applications to the High Court for replacement IPs, or for partially authorised IPs to continue to act, will have a detrimental impact on returns to creditors and on the efficiency of the insolvency process generally.

We enclose responses from a number of the RPBs and from R3 to the consultation carried out in Britain for your attention which provide further evidence of the lack of benefit from these proposed reforms. We would also question whether the proposed amendments are required at the present time to ensure compliance with Article 10(4) of the EU Directive on Services. While the legislation in England and Wales has been drafted and is currently at Committee Stage in the House of Lords, at the date of writing there is no part of the UK where partial authorisation is in operation.

In addition, the operation of insolvency legislation is clearly a devolved matter and we would respectfully request that the Committee considers whether the particular circumstances of Northern Ireland would give rise to a public interest argument under Article 10(4) for not introducing partial authorisation in this jurisdiction. In particular, the proliferation of small owner managed businesses where there are likely to be both personal and company considerations should be considered. We note that, unlike in England and Wales, no public consultation has been initiated on the proposed adoption of partial authorisation prior to the publication of the Bill, and only a limited consultation has taken place with a total of six responses. Of these only three were in favour, including from ourselves, however as noted above we no longer support this reform.

We consider that this proposed change should be the subject of separate legislation, following a full public consultation, and would be more appropriately dealt with as part of a Deregulation Bill (as is the case in England and Wales) rather than being dealt with as part of the Insolvency (Amendment) Bill.

We are supportive of the sixth objective, to correct the anomaly in the current legislation whereby individuals other than insolvency practitioners could be authorised to act as nominees or supervisors in voluntary arrangements.

We support the seventh objective, as part of supporting the policy objective of ensuring that bankrupt individuals continue to have access to bank accounts.

We also support the eighth objective, and believe it is important that credit unions have access to rescue procedures in the same way as other businesses and financial institutions.

Should you have any queries or wish to discuss this matter, please contact Brian Hegarty on (028) 8775 2990.

Yours faithfully

cavanagh|kelly

Encs

R3, the insolvency trade body – Written evidence

Introduction

1. R3 represents 97% of UK Insolvency Practitioners (IPs) - the only professionals authorised to take insolvency cases. From senior partners at the 'Big Four' accountancy firms to practitioners who run their own micro-businesses, our members have extensive experience of both corporate and personal insolvency.

2. R3's interest in the call for evidence stems from the insolvency measures contained within the draft Bill. The majority of our points will, therefore, relate to Clause 9 and Schedule 5.

3. R3 supports the majority of the insolvency proposals in the draft Bill. As such, our response focuses on areas of key importance to the profession – the proposed changes to the licensing regime for IPs (Clause 9), authorisation of IPs by the Secretary of State (Schedule 5, part 6) and basic bank accounts for undischarged bankrupts (Schedule 5, part 5). R3's overarching view on the remaining insolvency provisions is briefly laid out in the response, but more detailed commentary is provided in Annex A.

Executive Summary

4. R3 believes the majority of the insolvency proposals contained within the draft Bill are sensible and will make the conduct of insolvency processes more efficient and streamlined. This in turn should have a beneficial impact for creditors, including the business community and HMRC.

5. R3's principal concern with the draft Bill relates to Clause 9 and the proposed changes to the authorisation of Insolvency Practitioners. Firstly, R3 has serious concerns that allowing practitioners to be partially authorised for either corporate or personal insolvency could reduce standards across the profession and may thus affect the quality of advice given to debtors. Secondly, we are concerned that this provision may have a disproportionate impact on R3's members who work in small firms, many of whom are micro-businesses. Thirdly we question whether the measure will prove to be deregulatory.

6. In addition, we do not believe that Clause 9 supports the intention of the Bill - to reduce the burden of regulation on businesses. Whilst we appreciate that partial licences may be attractive to some of the large firms, R3 has serious doubts over whether the proposed partial licences will be utilised widely and as such, the proposal adds unnecessary layers of complexity to the current authorisation regime. In our view, the current regime works well and ensures Insolvency Practitioners are highly qualified.

7. Evidence from R3's membership shows that just 27% and 5% of members specialise in either corporate or personal insolvency respectively. In addition, part 390B of the draft Bill, which determines that a person who is partially authorised may not act in relation to partnerships, will rule out many IPs, that undertake such work, from obtaining a partial licence.

8. In addition, Clause 390B of the draft Bill, which provides an exemption relating to membership of a partnership, should not apply in Scotland, with regard to the personal specialist authorisation. In England and Wales an insolvent partnership can be dealt with through "corporate" insolvency procedures, e.g. liquidation, whereas in Scotland an insolvent partnership is dealt with through a "personal" insolvency procedure i.e. sequestrated (bankrupted). In Scotland it is possible to sequestrate either the individual partners of a partnership or the partnership without dealing with the other party (ie the partnership or partners, respectively) The explanatory notes of the draft Bill explain that the policy behind the exemption in Clause 390B is because knowledge of both company and individual law is required, however, this is not the case in Scotland where the affairs of insolvent partnerships and partners are both dealt with under individual insolvency law.

Key areas

Clause 9 – partial licensing

9. Under the current system of authorisation, Insolvency Practitioners are granted an insolvency licence, which allows them to act as an IP in relation to both corporate and personal insolvency cases. This licence is contingent upon passing the Joint Insolvency Exam (JIE) and gaining a significant amount of practical insolvency experience (approximately 600 hours for most licensing bodies). The JIE incorporates both personal and corporate insolvency papers and students must pass each paper to become qualified.

10. Clause 9 of the draft Bill introduces a new 'partial authorisation' level, which allows IPs to be granted licences to act either only in relation to companies, or only in relation to individuals. R3 has serious concerns about the implications of Clause 9 and feels strongly that the provision is unnecessary and will add further complexity to the current regime.

11. The explanatory notes of the draft Bill advise that these changes will 'increase accessibility to the profession and improve competition.' However, R3 believes that the proposed partial licences will not be widely taken up by practitioners for two principal reasons.

12. Firstly, a survey of R3's membership demonstrates that just 5% of IPs work in firms that deal with personal insolvency only and 27% in firms that deal with corporate insolvency only. It is clear that an overwhelming majority of the profession practice in both corporate and personal insolvency and therefore would not be suitable for a partial licence.

13. Secondly, section 390B of the draft Bill prevents partial licence holders from acting in relation to partnerships. Whilst large firms may have a limited practising scope and only deal with insolvent companies, they will often act in relation to partnerships, which means they will not take up partial licensing exclusively as this would fetter their ability to act in the full range of cases they wish to cover. As such, it seems reasonably likely that firms such as these will require at least some of their employees to have full authorisation, despite the firm's focus on corporate insolvency.

14. Given the reasons outlined above, R3 does not believe the proposed measure is deregulatory. It is likely that the partial licences will be utilised by only a small number of members of the profession and, as a result, this will not improve competition within the sector.

15. The current system of authorisation works well and ensures IPs are highly qualified and well equipped to deal with the complex situations they are often faced with. IPs have a significant level of responsibility and must make decisions which have a considerable impact on a variety of stakeholders, including suppliers, employees, as well as the wider economy. To provide proper advice to individuals and corporate entities, R3 believes it is necessary to have knowledge of insolvency legislation in its entirety. By way of example, an IP advising a company might need to provide advice on the directors' personal debts. Insolvency is already a narrow specialism and reducing it further could impact on the quality of advice provided to individuals and companies.

16. For the insolvency regime to work properly, it is necessary that creditors and the wider public have confidence in the industry. The level of knowledge and extensive experience required to become a qualified IP plays a significant role in ensuring that the profession is held in high regard. If the current standard of qualification is reduced, there could be a wider impact on the reputation of the industry as a whole.

17. R3 is also concerned that Clause 9 may have a disproportionate impact on R3's members who work in smaller firms. The explanatory notes outline that the partial licensing regime will 'reduce the cost of training and ongoing regulation for Insolvency Practitioners who specialise'. However, given an estimated 75% of small firms undertake both corporate and personal insolvency procedures for commercial reasons, it is likely that very few small firms will be able to take advantage of these benefits, as it would reduce the scope of work they could undertake.

18. Whilst we do not believe that partial licences will be taken up widely, as mentioned above, it is more likely to be the very large firms who are able to adopt partial licensing (as their business models are more likely to have a limited practising scope). As such, there is a risk that partial licences will create an unlevel playing field across the industry, making it relatively more costly for smaller IPs to compete in an already difficult market.

19. R3 is of the view that the proposed partial licences, contained within Clause 9 of the draft Bill, are not deregulatory. They are unlikely to increase competition within the sector and risk adding complexity to a licensing regime that currently works well. In addition, R3 has serious concerns that the proposed changes will have a disproportionate impact on smaller IPs and may reduce overall standards. The changes would therefore appear to make the current regime unnecessarily complex, with little tangible benefit. For the reasons outlined above, we would caution the Government against introducing these measures.

<u>Schedule 5, part 6 – repeal of provision for authorisation of nominees and supervisors in relation to voluntary arrangements</u>

20. Under the current system, individuals can be authorised to act solely as nominees or supervisors in voluntary arrangements. The Government considers that this will no longer be necessary if the partial authorisation regime in Clause 9 is introduced.

21. This provision is contingent upon the introduction of partial licences, which, as outlined above, R3 considers should not be introduced. As such, if Government decide not to implement Clause 9 then the authorisation for nominees and supervisors in relation to voluntary arrangements should not be repealed.

Schedule 5, part 6 – direct authorisation of Insolvency Practitioners by the Secretary of State

22. Schedule 5, part 6 removes the power of the Secretary of State to authorise individuals to act as Insolvency Practitioners. R3 welcomes this change, which it has advocated for a number of years and believes will improve consistency and transparency across the regulatory regime.

23. The regulatory regime for Insolvency Practitioners is complex. In addition to the seven Recognised Professional Bodies (RPBs), the Secretary of State also has the power to authorise practitioners. In contrast to the RPBs, the Secretary of State does not have the power to establish a disciplinary regime, which would enable it to impose a range of sanctions for regulatory breaches. The only power available to the Secretary of State is to withdraw a practitioner's authorisation, which is extremely draconian and therefore rarely used. This means that for a range of conduct breaches, which are not serious enough to warrant withdrawal of authorisation, the Secretary of State effectively has no regulatory powers.

24. The proposal to remove Secretary of State authorisation, alongside recent changes to the regulatory framework for IPs, will ensure that all practitioners are regulated to the same standard and there is consistency and commonality across the regime.The Secretary of State also acts as an oversight regulator for the RPBs. This provision therefore removes the conflict of interest with the Secretary of State's role as both a regulator of RPBs and a direct regulator of Insolvency Practitioners.

Schedule 5, part 5 - Basic bank accounts for undischarged bankrupts

25. R3 supports the move in Schedule 5, part 5 to facilitate banks providing bank accounts to undischarged bankrupts. R3 has been calling for banks to provide basic accounts for undischarged bankrupts for some time. R3 is keenly aware of the banks' concerns regarding after-acquired property and has highlighted previously that these issues should be dealt with through legislation, rather than guidance. R3 considers that the proposed changes strike a fair balance between providing adequate protection for the banks and ensuring Insolvency Practitioners can still make recoveries for creditors.

Additional insolvency provisions – Schedule 5

26. R3 supports the vast majority of the insolvency proposals contained within Schedule 5 of the draft Bill. The changes are likely to improve efficiency and remove unnecessary burdens, both on the insolvency profession and Government. This in turn should help to save costs, which will benefit creditors more generally. Please see Annex A for detailed views on these proposed changes.

Answers to specific questions

1. **The draft Bill covers a broad range of specific activities and a large amount of legislative provision is amended by it. Could the same result have been achieved using existing secondary legislative procedures?**

   R3 do not believe these changes could have been achieved using existing secondary legislative procedures.

3. **Are the changes proposed in the draft Bill evidence based and have any risks associated with the changes been taken adequately into account?**

   R3 do not consider that the move in Clause 9, to introduce a partial licensing regime for Insolvency Practitioners (IPs), is evidenced based. Indeed, we have seen no evidence that these changes will fulfil the Government's aim to increase competition within the sector.

   R3 do not believe the proposed partial licences will be widely taken up by practitioners as an overwhelming majority of the profession practise in both corporate and personal insolvency and as such would not be suitable for a partial licence.

   In addition, the Bill prevents partial licence holders from acting in relation to partnerships. Whilst some large firms may have a limited practising scope and only deal with insolvent companies, they will often act in relation to partnerships, which means they will not take up partial licensing exclusively as this would fetter their ability to act in the full range of cases they wish to cover. As such, it is reasonably likely that firms such as these will require their employees to have full authorisation, despite the firm's focus on corporate insolvency.

   R3 also believes that the move to introduce a partial licensing regime has several risks, which have not been fully considered by Government.

   To provide proper advice to individuals and corporate entities, R3 believes it is necessary to have knowledge of insolvency legislation in its entirety. Insolvency is already a narrow specialism and reducing it further could impact on the quality of advice provided to individuals or companies.

   If the standard of qualification for IPs is reduced there could be a wider impact on the reputation of the industry as a whole. For the insolvency regime to work properly, creditors and the wider public must have confidence in the profession. The level of knowledge and extensive experience required to become a qualified IP plays a significant role in ensuring that the profession is held in high regard.

   R3 is also concerned that Clause 9 may have a disproportionate impact on R3's members who work in smaller firms. The explanatory notes outline that the partial licensing regime will 'reduce the cost of training and ongoing regulation for Insolvency Practitioners who specialise'. However, given an estimated 75% of small firms undertake both corporate and personal insolvency procedures for commercial reasons, it is likely that very few small firms will be able to take advantage of these benefits, as it would reduce the scope of work they could undertake.

5

Whilst we do not believe that partial licences will be taken up widely, it is more likely to be the very large firms who are able to adopt partial licences (as their business models are more likely to have a limited practising scope). As such, there is a risk that partial licences will create an unlevel playing field across the industry, making it relatively more costly for smaller IPs to compete in an already difficult market.

R3 do not believe that the suggested partial licensing regime is deregulatory. There is no evidence to suggest that this change will increase competition within the sector and instead it risks reducing the quality of advice available to individuals and companies and may have a disproportionate impact on R3's members who work in small firms.

4. **Does the draft Bill achieve its purpose of reducing the regulatory burden on business, organisations and individuals effectively and fairly?**

R3 fully supports the insolvency provisions contained within Schedule 5 of the draft Bill and believe they will reduce the regulatory burden on businesses and individuals.

However, as discussed in our response, R3 has serious concerns about Clause 9, which proposes changes to the authorisation of Insolvency Practitioners. These changes are unlikely to increase competition within the sector and risk adding complexity to a licensing regime that currently works well. In addition, R3 believes that the proposed changes will have a disproportionate impact on smaller IPs and may reduce overall standards. The changes would therefore appear to make the current regime unnecessarily complex, with little tangible benefit. For the reasons outlined above, we would caution the Government against introducing these measures.

5. **Will the draft Bill generally benefit businesses by offsetting other regulatory burdens? Are there indirect impacts on other businesses from reducing regulation in specific sectors?**

The changes contained within Schedule 5 should generally benefit businesses. The proposals will make the conduct of insolvency processes more efficient, which in turn should see an improved return to creditors, many of whom are businesses.

However, as mentioned above, the proposed changes to Clause 9 may have a disproportionate impact on smaller insolvency firms, many of whom are micro-businesses. The changes may also risk reducing the quality of advice given to struggling businesses.

8. **Have the measures set out in the draft Bill been subject to adequate cost-benefit analysis on the basis of consultation with those affected?**

R3 is not aware of a cost-benefit analysis or wider impact assessment for the changes proposed in Clause 9 of the draft Bill, but as stated above, we do not believe the changes are deregulatory.

Power to disapply legislation

10. **Is a new "power to disapply legislation no longer of practical use" necessary or are there existing procedures which could be used to achieve the same effect?"(Clause 51)?**

Whilst we do not believe that partial licences will be taken up widely, it is more likely to be the very large firms who are able to adopt partial licences (as their business models are more likely to have a limited practising scope). As such, there is a risk that partial licences will create an unlevel playing field across the industry, making it relatively more costly for smaller IPs to compete in an already difficult market.

R3 do not believe that the suggested partial licensing regime is deregulatory. There is no evidence to suggest that this change will increase competition within the sector and instead it risks reducing the quality of advice available to individuals and companies and may have a disproportionate impact on R3's members who work in small firms.

4. **Does the draft Bill achieve its purpose of reducing the regulatory burden on business, organisations and individuals effectively and fairly?**

R3 fully supports the insolvency provisions contained within Schedule 5 of the draft Bill and believe they will reduce the regulatory burden on businesses and individuals.

However, as discussed in our response, R3 has serious concerns about Clause 9, which proposes changes to the authorisation of Insolvency Practitioners. These changes are unlikely to increase competition within the sector and risk adding complexity to a licensing regime that currently works well. In addition, R3 believes that the proposed changes will have a disproportionate impact on smaller IPs and may reduce overall standards. The changes would therefore appear to make the current regime unnecessarily complex, with little tangible benefit. For the reasons outlined above, we would caution the Government against introducing these measures.

5. **Will the draft Bill generally benefit businesses by offsetting other regulatory burdens? Are there indirect impacts on other businesses from reducing regulation in specific sectors?**

The changes contained within Schedule 5 should generally benefit businesses. The proposals will make the conduct of insolvency processes more efficient, which in turn should see an improved return to creditors, many of whom are businesses.

However, as mentioned above, the proposed changes to Clause 9 may have a disproportionate impact on smaller insolvency firms, many of whom are micro-businesses. The changes may also risk reducing the quality of advice given to struggling businesses.

8. **Have the measures set out in the draft Bill been subject to adequate cost-benefit analysis on the basis of consultation with those affected?**

R3 is not aware of a cost-benefit analysis or wider impact assessment for the changes proposed in Clause 9 of the draft Bill, but as stated above, we do not believe the changes are deregulatory.

Power to disapply legislation

10. **Is a new "power to disapply legislation no longer of practical use" necessary or are there existing procedures which could be used to achieve the same effect?"(Clause 51)?**

In 1986, the Insolvency Act introduced Individual Voluntary Arrangements (IVAs), as an alternative to bankruptcy. IVAs have effectively replaced deeds of arrangements, making the Deeds of Arrangement Act 1914 obsolete.

Schedule 5, part 2 – administration

The appointment of administrators

R3 supports the provision to enable a company or directors to appoint an administrator despite the presentation of a winding-up petition, if the petition was presented during an interim moratorium.

Administration is a key business rescue tool and this move, which aims to facilitate administration, is likely to bolster the rescue culture and save businesses and jobs.

Notice of intention to appoint an administrator

The draft Bill removes the current requirement to give notice of intention to appoint an administrator to persons who are not themselves entitled to appoint an administrative receiver or administrator in certain circumstances.

R3 fully supports this move as following alternative and wider judicial interpretation it re-establishes what appears to have been the original sensible, intention of the legislation of informing only those parties who have the power to appoint an administrator themselves of the directors' intention to appoint.

The release of an administrator

In insolvency, it will often be the case that there are insufficient assets in the 'pot' to make a return to unsecured creditors and as such, the unsecured creditors will have no financial interest in the administration.

Despite this, current legislation implies that when an administrator wishes to obtain his release as office-holder, a normal resolution of all of the creditors is required, in addition to a resolution of all of the secured creditors. This situation gives rise to unnecessary creditors' meetings, arranged with the sole purpose of giving the administrator their release.

The proposed changes in Schedule 5, part 2, will clarify the situation and make clear that where unsecured creditors have no interest in the administration, by virtue of the fact they will not receive a dividend, they are not involved in the administrator's release, which can instead be resolved by the secured creditors. This will avoid the need for unnecessary creditors' meetings, thereby reducing the costs of the process.

Schedule 5, part 3 – winding-up companies

Payment to the Bank of England

R3 supports the proposal to remove the court's power to order payment into the Bank of England of money due to a company. This power is no longer necessary and dates back to the Companies Act 1862, when the insolvency profession was largely unregulated.

The release of the liquidator when a winding-up order is rescinded

Schedule 5, part 3 inserts a new subsection, which provides that when a winding-up order is rescinded, the liquidator has his or her release with effect from the time the court may determine.

R3 considers this to be a useful provision, which will allow the liquidator's release to be addressed at the same time the court rescinds a winding-up order. This will avoid the need for the liquidator to make a subsequent, separate application to court.

Schedule 5, part 4 – disqualification of unfit directors

R3 supports the move in Schedule 5, part 4 to enable the Secretary of State or official receiver to directly request information that they consider relevant to a person's conduct as a director. Currently, the Secretary of State/official receiver may only request information from the office holder, which imposes an administrative burden on the IP. The proposed changes should reduce this burden and assist the Government with the disqualification of unfit directors.

Schedule 5, part 5 – bankruptcy

Appointment of an interim receiver

The proposed amendment to permit the court to appoint the official receiver or any Insolvency Practitioners as an interim receiver in all circumstances is to be welcomed.

Currently, only the official receiver can be appointed by the court to act as interim receiver. As both the official receiver and Insolvency Practitioners can act as trustees of a bankrupt's estate, it stands to reason that both parties should be able to act as interim receivers.

Statement of affairs in creditor petition cases

R3 supports the move in Schedule 5, part 5 to remove the requirement for a bankrupt to submit a statement of affairs in creditor petition cases, unless requested to do so by the official receiver. This will ensure consistency across insolvency legislation and put creditor petition bankruptcy on the same footing as companies wound up by the court, where the directors only submit a statement of affairs if required to do so by the official receiver.

It is our understanding that in the majority of cases, bankrupt individuals do not submit a statement of affairs. Individuals are often unaware of their duty to provide this information, as they have already submitted a Personal Insolvency Questionnaire, which contains the same information. As the official receiver already has the relevant information, these changes should remove the unnecessary burden on bankrupt individuals to provide this information twice.

Schedule 5, part 7 – preferential debts of companies and individuals

R3 supports the repeal of one element of priority given to employees' wages in certain insolvency proceedings, as the type of employee contract it relates to no longer exists.

Institute of Chartered Accountants of Scotland – Written evidence

Executive Summary

Introduction

1. The Institute of Chartered Accountants of Scotland ("ICAS") is the oldest professional body of accountants, and is a public interest body. ICAS represents around 19,000 members who advise and lead businesses. Around half our members are based in Scotland, the other half work in the rest of the UK and in almost 100 countries around the world. Nearly two thirds of our members work in business, whilst a third work in accountancy practices. ICAS regulates circa 75% of insolvency practitioners (IPs) who take appointments in Scotland together wish a number of IPs who operate in other parts of the UK. As a result, we have an in-depth knowledge and expertise of insolvency law and procedure. ICAS regulated IPs play a key role in delivering both personal and corporate insolvency services.

2. ICAS is interested in securing that any changes to legislation and procedure are made based on a comprehensive review of all of the implications and that alleged failings within the process are supported by evidence.

3. ICAS is pleased to have the opportunity to submit its views on this Bill. Our response shall concentrate on the clauses relating to Insolvency.

Comments on the Bill

4. We are supportive of the majority of the insolvency proposals contained within the draft Bill and that they will make the conduct of insolvency processes more efficient and streamlined. This in turn should have a beneficial impact for creditors, including the business community and HMRC.

Partial authorisation of insolvency practitioners

5. We do not agree with the proposals to allow partial authorisation of IPs. We are concerned that in doing so there is a significant risk that the public interest shall not be served and shall result in inappropriate advice being provided and a general lowering of professional standards.

6. In Scotland, the legislation surrounding corporate insolvency is derived from personal insolvency legislation. It is therefore important that IPs are conversant in both personal and corporate insolvency regimes. In addition, our members will often require to provide an assessment of personal insolvency implications and corporate insolvency implications in relation to a particular scenario. There is therefore a requirement to understand and be able to provide advice under both regimes.

7. We do not anticipate that there is likely to be significant uptake in partial authorisations. Many of our members work in smaller practices and do not specialise in one regime over another where they devote their time to insolvency work. In addition, a significant number of our IPs undertake insolvency work as part of a general practice and do not devote all of their practice time to insolvency work. In both such scenarios we anticipate

that IPs would not seek partial authorisation.

8. We would anticipate that the partial authorisation regime would result in increased costs of regulation for recognised professional bodies such as ICAS and that this is likely to have a negative impact on our members.

9. The Bill sets out provision to prevent a partially authorised person from accepting appointments which relate to Partnerships in certain circumstances. This provision would not be applicable to Scotland as the law of partnership in Scotland is different to that of England and Wales. Partnership bankruptcy in Scotland falls solely under the personal insolvency regime, notwithstanding that a partnership is a separate and distinct legal entity in Scotland. It is possible in Scotland for the individual partners to be bankrupt but not the partnership or for the partnership to be bankrupt and not the individual partners.

10. We do not believe that there will be a significant reduction in costs to individuals or sponsor employers in respect of training and qualification costs through the introduction of partial authorisation. While there may be some reduction in training and qualification costs we believe that this is likely to be limited due to the number of cross procedural matters which are invoked in both personal and corporate insolvency.

11. It is our view that the current authorisation regime works and provides the right mix of professional knowledge and skill to best serve the public interest. Should the policy of partial authorisation be pursued, then the Bill as drafted would require amendment to deal with the partnership position. It would be more appropriate to deal with partial authorisations in Scotland by reference to legislation (i.e. authorised to act in relation to Bankruptcy (Scotland) Act 1985 appointments or Insolvency Act 1986 appointments) than by legal persona/entity.

12. It is our view that the proposed creation of partial authorisations will increase the amount of regulation for the insolvency profession and will not enhance competition in the market place. It is possible that the creation of partial authorisations will have the opposite effect and create a small number of large personal debt 'factories' resulting in a reduction in personal debt insolvency providers.

Removal of power of Secretary of State to authorise individual insolvency practitioners

13. Schedule 5, part 6 removes the power of the Secretary of State to authorise individuals to act as IPs. We welcome this change, as we believe it will improve transparency across the regulatory regime.

14. In contrast to the Recognised Professional Bodies who are also able to authorise IPs, the Secretary of State does not have the power to establish a disciplinary regime and as a result has limited ability to sanction regulatory breaches. The only power available to the Secretary of State is to withdraw a practitioner's authorisation, which is extremely draconian and therefore rarely used. This means that for a range of conduct breaches, which are not serious enough to warrant withdrawal of authorisation, the Secretary of State effectively has no regulatory powers.

15. The proposal to remove Secretary of State authorisation, alongside recent changes to the regulatory framework for IPs, will ensure that all practitioners are regulated to the same

standard and there is consistency and commonality across the regime.

16. This provision also removes the conflict of interest with the Secretary of State's role as both a regulator of RPBs and a direct regulator of IPs. This we believe is correct and increases the transparency of the insolvency system in the UK.

Schedule 5, part 5 - Basic bank accounts for undischarged bankrupts

17. We support the move in Schedule 5, part 5 to facilitate banks providing bank accounts to undischarged bankrupts. The provision within the Bill is only applicable to England and Wales although the same issue is applicable in Scotland. Personal insolvency is a devolved matter and we would encourage further dialogue with the Scottish Government to ensure that steps are taken to address this matter within Scottish legislation also.

Additional insolvency provisions – Schedule 5

18. We support the vast majority of the insolvency proposals contained within Schedule 5 of the Bill. The changes are likely to improve efficiency and remove unnecessary burdens on the insolvency profession and Government. This should help to save costs, which will ultimately benefit creditors generally. Please see Appendix 1 for detailed views on these proposed changes.

Answers to specific questions

3. *Are the changes proposed in the draft Bill evidence based and have any risks associated with the changes been taken adequately into account?*

   We do not consider that the proposal to introduce a partial licensing regime for IPs (Clause 9), is evidenced based and we are not aware of any evidence that the changes proposed will result in achieving the Government's objective of increased competition within the sector.

   We do not believe the proposed partial licences will be widely taken up by practitioners as an overwhelming majority of the profession practise in both corporate and personal insolvency and as such would not wish to be partially licenced.

   In addition, the Bill prevents partial licence holders from acting in relation to partnerships. This is not consistent with the insolvency law of partnerships in Scotland which are dealt with under personal insolvency legislation.

   We are concerned that the move to introduce a partial licensing regime has a number of risks for the provision of appropriate insolvency advice. We believe that it is necessary to have knowledge of insolvency legislation in its entirety in order to identify possible risks and solutions when providing advice. Insolvency is already a narrow specialism and reducing it further could impact on the quality of advice provided to individuals and companies. This could also result in a reputational impact on the profession and it is imperative that all stakeholders in insolvency situations have confidence in the profession to deliver quality advice and services which is maintained through appropriate qualifications and regulation.

19. Does the draft Bill achieve its purpose of reducing the regulatory burden on business, organisations and individuals effectively and fairly?

ICAS supports the insolvency provisions contained within Schedule 5 of the draft Bill and believe they will reduce the regulatory burden on businesses and individuals.

However, as discussed in our response, we have serious concerns about Clause 9, which proposes changes to the authorisation of IPs. There is no evidence to suggest that these changes will result in increased competition within the sector. The proposed partial licencing regime will only add complexity to a licensing regime that currently works well. The changes would therefore make the licencing regime unnecessarily complex, with little tangible benefit. We would therefore urge the Government not to introduce these measures.

20. Will the draft Bill generally benefit businesses by offsetting other regulatory burdens? Are there indirect impacts on other businesses from reducing regulation in specific sectors?

The changes contained within Schedule 5 should generally benefit businesses. The proposals will make the conduct of insolvency processes more efficient, which in turn should see an improved return to creditors, many of whom are businesses.

The proposed changes to Clause 9 may have a disproportionate impact on smaller insolvency firms or sole practitioners. The changes may also risk reducing the quality of advice given to individuals in debt and struggling businesses.

21. Have the measures set out in the draft Bill been subject to adequate cost-benefit analysis on the basis of consultation with those affected?

We are not aware of any cost-benefit analysis or wider impact assessment for the changes proposed in Clause 9 of the draft Bill having been carried out.

22. What are the risks associated with the proposed new power to disapply legislation that is "no longer of practical use"?

This power would allow the repeal of legislation without parliamentary scrutiny. We are concerned that without adequate public consultation measures legislative changes which adversely impact on insolvency may be overlooked by legislators. A broad range of legislation impacts upon insolvency matters and much of this is not immediately apparent when changes to legislation are proposed. There is therefore a real risk that potentially detrimental changes may slip through unnoticed.

23. What are the consequences of the draft Bill for the devolved administrations?

Clause 9 will specifically impact on the devolved administration in Scotland. As highlighted in comments above, the insolvency law in relation to partnerships in Scotland is dealt with under personal insolvency which is a devolved matter. The proposals to allow partial licencing do not sit comfortably with the legislative position in Scotland in relation to this area. While we do not support partial licencing, should this proposed amendment be pursued then significant amendment to the proposals will be required to ensure an appropriate approach is taken in relation to the Scottish legislative provisions.

September 2013

Appendix 1 – Commentary on Schedule 5 of the Bill

Part 2 – administration

The appointment of administrators

We support the provision to enable a company or directors to appoint an administrator despite the presentation of a winding-up petition, if the petition was presented after a notice of intention to appoint an administrator was filed.

Administration is a key business rescue tool and this move, which aims to facilitate administration, is likely to assist with this resulting in saving businesses and jobs.

Notice of intention to appoint an administrator

The Bill proposes to remove the present requirement to give notice of intention to appoint an administrator to persons who are not themselves entitled to appoint an administrative receiver or administrator in certain circumstances.

We support this move as it appears to support the original intention of the legislation of informing only those parties who have the power to appoint an administrator themselves of the directors' intention to appoint.

The release of an administrator

There are regular cases in which there are insufficient assets to make a return to unsecured creditors and as a result the unsecured creditors will have no financial interest in the administration. Current legislation requires that when an administrator wishes to obtain his release as office-holder a resolution of all of the creditors is required in addition to a resolution of all of the secured creditors. This situation gives rise to unnecessary creditors' meetings, physical or held by correspondence, arranged with the sole purpose of giving the administrator their release.

The proposed changes in Schedule 5, part 2, will clarify the situation and make clear that where unsecured creditors have no interest in the administration, by virtue of the fact they will not receive a dividend, they are not involved in the administrator's release and that the release can be granted through the resolution of the secured creditors and, if relevant, preferential creditors. This will avoid the need for unnecessary creditors' meetings, thereby reducing the costs of the process.

Schedule 5, part 3 – winding-up companies

Payment to the Bank of England

We support the proposal to remove section 151 of the Insolvency Act 1986. The powers contained within this section are no longer necessary and date back to the Companies Act 1862, when the insolvency profession was largely unregulated.

The release of the liquidator when a winding-up order is rescinded

Schedule 5, part 3 inserts a new subsection, which provides that when a winding-up order is rescinded, the liquidator has his or her release with effect from the time the court may determine.

We consider this to be a useful provision and corrects an omission as the release of a liquidator in all other circumstances is already provided for within section 174 of the Insolvency Act 1986. This new subsection will avoid the need for the liquidator to make a subsequent, separate application to court.

Schedule 5, part 4 – disqualification of unfit directors

We support the proposal to enable the Secretary of State or official receiver to request directly from any person information that they consider relevant to a person's conduct as a director. Currently, the Secretary of State/official receiver may only request information from the office holder, which imposes an administrative burden on the IP. The proposed changes should reduce this statutory burden and make more efficient the process of disqualification of unfit directors.

Schedule 5, part 7 – preferential debts of companies and individuals

We support the repeal of one element of priority given to employees' wages in certain insolvency proceedings as 'year in hand' employee contracts to which it relates no longer exists.

Institute of Chartered Accountants in England and Wales – Written evidence

DEREGULATION BILL - INSOLVENCY

Schedule 5 – Part 6

ICAEW supports the repeal of the provision enabling direct authorisation of insolvency practitioners by a competent authority (in reality the Insolvency Service for GB and DETINI for Northern Ireland).

We are seeing a drive towards greater consistency in the approach to the regulation of insolvency practitioners. Most of the inconsistency in the current regulatory framework arises from the significant differences between the powers available to the recognised professional bodies (RPBs) and the Insolvency Service acting on behalf of the Secretary of State. The Secretary of State has no power short of authorisation removal with which to amend the behaviour of those authorised and it appears to be unable to publicise details of those IPs with whom it has agreed action plans. In the survey of IPs conducted as part of the OFT's study, The Insolvency Service was considered to be the most lenient of the regulators.

Also, the Insolvency Service's Annual Review of Insolvency Practitioner Regulation has shown over the years that shows that those IPs authorised by the Secretary of State generate significantly more complaints than those licensed by the RPBs.

DETINI authorises less than 10 insolvency practitioners, but faces the same issues as the Insolvency Service. Therefore it seems eminently sensible that DETINI should also cease direct authorisation, otherwise its authorisation regime could be seen as a safe harbour for IPs who wished to avoid the rigour of the RPB's disciplinary processes.

Neither is there any need for a regulator of last resort. The RPBs operate common standards for the granting of authorisation which are agreed with the Insolvency Service and contained within the Memorandum of Understanding. Their arrangements include an ability to license non-members to be insolvency practitioners. It seems reasonable to suggest that if an applicant failed to meet the standard for authorisation when applying to an RPB for a licence, then they are unsuitable to be a licence holder. It would seem inequitable if a lesser standard was applied by any regulator of last resort.

We expressed this view in our response to the Insolvency Service's consultation on the *Reforms to the regulation of insolvency practitioners*, available at http://www.icaew.com/~/media/Files/Technical/icaew-representations/2011/ICAEW-REP-51-11-Reforms-to-the-regulation-of-Insolvency%20Practitioners.pdf

Clause 9 – regulation of insolvency practitioners

We are less convinced by the proposals allowing for partial authorisation of insolvency practitioners.

Partial authorisation may reduce the acquisition costs of an insolvency qualification for an individual or their employer, and may reduce the salary costs for some firms. This could be seen as deregulatory. But we would question whether such a move could also lead to a reduction in standards. Insolvency law is complex but at the heart of most insolvency processes there will be people – whether as directors of failed companies or individuals with debt problems. This means that there will often be read across from a corporate failure to the personal finances of its directors, and the failure of a sole trader business could raise as many issues as the failure of a small company, albeit within a different insolvency framework. We'd question whether an insolvency practitioner with a partial authorisation for either corporate or personal insolvency would have the knowledge to deal with the cross cutting issues which arise in many insolvencies.

We think the issues of access to the profession could be better achieved by a review of the Joint Insolvency Examination Board examinations. Most modern qualifications including ICAEW's own ACA qualification are now modular, and include testing by a mix of examinations and computer based assessment, with multiple opportunities to access the testing. The JIEB remains a paper based test with sittings only once a year and strict rules on the routes by which you must pass all 3

required papers. There is also only 1 training provider offering study packages for JIEB, meaning there are no competitive influences on the pricing of that training.

Our view is that to retain the wide ranging knowledge needed by an insolvency practitioner whilst at the same time increasing access to the profession, modernising the JIEB is a better approach.

4 October 2013

Consumer Council Written Submission

Dear Jim

Thank-you for your request for the Consumer Council's view on the proposed Insolvency Bill. We have considered the amendments and feel that other organisations, specifically those who represent clients going through insolvency, would be better placed to provide a comprehensive response and feedback to the committee. However, we do welcome the proposal to give banks immunity from claims by trustees in respect of sums of money passing through a bankrupt's account unless there is a specific claim. Currently, the majority of banks have a blanket ban on offering bank accounts to un discharged bankrupts, and only one bank offers this service to un discharged bankrupts that we are aware of. We believe that all banks should offer basic bank accounts to un discharged bankrupts if they submit an application, provided the consumer meets the relevant requirements and standard checks that are applied to other consumers. Banks should be able to change their policies to meet the needs of consumers and demonstrate their flexibility and willingness to treat consumers fairly.

I trust this information will be of help to the Committee. Should you wish to discuss please do not hesitate to contact me.

Kind regards

Kathy

Kathy Graham
Interim Director of Policy
The Consumer Council, Elizabeth House, 116 Holywood Road, Belfast, BT4 1NY

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Email: kgraham@consumercouncil.org.uk Website: www.consumercouncil.org.uk
www.consumerline.org

From: Information
Sent: 21 October 2014 13:31
To: Kathy Graham
Subject: FW: NI Assembly Public Consultation

From: O'Lamhna, Peadar [mailto:Peadar.O'Lamhna@niassembly.gov.uk]

Sent: 21 October 2014 13:09

To: Information

Subject: NI Assembly Public Consultation

Good afternoon,

Please see attached letter from the Clerk to the Committee for Enterprise, Trade & Investment at the Northern Ireland Assembly inviting the Consumer Council to make a submission for the Insolvency Amendment Bill.

Kind Regards,

Peadar Ó Lamhna

PEADAR Ó LAMHNA

Bursary Student
Committee for Enterprise Trade and Investment

work: 02890 521614

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Room 375
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Institute of Chartered Accountants in Ireland Written Submission

Private & Confidential
Jim Mc Manus
Clerk to the Committee for the Enterprise Trade & Investment
Northern Ireland Assembly
Room 414
Parliament Buildings
Ballymiscain
Stormont
Belfast
BT4 3XX

01 December 2014

Dear Jim

Insolvency (Amendment) Bill

On behalf of the Insolvency Technical Committee ("ITC") of the Institute of Chartered Accountants in Ireland, we attach our response to the proposals for the proposed bill.

Yours sincerely

Sean Cavanagh
Chairman

Enc

Insolvency (Amendment) Bill – Call for responses – Submission by The Insolvency Technical Committee of the Institute of Chartered Accountants in Ireland

We welcome the Assembly's intention to introduce this legislation which will bring Northern Ireland law and practice into line with the GB legislation. Published under the Legislation Reform (Insolvency) (Miscellaneous Provisions) Order 2010 which came into force on 6 April 2010.

We are in agreement with the proposals in Clauses 1-13 of the Bill and consider that this will help to make the administration of insolvency cases easier by allowing for up-to-date methods of communication and eliminating unnecessary procedural requirements.

We welcome Clause 13 which will now encourage banks to facilitate the provision of bank accounts for bankrupts.

We do not agree with Clause 14 in respect of the proposed partial authorisation of insolvency practitioners. We have doubts as to whether partial authorisation will be beneficial and in the public interest in Northern Ireland. In Northern Ireland the vast majority of our firms work on both corporate and personal insolvency arrangements and we do not consider that there will be any significant uptake in partial authorisation.

If the proposal becomes law the Regulatory Bodies (RPB's) will be required to set-up a new monitory regime especially for this new class of partially authorised professional – this will, in our view, result in disproportionate increased costs.

We are also concerned as to the absence of evidence obtained in GB or in Northern Ireland to support this proposal. We understand that, despite the GB order coming into force in April 2010, the clause relating to partial authorisation is not yet in operation. We would have liked to have evidence of the uptake of requests for partial authorisation. In our view, the current authorisation regime works well and provides the right mix of professional knowledge and skill.

We fully support the provision of Clause 16 regarding Credit Unions and Clause 17.

Should you have any queries please contact the writer.

Sean Cavanagh
Chairman

1st December 2014

PricewaterhouseCoopers Written Submission

pwc

Mr Jim McManus
Clerk to the Committee for Enterprise, Trade and Investment
Northern Ireland Assembly
Room 414, Parliament Buildings
Ballymiscaw
Stormont,
Belfast
BT43XX

1 December 2014

Dear Mr McManus,

Re: Insolvency (Amendment) Bill.

Thank you for inviting PwC to respond to the proposals contained in the Insolvency (Amendment) Bill and to inform the Committee Stage after the second stage reading.

We have carefully considered the proposals contained in the Bill and have responded with our comments as requested.

Should the Committee so wish, we would be happy to provide additional information and, if requested, to appear before the Committee to provide further oral evidence.

If you require further information, please don't hesitate to contact me directly.

Yours sincerely,

Paul Terrington
Northern Ireland Regional Chairman
paul.a.terrington@uk.pwc.com
T: +44(0) 28 90 41 5028

Encl.../

PricewaterhouseCoopers LLP, Waterfront Plaza. 8 Laganbank Road, Belfast BT1 3LR
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pwc

The Insolvency (Amendment) Bill. PwC. December 2014

Response to The Committee for Enterprise, Trade & Investment on proposed changes to insolvency legislation as prescribed in the Insolvency (Amendment) Bill

We are pleased to submit our comments on the proposed changed to insolvency law in Northern Ireland as prescribed by the Insolvency (Amendment) Bill.

We have structured our response to address specific clauses of the Bill, as requested.

Clause 1: Attendance at meetings and use of websites

We agree that remote attendance at meetings is a practical and helpful addition to existing arrangements, insofar as it will reduce cost and provide greater access to interested parties.

However, we would have concerns that any new legislation may provide increased scope for creditors to challenge the validity of proceedings at a meeting, by claiming, for example that the technology did not work and they had been unable to access the meeting. There may also be issues relating to validating the identity of remote attendees, which would have to be adequately addressed through inclusion in the appropriate Statements of Insolvency Practice (SIPs).

We also have concerns that if the Rules relating to the conduct of meetings were not sufficiently prescriptive as to the procedures to be followed in relation, for example, to telephone voting, each firm will adopt its own procedure which could be confusing to creditors and again might lead to challenges to the validity of the proceedings. We would also suggest that in relation to Clause 208ZA(8), adequate time would need to be built in to allow a suitable venue to be identified and creditors informed. We also believe that these should be covered by an appropriate SIP.

We support the concept that insolvency practitioners should be able to provide information via a website, which would be particularly beneficial in cases where there are large numbers of creditors and would afford considerable efficiencies to the insolvency process. As with our comments in respect to the conduct of meetings, we believe that an industry standard for such websites would be beneficial and could also be addressed by an appropriate SIP

Clause 2: References to things in writing

The new article has merit and we have no additional comment.

Clause 3: Removal of requirement for annual meetings in a members' voluntary and a creditors' voluntary liquidation

We agree that this is a practical and helpful addition to existing arrangements. In our experience, it is very rare for creditors or members to attend annual meetings. In a very large case, creditors might attend the first annual meeting but numbers soon fall away to zero.

We believe this proposal should deliver cost efficiencies and we agree that the information presently laid at the meeting should instead be sent to the creditors/members as part of a proposed progress report.

pwc

The Insolvency (Amendment) Bill. PwC. December 2014

Clause 4: Requirements in relation to meetings under Article 81 and 84 of the Insolvency Order

The new article has merit and we have no additional comment.

Clause 5: Individual voluntary arrangements: removal of requirement to submit a nominee's report to the High Court

The new article has merit and we have no additional comment.

Clause 6: Fast-track voluntary arrangements: notification of the Department

The new article has merit and we have no additional comment.

Clause 7: Powers of liquidator exercisable with or without sanction in a winding up

The new clause has merit, insofar as it will allow insolvency practitioners to progress cases on a more commercial basis which will ultimately lead to cost efficiencies.

Clause 8: Powers of trustee exercisable with or without sanction in a bankruptcy

The new clause has merit insofar as it will allow insolvency practitioners to progress cases on a more commercial basis which will ultimately lead to cost efficiencies.

Clause 9: Definition of debt

The new amendments have merit and we have no additional comment.

Clause 10: Treatment of liabilities relating to contracts of employment

The new amendments have merit and we have no additional comment.

Clause 11: Deeds of Arrangement

The new amendments have merit as this is a very old type of insolvency which has been superseded.

Clause 12: Bankruptcy: early discharge procedure

We agree that discharge should be after 12 months, a reduction from 3 years to 12 months having already been enacted. Early discharge is an administrative burden that ultimately adds to cost of administering the estate.

Clause 13: After-acquired property of bankrupt

In our opinion, non-culpable bankrupts are in effect punished by a lack of access to mainstream financial products. They may not be able to access bank accounts, which in turn means they are not eligible for discounts available for paying utility bills and dealing with other day-to-day creditors by direct debit. We believe that there is a case for a debtor having controlled access to a basic bank account, even prior to discharge.

Allowing a bankrupt to use mainstream banking facilities, albeit a basic current account without access to overdraft or credit facilities, would represent an important step in the process of financial rehabilitation, helping bankrupts to regulate their affairs and avoiding at least some of the costs attaching to disenfranchisements.

While any facilities offered in this manner should be carefully managed to avoid abuse, we would observe that legislating to afford bankrupts to access mainstream banking facilities does not necessarily mean that banks will agree to facilitate such access. We therefore recommend that consultation between the Department and banks be undertaken to ensure that facilities provided for bankrupts in law, are also available in practice.

We acknowledge that the outlined changes could make it more difficult for Trustees to pursue claims for after acquired property but such actions by Trustees are, in our experience, rare.

Clause 14: Authorisation of insolvency practitioners

We are not in favour of the partial authorisation of Insolvency Practitioners (IPs). We believe that any proposal to introduce two new licensing regimes for IPs will have a negative impact on businesses and individuals seeking financial advice. Our concerns include:

- Businesses and individuals seeking financial advice need to know from the outset if an IP can help them. Quite often the distinctions between corporate and personal financial affairs are blurred (particularly with regard to small businesses - which often involve personal guarantees) and therefore the IP ought to be competent and qualified in both corporate and personal insolvency.

- IPs commonly are unclear whether they're dealing with a corporate or personal insolvency case until the first meeting – and sometimes later should a client not disclose all relevant financial information from the outset of the process.

- While not specified in the consultation paper, we would be concerned as to how partnerships would be dealt with under a dual or partial authorisation regime. We are not persuaded that it would be in the interests of creditors or the credibility of the process for a "personal licence" to be sufficient to deal with a partnership. Some partnerships are very complex and many of

the commercial and practical issues arising are similar to those that regular arise in corporate cases.

- Similarly a practitioner with only a "personal licence" may not have the necessary skills set to deal with the insolvency of a high net worth individual with complex funding arrangements.
- Given the nature of the insolvency profession, we would expect take-up of partial licences to be limited. Indeed, we are uncertain who might wish to take advantage of partial licences, other than possibly volume IVA providers.
- Partial licences will not increase competition - the UK already has one of the most competitive insolvency regimes in the world – 7th best (in terms of speed and returns to creditors), according the World Bank Data. This proposal risks undermining this rating.
- We are not aware of any need a new specialism of IP to enter the market. On the contrary, there have been redundancies in this sector over the last few years, while the employment prospects of an IP with only a partial licence may be restricted as they will not be attractive to a firm that wants its practitioners to do both corporate and personal work.
- There is a separate, but related issue surrounding the concept of 'grandfathering' – the situation whereby it was historically possible to join the profession through a mentoring process overseen by more experienced practising IPs but before the advent of formal IP licensing post examination. While such 'grandfathered' practitioners may not represent a substantial number, it perhaps ought to be a consideration that, where a 'grandfathered' IP cannot demonstrate a continuous period of practice as an IP, the examinations should perhaps be a requirement to demonstrate current competency.

In the event that it is decided to proceed to implement these proposals, in order to ensure that holders of a "corporate licence" or "personal licence" are competent to provide appropriate advice, we believe that in order to obtain a "personal licence" it should be essential to demonstrate knowledge of corporate insolvency and vice versa, even if the examination for partial qualification is undertaken at a lower level than for a full licence.

Clause 15: Power to make regulations

New amendment has merit and we have no additional comment.

Clause 16: Company arrangement or administration provision to apply to a credit union

New clause has merit given the risk of financial difficulties in the industry.

Clause 17: Disqualification from office: duty to consult the Lord Chief Justice

New amendment is sensible

Clause 18: Interpretation

New amendment has merit and we have no additional comment.

Clause 19: Transitional provisions, minor and consequential amendments and repeals

New amendments have merit and we have no additional comment.

Clause 20: Commencement

The new amendment has merit and we have no additional comment.

Clause 21: Short title

New amendment is sensible and we have no additional comment.

Ends.

StepChange Written Submission

Jim McManus
Clerk, Committee for Enterprise, Trade and Investment
Northern Ireland Assembly
Room 414, Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX.

Sent by email to committee.eti@niassembly.gov.uk

Dear Mr McManus

Committee Stage of the Insolvency (Amendment) Bill

Thank you for your invitation to submit evidence to the Committee on this Bill.

This year, StepChange Debt Charity expects to help about 4,000 people with debt problems in Northern Ireland and a proportion of these will have an insolvency remedy recommended as the best solution to their debt problems.

StepChange Debt Charity does not deal with corporate debt and so we cannot comment on those aspects of the bill. StepChange Debt Charity does not provide individual voluntary arrangements in Northern Ireland at present, so we do not feel able to comment on the provisions in clause 14 and 15

StepChange Debt Charity warmly welcomes the provisions contained in clause 13 to remove the potential liability of banks against a trustee in respect of after acquired property. Access to basic transactional banking is a vital part of good financial health for households recovering from problem debt.

However few banks are now willing to offer basic bank accounts to people who are undischarged bankrupts. This can cause difficulty for our clients. The banking industry has cited as a reason for this refusal those provisions in insolvency legislation that impose a potential liability on banks for after acquired property passing through a bankrupt's account.

By amending the legislation in Northern Ireland to remove this potential liability, clause 13 removes the reason for banks to refuse to offer basic bank accounts to undischarged bankrupts. This will remove an unnecessary impediment to people recovering from serious debt problems. For these reasons StepChange Debt Charity strongly supports clause 13.

Yours sincerely

Peter Tutton

Peter Tutton
Head of Policy

0207 391 4596
www.stepchange.org

Royal Courts of Justice Written Submission

Northern Ireland
Courts and Tribunals Service
www.courtsni.gov.uk

Chancery Office
Royal Courts of Justice
Chichester Street
BELFAST BT1 3JF
Telephone: 028 9072 4703

13 January 2015

Jim McManus
Clerk to the Committee for
Enterprise, Trade & Investment
Northern Ireland Assembly
Room 375
Parliament Buildings
Ballymiscaw
Stormont
BT4 3XX

Dear Mr McManus,

Thank you for your letter of 16 December 2014 including the recent written briefing to the Committee from the Department on the Insolvency (Amendment) Bill.

Neither Mr Justice Deeny nor the Committee have previously had the opportunity to view these documents, and are therefore very helpful.

As the views earlier expressed were not those solely of Mr Justice Deeny, he considers it best to consult the other members of the relevant Committee. As such, he is convening an extra-ordinary meeting for the purpose of discussing the Bill and will revert to you as soon as possible.

Yours sincerely

Karen Campbell

Karen Campbell
Royal Courts of Justice
Probate Office

An Agency within DOJ
Department of Justice

INVESTORS IN PEOPLE

CUSTOMER SERVICE EXCELLENCE CSE

Royal Courts of Justice Written Submission

From: The Hon Mr Justice Deeny

Royal Courts of Justice
Belfast BT1 3JF

23 January 2015

Dear Mr McManus

Thank you for your letters of 24 November and 16 December 2014.

I recognise the interest which your Committee has taken in the views of the Chancery and Probate Liaison Committee.

You asked in your letter of 24 November 2014 whether the Committee had been satisfied with the Department's response to our concerns about the amendment to the Insolvency Order with regard to the right of trustees in bankruptcy to recover in respect of monies passing through bankrupts' accounts arising from after acquired property.

As Mrs Campbell pointed out in her letter of 8 December 2014 we had no record of such a response and indeed that proves to be the case. We did receive a letter from the Minister of 6 June 2014 but it related to other issues.

Your letter of 16 December 2014 helpfully enclosed the section of a briefing which your Committee had received from the Department. On foot of that I convened a special meeting of the Chancery and Probate Liaison Committee which met on 22 January 2015 and we considered the proposed amendment to Article 280 of the Insolvency Order in the current form which the Insolvency Service had provided us with. In the light of the explanations received and, in particular, the fact that we are only dealing with the issue of after acquired property, we can say that we are content with the Department's response to you.

As we had occasion to look at the proposed amendment could I draw three small things to the attention of your Committee for their assistance?

Firstly, as the amendment contained in Clause 13 of the Insolvency (Amendment) Bill now stands you will have at Article 280(4) of the Insolvency Order a sub-paragraph (a) but no further sub-paragraphs. It would be good practice to remove "(a)" and merge these separate parts of Article 280(4) into a single paragraph.

Tel: (028) 9072 5922 • Fax: (028) 9023 6838

Secondly, the proposed Clause (4A) sent to us has a misprint in that the word "or" after bankrupt on the second line should, we suggest, read "of".

Thirdly, that text has a closing bracket after the word Article on the third line but there is no opening bracket on the second line.

I trust this is of assistance.

Yours sincerely

Donnell Deeny
Presiding Judge of the Chancery Division of the High Court
Chairman Chancery and Probate Liaison Committee

Mr Jim McManus
Clerk
Committee for Enterprise, Trade and Investment
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Parliament Buildings
Ballymiscaw
Stormont
Belfast
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Northern Ireland Assembly

The Honourable Mr Justice Deeny,
Chair,
Chancery and Probate Liaison Committee,
Royal Courts of Justice,
Chichester Street,
Belfast,
BT1 3JF

24 November 2014

The Honourable Mr Justice Deeny,

Insolvency (Amendment) Bill

The above Bill was formally introduced to the Northern Ireland Assembly on 7 October 2014 and passed its Second Stage on 10 November 2014. The Bill has now been referred to the Committee for Enterprise, Trade and Investment which has responsibility for the Committee Stage of the Bill.

At its meeting on 18th November 2014, the Committee noted that the Department of Enterprise, Trade and Investment had carried out a consultation on the proposed legislative amendment to facilitate banks letting bankrupts have accounts.

The Department informed the Committee that it had carried out an informal consultation between 10 October and 21 November 2013 on the proposal for a legislative amendment to prevent trustees in bankruptcy bringing retrospective claims against banks in respect of payments made out of bankrupts' accounts. The Department stated that, in your role as Chair to the Chancery and Probate Liaison Committee, you had expressed concern about the proposed amendment. The Committee understands your concern centred on:

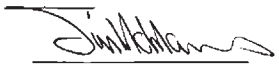
- The possibility of cheques issued by bankrupts not being honoured;
- Banks not being responsible for the loss incurred by those receiving cheques which were dishonoured on presentation; and
- Withdrawal of trustees' rights to take action in respect of monies passing through bankrupts' accounts leading to banks failing to exercise necessary control over bankrupts' accounts.

Jim McManus, Clerk to the Committee for Enterprise, Trade & Investment
Northern Ireland Assembly
Room 375, Parliament Buildings, Ballymiscaw, Stormont, Belfast, BT4 3XX.
Email: jim.mcmanus@niassembly.gov.uk
Tel. No. 028 9052 1230

As part of its call for evidence, the Committee agreed that I write to you to ask if you are content with the Department's response to your concerns or is there anything further on the matter that you would like to raise with the Committee.

I look forward to your response.

Yours sincerely,



Jim McManus
Clerk
Committee for Enterprise, Trade and Investment

Jim McManus, Clerk to the Committee for Enterprise, Trade & Investment
Northern Ireland Assembly
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Email: jim.mcmanus@niassembly.gov.uk
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Northern Ireland Assembly

Appendix 4

Memoranda and Papers from DETI

Department of Enterprise, Trade and Investment
Proposed Amendments to the Insolvency Law

PROPOSED AMENDMENTS TO INSOLVENCY LAW

BRIEFING FOR THE ETI COMMITTEE

1. Purpose of Briefing

To seek the ETI Committee's views on,

(i) the Department's proposals for changes to insolvency law,

(ii) a proposed consultation exercise in relation to these proposals.

2. Background

2.1. Historically our policy has been to keep Northern Ireland insolvency legislation so far as possible in parity with that applying in England and Wales. This has the two-fold advantage of ensuring equality of treatment under the law in the two jurisdictions and that creditors from England and Wales taking action over unpaid debt are not dealing with a system which is completely alien to them.

2.2 The main piece of primary insolvency legislation in England and Wales is the Insolvency Act 1986 (1986 c 45). The corresponding piece of legislation for Northern Ireland is the Insolvency (Northern Ireland) Order 1989 (S.I. 1989 No. 2405 N.I. 19) ("the 1989 Order"). In England and Wales detailed procedure for the conduct of insolvency proceedings is set out in the Insolvency Rules 1986 (S.I. 1986/1925). In Northern Ireland it is set out in the Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364) ("the 1991 Rules").

2.3 All of this legislation was drafted and made before the advent of modern methods of electronic communications. Some procedures which were relevant in the past have become outdated and pointless. Others could be altered to make them more efficient and reduce the cost of administering insolvencies.

2.4 The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I 2010 No. 18) was made in GB to address these matters.

2.5 There is a need to likewise up-date Northern Ireland's insolvency legislation if those using it are not to be at a disadvantage compared to their counterparts in England and Wales.

2.6 Since Legislative Reform Orders are not available in Northern Ireland primary legislation would have to be used. Our Minister plans to introduce an Assembly Bill in April 2013. This briefing is about the policy consultation for that Bill. There would be a need to make linked changes to the 1991Rules and

this would be done through an amending set of Rules to be brought into operation at the same time as the primary legislation.

2.7 The proposals are in keeping with the Priority 1 Objective in the draft Programme for Government of acting collaboratively with partners in the private, community and voluntary sectors to assure, and positively maximise the impacts of our work. They complement the Priority 5 Objective of improving online access to government services.

3. Procedures under Insolvency Legislation

The following procedures are available under the insolvency legislation applying in Northern Ireland,

In relation to companies;

3.1 Administration - a procedure aimed primarily at the rescue of a company as a going concern. An administrator can be appointed by the High Court, by a floating charge holder, or by the company or its directors.

Administrative Receivership – the appointment of an administrative receiver by a creditor to take and sell assets subject to a form of security termed a floating charge

Company Voluntary Arrangement – An agreement between a company and its creditors for payment of its debts in full or in part, usually over a period of time

Creditors Voluntary Winding Up – the winding up of an insolvent company by a liquidator appointed by its creditors

Members Voluntary Winding Up – the winding up of a company by a liquidator appointed by its members. The directors must have declared that the company will be able to pay its debts in full within 12 months.

Winding up by the High Court – The liquidation of a company following the making of a winding up Order by the Northern Ireland High Court. The most common grounds for a petition to wind up a company are that it is unable to pay its debts

In relation to individuals

3.2 Bankruptcy – the making of an Order by the Northern Ireland High Court which give the individual protection from further action by any of their creditors and leads to whatever assets they have, subject to certain exceptions, becoming vested in a trustee to be sold for the benefit of their creditors. A Bankruptcy Order can be made following presentation of a petition by either the debtor himself or one of his creditors.

Debt Relief – the making of an Order by the Official Receiver giving an individual protection from action by their creditors. This form of relief is only available to individuals who meet certain conditions, including that their total debt does not exceed £15,000, their assets are not worth more than £300 and they do not have more than £50 surplus income in the month.

Individual Voluntary Arrangement - A legally binding agreement between an individual and his or her creditors for payment of his or her debts in full or in part, usually over a period of time

Responsibility for conduct of insolvency procedures

4.1 For the purposes of this document the person in charge of an insolvency procedure is termed the office-holder. Depending on the circumstance pertaining in individual cases, in bankruptcies it is either the Official Receiver, who is a civil servant and officer of the court, or a private sector insolvency practitioner who will hold office as trustee to realise the assets and distribute the proceeds to the creditors. In the case of a company wound up by the Court, either the Official Receiver or a private sector insolvency practitioner will hold office as liquidator. The office-holder will usually be a private sector insolvency practitioner in the majority of other procedures.

5. The Proposals.

Electronic Communications

5.1 Various amendments were made to the 1989 Order by the Insolvency (Northern Ireland) Order 2005. They included the insertion of a new schedule, B1, creating a new enhanced administration procedure. It was specifically provided in that schedule that a reference in it "to a thing in writing includes a reference to a thing in electronic form". Rules made in connection with Debt Relief provide for certain documents to be completed in electronic form and sent by electronic means. Other than this no provision exists in insolvency legislation permitting the use of electronic communications in the other insolvency procedures. This gives rise to doubt as to whether documents which are required to be in writing would be valid if transmitted by email, which can lead to reluctance on the part of office-holders to transmit documents in this way. This reluctance can serve to limit the use they are able to make of this cheap and speedy method of communication.

5.2 We therefore propose to amend the 1989 Order to clarify that, subject to certain exceptions such as where a document has to be served personally, references anywhere in it to a thing in writing includes that thing in electronic form. We also propose to amend the 1991 Rules to clarify that notices and documents can be sent or delivered by electronic means.

5.3 The position of anyone without access to a computer will be fully safeguarded. It will only be possible to send documents electronically with the intended recipient's consent. Anyone receiving an electronic document will also have the right to request a paper copy free of charge.

Communication by website

5.4 Under the legislation office-holders are required to send information and notices to interested parties, notably creditors, at various stages during insolvency proceedings. Depending on the size of a case this could potentially involve the office-holder in having to mail the same document or documents to a large number of people, some of whom could be overseas. The documents themselves could be bulky or heavy. Mailing could turn out to be a costly exercise, and the money to pay for it would ultimately come out of the funds available for creditors. The volume or size of the documents to be transmitted or the number of people entitled to see them could make sending them by email problematic.

5.5 We propose to give office-holders the option of complying with requirements to send or deliver documents by placing the documents on a website, and sending notice to those entitled to see them that they had done so, along with the password to access the website. Those needing hard copies of the documents will have the right to receive them free of charge.

Virtual Meetings

5.6 Creditors and company members are given a say in the conduct of insolvency proceedings through being able to attend meetings at various stages in the course of insolvency proceedings. The current legislation envisages that such meetings will take place in person at a physical location. This obviously involves anyone wishing to take part having to travel to the meeting which may mean them having to take time of work or, if they have their own business, taking time away from it. Their travelling expenses have to be paid out of their own pocket. If, as is becoming more common with insolvencies increasingly assuming an international dimension, there are creditors from other countries, this could be a significant cost for them. Those with children or other dependants may have to make arrangements, again at a cost, to have them looked after while away at the meeting. It is possible to appoint a proxy to vote on your behalf at a meeting but this forces you to make your decision in advance without the benefit of having heard the pros and cons of your choice discussed at the meeting.

5.7 It would save both time and money if those entitled to attend meetings were able, where appropriate, to take part in them remotely without having to travel to a central location. Modern communications technology such as video and tele-conferencing and internet chat rooms would make this possible and in addition, enable participants to vote at meetings where the legislation confers a right for them to do so. All that remains to be done to make the option of virtual meetings available in insolvency proceedings is to legislate to allow it and this is what we propose to do.

5.8 We would put safeguards in place to ensure that no-one is disadvantaged. We intend to make clear that it will only be possible to hold a virtual meeting if it is reasonable to have formed the opinion that it is unnecessary or inexpedient

to hold one at a physical location. We intend that there will be a requirement to have regard to the legitimate interests of those entitled to attend. We intend that, in the case of a meeting of creditors or contributories (to a company) ten percent or more by value of them will be able to force the holding of a physical meeting, as will ten percent or more of members with voting rights in the case of a meeting of company members.

Abolition of Requirement for Sanction

5.9 It is proposed to do away with the requirement for liquidators and trustees to seek sanction from, as the case may be, company members, creditors, or this Department to reach a compromise over payment of debts. This requirement relates to the collection by liquidators and trustees of debts due to companies in liquidation and individuals in bankruptcy. Those owing the debts are not always prepared to pay the full sum allegedly due. They may not be in a position to pay it or they may dispute the amount. Legal action to recover the full sum might cost more than the shortfall, with no guarantee of a successful outcome. In such situations it can be better for trustees and liquidators to take a pragmatic approach and settle for a lesser amount.

5.10 It is our view that the requirement to obtain sanction to do this is a hurdle through which liquidators and trustees should not have to pass. As insolvency practitioners they are experienced members of a regulated profession. The decision as to whether to compromise over settlement of a debt is properly a commercial one, not something to be second guessed by company members, creditors or the Department. Money which could be going to creditors should not be expended paying liquidators and trustees to go through a pointless formality. This is why we propose to do away with the requirement for liquidators and trustees to obtain sanction for this particular purpose.

Abolition of Requirement for progress reports in creditors' and members' voluntary winding up to be laid at a meeting of members/creditors

5.11 Under the current law if a creditors' or members' voluntary liquidation lasts for longer than one year, the liquidator has to summon annual meetings of the company members and in the case of a creditors voluntary winding up, of the creditors. The meetings are held so that the liquidator can lay before them an account of his acts and dealings and of the conduct of the winding up during the preceding year.

5.12 The requirement for such meetings in England and Wales was done away with by the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 on the grounds that there was anecdotal evidence that such meetings were rarely attended and amounted to nothing more than the laying of a receipts and payments account before the meeting. Unless any evidence to the contrary emerges from the policy consultation it is proposed to likewise do away with the requirement under Northern Ireland legislation for the liquidator's account to be laid at a meeting. The liquidator would instead be required to prepare and send to members and creditors a progress report which would include the receipts and payments account which currently has to be

laid at a meeting and in addition, details of what remuneration he had taken during the preceding year. This report is an example of the kind of document which could be issued electronically or on a website.

Repeal of the Deeds of Arrangement Provisions

5.13 A Deed of Arrangement is an instrument made for the benefit of creditors, otherwise than in connection with an individual voluntary arrangement or bankruptcy. It is a procedure which has fallen completely into disuse, there having been no Deeds of Arrangement since the Insolvency (NI) Order 1989 came into operation in October 1991. There is therefore no point in keeping provision for it on the Statute Book.

Removal of the requirement for reports to be filed in court in Individual Voluntary Arrangements

5.14 It is possible for a debtor who is attempting to enter an individual voluntary arrangement to seek an interim order from the Court which will freeze any action by his creditors. This gives him time to draw up a proposal to put to his creditors and for them to vote on whether or not to accept it.

5.15 The Court normally has no involvement in an individual voluntary arrangement where the debtor does not seek an interim order. However the current legislation still obliges the insolvency practitioner in charge of setting up the individual voluntary arrangement, termed the nominee, to submit a copy of his report, on the prospects for the debtor's proposal being approved and implemented, to the Court. Likewise the chairman of the creditors' meeting convened to vote on the debtor's proposal is obliged to report the result to the Court.

5.16 The Official Receiver can set up individual voluntary arrangements, termed Fast Track Voluntary Arrangements (FTVAs), for undischarged bankrupts. Although the Court has no involvement the current law obliges the Official Receiver to report to the Court on whether the creditors have approved or rejected the proposed voluntary arrangement.

5.17 In view of the court having no role in cases not involving an interim order it is proposed that nominees should be required to send their reports on the merits of debtors' proposals to creditors instead of to the Court and that the requirement for the chairman to report the outcome of the creditors' meeting to the Court should be done away with. It is also proposed that it is to the Department instead of the Court that the Official Receiver should report as to whether the creditors have approved or rejected a proposed FTVA.

Proof of Debt –companies

5.18 Creditors seeking to recover payment from a company which has entered insolvency proceeding have to lodge a claim with the office-holder. This is termed proving their debt.

5.19 Creditors in a liquidation are entitled to submit claims up to the date on which the company went into liquidation, and creditors in an administration are entitled to submit claims up to the date on which the company entered administration. Any debts incurred by the company after the date of liquidation or administration are the responsibility of the liquidator or administrator as the case may be.

5.20 It is possible for a company which has been in liquidation to go into administration or vice versa. We wish to amend the law to make clear that it is only possible for creditors to prove for debts incurred to them by the company up to the date on which the company entered the earlier proceedings. This will regularise the position that if anyone supplies goods or services to a company after it has entered administration or liquidation it is the administrator or liquidator who is responsible for paying them and they have no claim against the company estate, even if the company subsequently enters a different form of insolvency proceedings.

Liability in Tort

5.21 A tort is a civil wrong not involving a breach of contract or trust. Article 2 of the Insolvency (Northern Ireland) Order 1989 establishes the circumstances in which a liability in tort is a debt provable in the winding up of a company or if a company is in administration. They are that the company became "subject to that liability by reason of an obligation incurred at the time the cause of action accrued".

5.22 On legal advice the law in England and Wales was amended to provide that,

> (a) A liability in tort is provable in a winding up or administration if the cause of action had accrued, or all the elements, other than actionable damage necessary to establish the cause of action, existed at the date on which the winding up order was made or the company entered administration
> (b) For a liability in tort to be provable where a company was in administration immediately before it was wound up or vice versa the cause of action must have accrued or all the elements necessary to establish a cause of action (except for actionable damage) must have existed at the date on which the company entered the earlier proceedings.

5.23 We propose to likewise amend the law in Northern Ireland.

6. Cost of the Proposals

6.1 None of the proposals involve any cost to the public purse. It is possible that there could be some additional costs for insolvency practitioners in communicating by website and holding virtual meetings. These are the subject of a Regulatory Impact Assessment. Communicating by website and holding

virtual meetings will in any case be optional so that insolvency practitioners are not being forced to incur any additional costs.

Next Steps

7.1 It is intended to submit a memorandum to the Executive to seek the Executive's agreement to carry out a policy consultation once the Committee has responded to this briefing. The plan is to have this done in time for the Executive to consider the matter when it meets on 5 April 2012.

7.2 The Committee's attention is drawn to a copy of the draft policy consultation document, including a partial Regulatory Impact Assessment, and Equality and Rural Proofing screening which is attached as Appendix A.

7.3 It is planned that policy consultation will take place between April and July 2012 and will last 12 weeks. A wide range of interests will be consulted including those on the OFMDFM list, this Department's equality list, and the insolvency profession.

7.4 Actual consultation will take the form of the issue of a letter to those being consulted referring to a copy of the consultation document which will be placed on the Department's website. A copy of this letter will be sent to the clerk to your committee.

7.5 Paper copies of the consultation document will be available on request.

7.6 It is also intended to place notice about the consultation in the Belfast Telegraph, the News Letter and the Irish News.

Officials responsible for the policy:

Senior Officer: Jackie Kerr (G 5) Tel: 9052 9455
Email Jackie.Kerr@detini.gov.uk

WR Nesbitt (G6) Tel: 9054 8506
Email reg.nesbitt@detini.gov.uk

Jack Reid (DP) Tel: 9054 8543
Email jack.reid@detini.gov.uk

APPENDIX 1

Department of
Enterprise, Trade
and Investment
www.detini.gov.uk

Insolvency Service

Consultation

Modernisation and Streamlining of Insolvency Procedures - Proposals to Amend the Insolvency (Northern Ireland) Order 1989

Consultation on Policy

April 2012

Closing Date for Responses: 2 July 2012

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Annexes

APPENDIX 1

There is a separate Consultation Response Form for both the questions in the main consultation document and the partial Regulatory Impact Assessment.

Purpose of this Consultation

The main purpose of this consultation is to seek your views on proposals to make amendments to the Insolvency (Northern Ireland) Order 1989 similar to ones made to the Insolvency Act 1986 applying in England and Wales by the Legislative Reform (Miscellaneous Provisions) Order 2010 (S.I 2010 No. 18).

The proposed changes would allow for a move away from outmoded paper based methods of communication. They would clear the way for communication to take place by modern, faster and more efficient electronic means. It is also proposed to modify certain procedural requirements to make them less onerous. Finally it is proposed to do away with the legislation relating to Deeds of Arrangement which have fallen into disuse.

As it is not possible to legislate by Reform Order in Northern Ireland the proposed changes set out in this document would, if agreed, have to be taken forward via primary legislation in the form of an Assembly Bill.

APPENDIX 1

Executive Summary

1. The proposals are intended to facilitate the use of modern methods of communication during insolvency proceedings and to modernise and streamline some of the processes involved and make them easier to use. The underlying objective is to reduce burdens on users of insolvency law generally so as to increase the returns to creditors.

2. Most of Northern Ireland' insolvency legislation was made before the advent of modern methods of electronic communication such as emailing and the internet. The Insolvency (Northern Ireland) Order 1989 and the Insolvency Rules (Northern Ireland) 1991 which were made for the purpose of giving effect to that Order make little reference to electronic communications so there is considerable doubt as to whether their use is permissible in insolvency proceedings.

3. The proposed changes would modernise and make more flexible the means which insolvency office-holders and creditors (and others who send or receive information) can use to communicate and exchange information in insolvency cases by :

- Updating insolvency legislation to make it explicit that communication can be effected electronically where the legislation requires it to be "in writing".
- Enabling insolvency office-holders to provide information by sending a document stating that the information is available on a website.
- Providing a legislative framework that will allow insolvency office-holders to hold meetings required as part of their conduct of insolvency cases through media other than attendance at a physical venue.

4. The proposed changes would streamline certain insolvency procedures by:

- Removing the requirement for liquidators and trustees in bankruptcy to obtain sanction for compromises made when realising assets.
- Removing the requirement for liquidators to summon annual meetings of members and/or creditors for the purpose of laying an account of their acts and dealings and of the conduct of the winding up during the preceding year.
- Repealing the Deeds of Arrangement provisions as this procedure has fallen into disuse.
- Removing the requirement for certain reports to be routinely filed in court in Individual Voluntary Arrangements.

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How to Respond:

Responses to this consultation document should be sent to:

By post to:

Jack Reid
Legislation Unit
Insolvency Service
Department of Enterprise, Trade and Investment
Fermanagh House
Ormeau Avenue
Belfast
BT2 8NJ

Or by e-mail to jack.reid@detini.gov.uk
Fax: 028 90548520

All responses should include the name and postal address of the respondent.

Please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

It would be very helpful if you could present your views in the form of responses to the individual questions asked in the document.

An acknowledgement will be sent to confirm receipt of each response.

If you have any questions about the consultation document you can contact Jack Reid:

Tel: 028 90548543
E-mail: jack.reid@detini.gov.uk

If you have any comment or complaint about the way this consultation was conducted, it should be sent to:

W.R. Nesbitt
Director of Insolvency
Insolvency Service
Department of Enterprise, Trade and Investment
Fermanagh House
Ormeau Avenue
Belfast
BT2 8NJ

A copy of the Code of Practice on Consultation is at Annex 6.

Hard copies of this consultation document are available from Jack Reid at the address shown

above. Request for copies in other formats, e.g. large print, Braille, disc, audio cassette and other languages will also be considered.

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A list of those organisations and individuals consulted is in Annex 1. We would welcome suggestions as to others who may wish to be involved.

TIMETABLE FOR RESPONSES

This consultation will close on 2 July 2012 and responses to this consultation should be forwarded to reach the Department at the address above on or before that date. It will not be possible to consider responses received after 2 July 2012.

Publication of Responses

The Department of Enterprise, Trade and Investment will publish a summary of responses on its website legislation page at www.insolvencyservice.detini.gov.uk/consultations after the consultation period has ended. Your response, and all other responses to the consultation may also be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. If we are asked to disclose responses under freedom of information account will be taken of any requests for confidentiality. However it is unlikely that information provided by a consultee would be regarded as confidential other than in very particular circumstances. The Freedom of Information Act gives the public a right of access to any information held by a public authority, in this case the Department of Enterprise, Trade and Investment. This right of access to information includes information provided in response to a consultation. However the Department is responsible for deciding whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential. If you do not want all or part of your response or information about your identity to be made public, please state this clearly in your response by marking your response as 'CONFIDENTIAL', and include an explanation as to the reason. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

We will handle any personal data you provide appropriately in accordance with the Data Protection Act 1998.

For further information about confidentiality or responses, please contact the Information Commissioner's Office, or see the web-site at:
http://www.ico.gov.uk

APPENDIX 1

INTRODUCTION

1. This consultation paper sets out in detail proposals to modernise insolvency law by permitting greater use of electronic communications and streamlining and updating some insolvency procedures to make them easier to carry out. The underlying objective is to reduce the burdens on all those using or affected by insolvency law with the particular aim of increasing the returns to creditors.

2. The group most directly affected by the proposals in this paper will be insolvency practitioners, who will benefit from the removal or reduction of burdensome requirements. Creditors and shareholders (in the case of companies) will be the beneficiaries of the reduction in the cost of conducting insolvency proceedings; and will also themselves see some changes to the ways in which insolvency proceedings are conducted, notably greater flexibility in some key areas.

3. The main piece of primary legislation under which insolvency is administered in Northern Ireland is the Insolvency (Northern Ireland) Order 1989. Detailed procedure is set out in the Insolvency Rules (Northern Ireland) 1991.

4. There are numerous requirements under the Order and the Rules for information and documents to be conveyed from one person to another in the course of insolvency proceedings. It is unclear whether the law would permit the information and documents to be sent by electronic means. This uncertainty has led to office holders in insolvency proceedings erring on the side of caution and sticking to traditional paper based methods.

5. There are also requirements in the Order and Rules for meetings, especially meetings of creditors, to be held for the purpose of receiving information and making decisions. While the opportunity to attend such meetings represents a valuable opportunity for those affected by insolvency to have a say in the way in which insolvencies are administered, such meetings tend to be poorly attended. The law as it stands does not allow for remote attendance at meetings. The time and costs incurred travelling to a physical venue are obviously disincentives to people attending.

6. It is essential to revisit legislation from time to time to ensure that it remains fit for purpose. It is for example questionable whether delivery of the liquidator's annual progress account in voluntary liquidations needs to take place at a general meeting of the company. It is questionable whether any useful purpose is served by a nominee in an individual voluntary arrangement not involving an interim order having to submit a report on the merits of the debtor's proposal to the Court when the Court has no role in approving the proposal. It is questionable whether a trustee or liquidator should have to seek sanction from the company, the creditors or the Court as the case may be, in order to reach a compromise over debts due in a bankruptcy or liquidation.

7. These problems and shortcomings have been addressed in England and Wales through the making of the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order which came into force on 6 April 2010, and by making associated changes to the Insolvency Rules applying in England and Wales. We plan to take forward an Assembly Bill to effect similar amendments to the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") and to make a set of amending rules

to effect related amendments to the Insolvency Rules (Northern Ireland) 1991. This consultation is to establish your views on these plans. A number of specific questions are set out in each section and in the consultation response form.

APPENDIX 1

THE PROPOSALS

Proposal 1

To modernise and make more flexible the means which office-holders and creditors and others sending or receiving information can use to communicate and exchange information in insolvency cases.

8. This would tie in with the Government's commitment to enabling electronic communication, where possible and appropriate. Flexibility in this area would give insolvency office-holders and others the option of choosing faster, more efficient and less costly methods of communication, and enabe stakeholders to receive communications in the way best suited to their requirements.

9. There are three interlinked parts to the proposal. They are considered separately but it is important to see them as part of a complete package to deliver savings while maintaining effective communication during insolvency procedures.

a) Make specific provision for electronic communication

10. To update insolvency legislation to make it explicit that communication can be effected electronically in cases where the Insolvency (Northern Ireland) Order 1989 expressly requires documents or information to be in writing and to remove the stipulation in Articles 81 and 84 of the 1989 Order that notices of meetings held under those Articles are to be sent "by post".

Present position

11. Insolvency legislation, like a lot of other legislation, was drafted before the age of widespread electronic communication and is based on written communication being conducted through the paper postal system.

12. Paragraph 1(2) of Schedule B1 inserted into the 1989 Order by the Insolvency (Northern Ireland) Order 2005 makes clear that electronic communication may be used in cases where that schedule refers to documents or information being "in writing,". However this only covers Administrations (see paragraph 1(2) of Schedule B1 to the 1989 Order: "A reference in this Schedule to a thing in writing includes a reference to a thing in electronic form."). The remainder of the 1989 Order does not have the benefit of this clarification. We consider that insolvency practitioners and others will be influenced in their interpretation of the meaning of "in writing" by the fact that the clarification has been made for the purposes of Schedule B1 in relation to Administration proceedings. The lack of such a provision in relation to other proceedings under the 1989 Order must give rise to real doubt as to whether electronic communication is allowed in those proceedings.

13. Doubt as to the extent to which electronic communication is legally permissible or how it would affect the validity of the underlying actions can result in office holders taking the view that they

should neither use electronic means for communication nor accept it from others. This tendency to shy away from the use of electronic communication adds to the costs of administering estates.

14. Articles 81 and 84 of the 1989 Order require the notices of meetings held under those sections to be sent to creditors "by post". The printing and postage costs thereby incurred likewise fall on the estate.

Proposed Changes

15. It is proposed to,

(i) clarify that references throughout the 1989 Order to documents and information which must be "in writing" or "written" etc include documents in electronic form. This would be done by repealing paragraph 1(2) of Schedule B1 to the 1989 Order and inserting a new provision to clarify that for the purposes of all insolvency proceedings "in writing" includes done in electronic form.

This would allow increased use to be made of electronic means to transmit documents and information resulting in saving on printing and postage charges and leaving more money for distribution to creditors.

Some references to "in writing" will be unaffected, for example, because the document has to be served personally, as under Article 103 of the 1989 Order.

Use of electronic communications will only be permitted where the intended recipients have consented to it. Those wishing to receive hard copies of documents will still be able to do so. In addition recipients of any document sent electronically will have the right to request a hard copy.

(ii) remove the references in Articles 81 and 84 of the 1989 Order to notices of the meetings held under those Articles being sent "by post".

In many instances the notices of the meetings required to be held under Articles 81 and 84 of the 1989 Order will still have to be sent by post even if this proposal proceeds, as they are issued at the beginning of the proceedings before the creditors have had a chance to consent to the use of electronic communications and provide an e-mail address. However, savings will be made where a body, such as Her Majesty's Revenue and Customs or one of the major banks, has given a general consent to all documents in insolvency proceedings in which it is a creditor being sent to it by e-mail.

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b) Make it possible to communicate information and document via websites

16. To enable insolvency office-holders to comply with requirements to provide information by notifying everyone entitled to receive the information, that it is available on a website.

Present position

17. Insolvency office-holders are required to send information at various stages of insolvency proceedings, sometimes with forms for completion and return by the creditors. The costs of printing hard copies of what are often lengthy reports and sending these by post to all of the creditors can be very substantial and have to be borne by the estate, leaving less money for creditors. The Court can already order that the office-holder can issue information to creditors by means of an advertisement (for example where there are large numbers of creditors and liquidation follows administrative receivership, where the creditors already have the information from the administrative receiver.) Also in an Administration the Court can make whatever order it thinks fit concerning the means of communicating with a large number of creditors, for example in a case in England and Wales it ordered that the company website could be updated as one means of keeping the creditors informed.

18. While it is proposed to allow office-holders to send many notices and other documents by e-mail there can be problems doing this in practice if there are a lot of documents or any of them are large in size.

Proposed Changes

19. The proposal is that in addition to being given the right to send information and documents by e-mail, office-holders should be able to communicate information or documents by publishing them on a website and sending intended recipients a notice stating that they are available for viewing on the website and giving the website address and any password needed to access it. For the avoidance of doubt it is intended that it will become possible to communicate with the members of a company in this way in, for example, a members' voluntary liquidation or in a company voluntary arrangement.

20. Creditors and members would be able to view information put on a website either on their own computer or, in public libraries which are increasingly offering free Internet access to members of the public. In addition it would still be possible to receive hard copies of documents free of charge, on request.

21. Website use is expected to provide significant cost and time savings in cases where insolvency office-holders are required to send bulky documents (such as Administration proposals, perhaps

running to more than 20 pages) to a large number of creditors (in many larger cases totalling over 100 creditors and in some cases over 1000).

c) Make it possible for meetings to be held in the course of insolvency proceedings without the participants having to attend in person or by proxy

Present position

22. Under the 1989 Order and the 1991 Rules meetings have to be held at various stages during the conduct of insolvency proceedings. They range from meetings of members and/or creditors to resolve to put the company into an insolvency procedure or to vote on a proposal to enter into a legally binding arrangement, to meetings that the office-holder is bound to convene to determine issues such as the agreement of his remuneration, to enable the creditors to sanction certain activities that the office-holder may need to undertake, or simply to formally conclude or terminate the insolvency process.

23. Since February 2006 it has been possible to hold meetings by correspondence in Administrations. Anything that can be done at a creditors' meeting in an administration can be done by correspondence between the administrator and the creditors (paragraph 59 of Schedule B1 to the 1989 Order). While this has been a useful development it may be of limited value in the case of meetings where any kind of interaction or discussion is necessary, for example, where different insolvency practitioners are put forward for appointment as office-holder or where modifications are proposed to proposals from the office-holder.

24. In all other forms of insolvency procedure, meetings required to be held under the 1989 Order have to be physical meetings. A creditor or member must either be present or represented by proxy.

25. It costs money to arrange and hold a physical meeting, which reduces the amount left for the creditors. The insolvency office-holder has to arrange a venue, which is large enough to accommodate all the creditors who might attend. It may not be possible to predict the number with any degree of accuracy. The result is that money which could otherwise go to creditors is wasted hiring a venue than turns out to be larger than necessary.

26. If creditors/members wish to be involved in the business of the meeting, they either have to travel to it, perhaps requiring them to take time off work or make other domestic re-arrangements, or else appoint someone to act as their proxy.

Proposed Changes

APPENDIX 1

27. We propose making the concept of attendance at physical meetings in all insolvency proceedings more flexible so that insolvency practitioners would be able to choose the medium (or, in some instances, mixture of media) by which to conduct the business of a meeting, taking into account the circumstances of the case. For example, the business of a meeting could be conducted with creditors present in person or on the telephone. It would not matter whether everyone attending the meeting was in the same place. A person would be held to be attending the meeting provided that they could interact and vote at the meeting in such a way that their views were communicated to everyone else attending the meeting and their vote could be recorded at the same time as votes of others attending the meeting.

29. Enabling the business of a meeting to be conducted through different media by making the requirements relating to the way in which meetings can be conducted more flexible would enable more creditors to play an active part if they wish to do so.

30. Our aim is to move away from the situation where the only way to hold meetings is to have them at a physical venue by offering those involved the option of holding remote meetings instead. As technology and take-up levels improve over time this will make it easier for creditors to participate in meetings in insolvency processes at minimal cost and without the inconvenience of having to travel, perhaps for long distances, to a physical venue. They will instead be able to attend meetings from their own office or home, via for example their computer or telephone.

31. We propose to provide that where an insolvency practitioner intends to hold a meeting by media that does not include attendance at a physical venue, any single creditor or group of creditors of the insolvent whose debt(s) amount to a prescribed percentage of the total owed to the creditors of the company, (expected to be 10%) may within a prescribed period (e.g. 5 business days) from the date of the notice of the meeting being sent out, require him to allow attendance at the meeting in person.

32. Existing provisions of the 1989 Order which allow creditors and other interested parties to apply to court if dissatisfied with the actions of an office-holder would apply to the conduct of meetings. See for example, Article 19 (CVAs), Article 98 (CVLs), Article 143(5) (winding up by the court), Article 136 (IVAs), Article 276(1) (bankruptcy) and paragraph 75(1) of Schedule B1 (administration).

Questions

Electronic communications generally

Q 1– Would you take advantage of these proposals to make communication in insolvency procedures more flexible, as set out above?

Q 2– If certainty were provided that you could send communications electronically, would you take advantage of the provision?

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Q 3– Do you consider that this would provide savings? If so, can you give some estimation of what those savings might amount to?

Websites

Q 4– If insolvency office-holders were able to provide information via a website, would you be agreeable to this?

Proposal 2

To remove the requirement for liquidators and trustees in bankruptcy, to obtain sanction for compromises made when realising assets.

Present position

33. Schedules 2 and 3 to the 1989 Order list various powers that a liquidator of a company or a trustee in bankruptcy may exercise as appropriate in the course of the winding up of a company or the bankruptcy of an individual.

34. Some of these actions (in Parts II and III of each Schedule) are exercisable by the insolvency office-holder on his own authority i.e. there is no requirement to obtain the sanction of the creditors either before or after taking any of those actions. Others require the prior consent of the creditors or members (or an extraordinary resolution in the case of a members voluntary liquidation) or the permission of the High Court.

35. Sanction is currently required from the liquidation/creditors' committee, the creditors or the Court to compromise the realisation of an asset that is owned by, or a debt or claim that is owed to, the company in liquidation or the bankrupt.

Proposed Changes

36. We propose to abolish the requirement to obtain prior sanction before compromising or otherwise settling debts and claims owing to insolvency estates as we consider that this is an area of work which could and should be left to the commercial judgement of insolvency professionals. The requirement to obtain this sanction was carried over into the 1989 Order from earlier bankruptcy and companies' legislation made at a time when the insolvency profession was unregulated. Over the last 20 years there have been significant developments in the operation of the regulatory regime which was put in place by the 1989 Order. In our view this renders the need for creditors to sanction specific activities of the liquidator or trustee in this way unnecessary.

37. Insolvency practitioners are required to seek the best possible return for the creditors and should therefore take all reasonable steps to get as much money as possible for assets. The need to compromise should only arise where there is some very real difficulty in realising an asset. For example, someone owing money may refuse to pay the full amount due. There may be a genuine dispute, or the office-holder may be satisfied after making enquiries that the debtor is genuinely unable to pay the full amount. On the other hand, the debtor might be hoping that the office-holder will be without funds to take court action to recover the money. Even if the office-holder has funds in hand, he may take the commercial view that the return to the estate would be greater if he settles for a lower amount rather than incurring further costs. These are commercial judgements, which the office-holder is well placed to make and he should be able to justify his actions to the creditors when he reports later on the outcome. Delay in agreeing a compromise may further reduce the amount that may be recovered for the estate since the debtor might, for example, withdraw an offer for settlement if there is any delay in accepting it.

38. The insolvency office-holder would still be accountable for his actions in that the existing rights which a creditor or member has under the legislation to challenge the actions of a liquidator or trustee would remain unchanged.

39. The proposal is to remove the sanction in respect of claims **by,** but not **against,** the trustee or liquidator.

40. Removal of the requirement to obtain sanction to compromise or settle debts and claims would leave the insolvency office-holder free to use his commercial judgement as he sees fit to realise such assets on behalf of the general body of creditors/members without recourse to the creditors, members or the Court. Doing away with the need for liquidators and trustees to obtain sanction would save money which would leave more for the creditors (or members in the case of a members' voluntary liquidation). It would mean that the potential for loss to estates resulting from delay in taking action while sanction was being obtained would be avoided. It would save creditors having to spend time and money dealing with requests for sanction.

Questions

Q 5 – Do you have any experience, as a creditor, of involvement in the process of giving sanction to a liquidator or trustee? If so, did you consider it a useful process?

Q 6 – If you are an insolvency practitioner, what is your experience as to this process? Can you identify examples of instances where the present process has worked against the best interests of the estate?

Proposal 3

APPENDIX 1

To do away with the requirement for liquidators to summon annual meetings of members and/or creditors for the purpose of laying an account of their acts and dealings and of the conduct of the winding up during the preceding year.

Present position

41. A company may only enter into an MVL where its directors make a statutory declaration that the company's debts can be paid in full, with statutory interest, within a period not exceeding twelve months (see Article 75 of the 1989 Order). As these are cases where the company expects to pay its debts in full, it is the members (shareholders) of the company who "control" the liquidation, rather than its creditors. If the liquidator forms the view that the company is in fact insolvent, he is required to convert the liquidation into a creditors' voluntary liquidation ("CVL"), thereby shifting "control" of the liquidation to the company's creditors (see Article 81 of the 1989 Order). However, it is possible for an MVL to be extended beyond 12 months where that deadline cannot be met, provided the members give permission and the company remains solvent.

42. Article 79 of the 1989 Order requires the liquidator of a company in members' voluntary liquidation ("MVL") to summon a general meeting of the company at the end of the first year following the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the year- end or such longer period as the Department may allow. In a CVL the liquidator is required by Article 91 of the 1989 Order to summon general meetings of the company and its creditors at the end of the first year following the commencement of the winding up, or at the first convenient date within 3 months from the end of year or such longer period as the Department may allow. The meetings, which have to be physical ones, are held so that the liquidator can lay before each of them an account of his acts and dealings, and of the conduct of the winding up, during the preceding year.

43. It is believed that in practice the laying of the account of the liquidator's dealings and the conduct of the winding up amounts to nothing more than laying before the meeting a copy of the receipts and payments account which Article 162 of the 1989 Order obliges the liquidator to send to the Registrar of Companies and which is therefore publically accessible.

44 There is no requirement for any decisions to be made at the meeting; its purpose is simply to receive the account.

45. We understand that members/creditors rarely attend the meetings but would be glad to receive any further information which consultees may be able to give as to the frequency of attendance and the usefulness of such meetings.

46. There are costs. The liquidator may need to hire a room, especially if he is uncertain how many creditors, if any, will attend. He needs to be available to chair the meeting. These costs have to be borne by the liquidator in the first instance and will end up being met out the assets of the company leaving less money for creditors/members.

Proposed Changes

47. If these meetings are in fact poorly attended, we would like to remove the requirement to call them, and provide for the creditors to receive the same information in a way which would be more convenient both for them and the liquidator. We propose to introduce a requirement for liquidators and other office-holders to provide progress reports to the creditors/members which will include the receipts and payments account which currently has to be laid before the annual meeting, and details of the remuneration the liquidator has taken over the course of the year. Creditors would also be given improved rights to request further information, and to challenge the remuneration drawn by the liquidator.

48. Creditors/members would still be able to ask the liquidator questions about information in the receipts and payments account and we would expect the liquidator to respond to reasonable requests for information. Any rights to challenge the actions of the liquidator would remain unaffected by this proposed change.

Questions

Q 7- In your experience, how often do creditors/members attend the annual meetings at which a liquidator's receipts and payments accounts are laid?

Q 8- Do you agree that the information presently laid at the meeting should instead be sent to the creditors/members as part of a proposed progress report?

Proposal 4

To repeal the Deeds of Arrangement Provisions

Present position

49. The primary legislation covering Deeds of Arrangement is Chapter 1 of Part 8 of the 1989 Order. A Deed of Arrangement is an instrument made by, or in respect of the affairs of, a debtor for the benefit of his creditors, otherwise than in connection with an individual voluntary arrangement or bankruptcy. The principal types are an assignment of property or a deed of or agreement for a composition. A Deed of Arrangement does not bind the debtor's creditors so that any of them may continue to pursue the debtor to bankruptcy.

Proposed Changes

50. The Deeds of Arrangement procedure has been totally superseded by informal agreements between debtor and creditors such as Debt Management Plans and by voluntary arrangements under the Chapter 2 of Part 8 of the 1989 Order. There have been no Deeds of Arrangement in Northern Ireland since the coming into operation of the 1989 Order in October 1991. It is part of Better Regulation strategy to get rid of laws that are no longer needed. The Insolvency Service in England and Wales plan to repeal the equivalent legislation applying in England and Wales

through a Repeals Bill which it is intended will be introduced at Westminster in October 2012. We think that it would be a good idea while the opportunity presents itself to include in the proposed Assembly Bill provision to repeal the Deeds of Arrangements provisions in the 1989 Order together with all secondary legislation made under those provisions and to remove all references to those provisions and to deeds of arrangement in other primary and secondary legislation.

Question

Q 9- Do you agree that the Deeds of Arrangement provisions should be repealed?

Proposal 5

To remove the requirement for certain reports to be routinely filed in court in Individual Voluntary Arrangements.

Present position

51. The current IVA regime is set out in Chapter 2 of Part 8 of the Insolvency (Northern Ireland) Order 1989. In general terms, an IVA is a binding agreement between a debtor and his creditors under which the debtor repays his outstanding debts, either in full or in part. The debtor prepares an IVA proposal setting out details of his assets and liabilities and how they will be dealt with. All IVAs are administered by a licensed insolvency practitioner (IP) (usually a qualified lawyer or accountant). Up until the proposal is approved the IP is called the nominee. The debtor submits his proposal to his IP, who, before it can be proceeded with, has to form the view that it has a reasonable prospect of being approved (by the creditors) and implemented. The proposal will typically be to make reasonable monthly payments out of surplus income for a period of five years. However IVAs are flexible and can be based on other means of repayment such as a one-off payment from a third party. If the nominee has formed the view that the IVA proposal is viable he arranges for a meeting of creditors to be held. At that meeting the creditors vote on whether or not to approve the IVA proposal. They may suggest modifications to the proposal, which have to be agreed to by the debtor. The creditors also decide whether the IP who has been acting as nominee should remain as supervisor to administer the approved proposal or whether a different IP should be appointed. A majority of 75% in value of those attending or represented at a creditors' meeting is needed for a proposal to be approved. The terms of the proposal become binding on the debtors and creditors if it is approved and details of it are then filed in court. The details are also passed to the Department of Enterprise, Trade and Investment which arranges for them to be entered in a publicly accessible register, the Register of Individual Voluntary Arrangements.

52. The option exists in nearly all cases where a debtor is intending to make a proposal to his creditors, of application being made to the court for an interim order, providing a moratorium against action by creditors. An interim order lasts for 14 days, but can be extended if the nominee needs more time to prepare a report, which he has to submit to the court, on the debtor's proposal and to provide an opportunity for a meeting of creditors to be held to vote on the proposal.

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53. With the coming into operation of the Insolvency (Northern Ireland) Order 2005 on 2 February 2006 it became possible for undischarged bankrupts to put a proposal to their creditors under what is termed a fast track individual voluntary arrangement (FTVA) as an alternative to one conducted by a private sector IP. The Official Receiver acts as nominee/supervisor in all FTVA cases. The Official Receiver is a civil servant and officer of the court, and is otherwise responsible for administering bankruptcies.

54. In an FTVA creditors cannot propose modifications to the proposal and they do not physically meet. Instead creditors have to vote by correspondence by a specified date to either accept or reject the proposal.

55. Under the current law,

- a report on the prospects for the debtor's proposal being approved and implemented must be submitted to the court by the nominee in all IVAs
- the chairman of the creditors' meeting in an IVA must report the result to the Court
- In the case of a FTVA the Official Receiver must report to the court on whether the creditors have approved or rejected the proposed voluntary arrangement

Proposed Changes

56. The court does not have any role in individual voluntary arrangements which do not involve an interim order except in the rare instance of the decision of the meeting of creditors being challenged. Neither does it have any role in FTVAs except in the case of an application to revoke one. We propose,

- in IVA cases where no interim order has been made,
    - to discontinue the requirement for the nominee to send his report on the merits of the debtor's proposal to the court. We propose that in such cases the nominee should instead be required to send his report to the creditors
    - to do away with the requirement for the chairman of the creditors' meeting to report the result to the court

- to replace the requirement for the Official Receiver to report to the court whether a proposed FTVA has been approved or rejected by the creditors with a requirement to notify this information to the Department

57. We intend to retain the current requirements for the chairman of the creditors' meeting to,

- send notice of the result to the creditors, and where the debtor is an undischarged bankrupt, the Official Receiver and trustee, if any
- send a report to the Department if the meeting has approved the debtor's proposal giving the name and address of the debtor, the date on which the approval was given and the name and

address of the supervisor. This information is used by the Department to maintain its free public record of IVAs on the Individual Voluntary Arrangement Register.

58. No alterations would be made to the requirements to send reports to the Court in cases where an interim order has been made.

59. Cutting down on the requirements to send notifications and reports to the court will cut the cost of administering IVAs leaving more of the funds made available by the debtor for distribution by way of a dividend to creditors. The Court Service will save on administration costs through no longer having to engage in a pointless exercise receiving and filing documents which are seldom if ever used.

Questions

Q. 10- Do you agree that nominees should no longer be required to send reports on debtor proposals to the court in non-interim order IVAs?

Q. 11- Do you agree that the chairman of the creditors' meeting should no longer be required to report the result to the court in non-interim order IVAs?

Q. 12- Do you agree that the Official Receiver should be required to report the result of the vote on whether to accept or reject a FTVA to the Department instead of to the court?

Proposal 6

60. To update the definitions of debts and liabilities in the 1989 Order.

Present position

Article 2(3) of the Insolvency (Northern Ireland) Order 1989

61. Article 2(3) of the 1989 Order sets out a criterion to be used in deciding whether a liability in tort is provable if the tortfeasor is a company which has been wound up or is in administration or is an individual is bankrupt.

62. The corresponding provision for England and Wales is Rule 13.12(2) of the Insolvency Rules 1986. Amendments have been made to the Rule 13.12(2) definition. On legal advice the criterion has been changed so that it is no longer set in terms of a company having become subject to a liability by reason of an obligation incurred at the time when the cause of action accrued. A liability in tort is now provable if the cause of action had accrued at the date on which the company entered liquidation or administration, or all the elements necessary to establish the cause of action existed at that date except for actionable damage. Rule 13.12(2) has been further

amended to provide that for a liability in tort to be provable in a case where a winding up was immediately preceded by an administration the cause of action must have accrued or all the elements necessary to establish the cause of action (except for actionable damage) must have existed at the date on which the company entered administration.

Article 5(1) of the Insolvency (Northern Ireland) Order 1989

63. Article 5(1) of the 1989 Order defines a debt in relation to the winding up of a company or where a company is in administration.

64. The corresponding provision for England and Wales is Rule 13.12(1) of the Insolvency Rules 1986. This provision has been amended to provide that where a winding up was immediately preceded by an administration, debt means any debt or liability to which the company was subject at the date on which it entered administration. By virtue of paragraph (5) of Rule 13.12, that Rule would also apply so that where an administration was immediately preceded by a winding up, debt would mean any debt or liability to which the company was subject at the date on which it went into liquidation.

Proposed Changes

65. It is proposed to amend Articles 2(3) and 5(1) in line with the way in which Rule 13.12(1) &(2) of the Insolvency Rules 1986 have been amended. This would clarify that,

- when it comes to determining whether a debt can be proved in a case where a winding up follows an administration or vice versa it is the date on which the company entered the earlier proceedings which counts
- if a company has been wound up or is in administration a liability in tort is provable, if the cause of action had accrued, or all the elements other than actionable damage necessary to establish the cause of action existed, at the date on which the winding up order was made or the company entered administration
- Clarify that for a liability in tort to be provable in a case where a company was in administration immediately before it was wound up or vice versa the cause of action must have accrued or all the elements necessary to establish the cause of action (except for actionable damage) must have existed at the date on which the company entered the earlier proceedings.

Question

Q.13- Do you agree that Articles 2(3) and 5(1) should be amended to bring them into line with the way in which Rule 13.12(1) & (2) of the Rules applying in England and Wales has been amended?

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EQUALITY AND RURAL PROOFING

66. Equality screening has not shown that any of the proposals would adversely affect the section 75 groups. The proposal to allow remote holding of meetings could be of benefit to the elderly, the disabled and those with dependants.

67. Rural impact screening has not shown any adverse effect on those living in rural areas. The proposal to allow remote holding of meetings would also be of benefit to those living in rural areas as it would save them having to travel to attend physical meetings.

Question

Q. 14- Do you agree that the proposals will not have any negative impact on any of the section 75 groups*?

Q. 15 Do you agree that the proposals will not have any negative impact on those living in rural areas?

*Persons of different religious belief, political opinion, racial group, age marital status or sexual orientation;
Men and women generally
Persons with a disability and persons without
Persons with dependants and persons without

APPENDIX 1

Annex 1

List of consultees

Abbey National PLC
Accountant in Bankruptcy Scotland
Advice NI
Advice Services Alliance
Alliance & Leincester PLC
Arthur Cox, Solicitors
Arthur Guinness & Sons
Association of Chartered Certified Accountants
The Attorney General for Northern Ireland
Bank of Ireland
Bank of Ireland Commercial Finance
The Bankruptcy Association
Barclays Bank PLC
Bass Ireland
Belfast Solicitor's Association
BK Binney Ltd
Blackhorse Personal Finance
British Bankers Association
BT
The Catholic Bishops for Northern Ireland
Chartered Institute of Management Accountants
Child Maintenance and Enforcement Division of the Department for Social Development
Civil Law Reform Division of the Departmental Solicitors Office
Civil Service Benevolent Fund
Cleaver, Fulton Rankin, Solicitors
Clerk of Petty Sessions, Laganside Courts
Community Relations Council
Concordia
Confederation of British Industry
Consumer Credit Counselling Service
Consumer Credit Trade Association
Construction Employers Federation
Corporation of Insurance, Financial and Mortgage Advisers
The Countryside Agency
The Crown Solicitor for Northern Ireland
Departmental Solicitors Office
DETI Committee
Disability Action
The District Judge (Magistrates Court)
Engineering Employers Federation
Equality Commission for Northern Ireland
Executive Council of the Inn of Court of Northern Ireland
Experian Northern Ireland
Federation of Master Builders
Federation of Small Businesses
First Trust
Food Standards Agency
General Consumer Council for Northern Ireland
Halifax Bank of Scotland & Ireland
HBOS
HM Council of County Court Judges

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HM Revenue & Customs
Housing Executive
HSBC Bank PLC
Human Rights Commission
Information Commissioner's Office
Insolvency Practitioners
Insolvency Practitioners Association
Insolvency Rules Advisory Committee
Insolvency Service (GB)
Institute of Chartered Accountants – Ulster Society
Institute of Chartered Secretaries & Administrators
Institute of Directors, Northern Ireland
Institute of Professional Legal Studies (QUB)
Inter Trade, Ireland
Invest NI
Irish Banking Federation
Irish League of Credit Unions
Judge Deeny
Land & Property Services
Law Centre (NI)
Law Society of Northern Ireland
Lloyds TSB plc
Lombard & Ulster
The Lord Chief Justice
Marks & Spencer Financial Services PLC
The Master in Bankruptcy
The Master, Enforcement of Judgments Office
The Master, Family Division
Members of the Northern Ireland Assembly, MPs and MEPs, NI political parties
The Ministry of Defence
Money Advice Trust
National Federation of Builders
National Housebuilding Council
NIC/ICTU
NIIB Group Ltd.
North/South Ministerial Council
Northern Bank Ltd.
Northern Ireland Association of Citizens Advice Bureaux
Northern Ireland Association for the Care and Resettlement of Offenders
Northern Ireland Bankers Association
Northern Ireland Chamber of Commerce and Industry
Northern Ireland Chamber of Trade
Northern Ireland Council for Voluntary Action
Northern Ireland Courts and Tribunals Service
Northern Ireland Electricity
Northern Ireland Finance House Association
Northern Ireland Food and Drink Association
Northern Ireland Independent Retail Trade Association
Northern Ireland Judicial Appointments Commission
Northern Ireland Law Commission
Northern Ireland Legal Services Commission
Northern Ireland Local Government Association
Northern Ireland Office
Northern Ireland Ombudsman
Northern Ireland Water
Northern Ireland Youth & Family Courts Association

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Official Assignee, Dublin
Office of the First and Deputy First Minister
Office of the Legislative Counsel
Participation & the Practice of Rights Project
The Police Service of Northern Ireland
Provident Financial Services
Provident Personal Credit Ltd.
Registrar of Companies, Belfast
Registrar of Companies, Cardiff
Registrar of Companies, Edinburgh
RFS Ltd.
Road Haulage Association
School of Law, Queens University of Belfast
School of Law, University of Ulster
Shopacheck Financial Services Ltd
Society of Local Authority chief Executives
Stock Exchange - NI Regional Advisory Group
Student Loan Company
Stubbs Gazette
Ulster Bank Ltd.
Ulster Community Investment Trust
Ulster Farmers Union
Ulster Federation of Credit Unions
Ulster Society of Chartered Certified Accountants
The Victim's Unit
Welcome Financial Services Ltd.
Woolwich PLC

Consultees on the Department of Enterprise, Trade and Investment equality consultation list, copies of which will be made available on request.

APPENDIX 1

Annex 2

Partial Regulatory Impact Assessment

NB: This section has a separate response form

APPENDIX 1

1. Title of Proposal

Modernisation of methods and processes in insolvency.

2. Purpose and intended effect of measure

The overall objective is to make the administration of insolvencies faster, more efficient and less expensive.

It is proposed to do this in a number of ways, each with its own contributory objective.

Electronic Communications

Our objective is that it should become the norm to use electronic communications rather than ordinary mail in the majority of cases where any form of notice, report or other document has to be sent to someone else in the course of insolvency proceedings.

(Note: Office-holder is a term used in this document to refer to the person in charge of insolvency proceedings. Depending on the type of proceedings and the circumstances applying in individual cases the office-holder may be either the Official Receiver or an insolvency practitioner. The Official Receiver is a civil servant in the Department of Enterprise, Trade and Investment and an officer of the court. Insolvency practitioners are individuals licensed by Recognised Professional Bodies or the Department for the purpose of conducting insolvency proceedings. Most are accountants or solicitors).

i. Legitimising the use of electronic communications

Objective

- To promote the use of electronic communications by clarifying that documents have the same legal recognition whether transmitted by electronic means, ie email, or sent through the ordinary post. This would give office-holders in all types of insolvencies, including private sector insolvency practitioners, confidence to send and receive documents electronically.

Background

Insolvency legislation allows for a range of corporate and individual insolvency proceedings. In the case of companies there is liquidation, administration, receivership and voluntary arrangement. In the case of individuals there is bankruptcy, voluntary arrangement and debt relief. Use of electronic communications is recognised as valid in law in the case of company administration and debt relief. It is open to doubt whether, under the current legislation its use would be valid in the other proceedings. This uncertainty makes office holders loath to use modern methods of electronic communications to send and receive documents in the course of these proceedings. It constrains insolvency practitioners and those corresponding with them to adopt the more costly and slower method of sending documents in paper form through the ordinary post.

Risk Assessment

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There are numerous requirements under insolvency legislation for communication between office holders and others. A simple example is the requirement for a liquidator to give notice of his intention to declare and distribute a dividend. Another is the requirement for the Official Receiver to send a report to creditors about the bankruptcy proceedings and the state of the bankrupt's affairs at least once after the making of a bankruptcy order. It costs a minimum of £0.36 to send a letter by second class post. Posting larger documents costs considerably more, especially if they are sent first class. In addition there is the cost of paper and staff time taken to produce paper copies of documents for mailing. These costs have to be met out of insolvent's estates leaving less money for the creditors.

ii Permitting the use of websites to disseminate information

Objective
To make it possible for office holders to disseminate information or send documents by putting the information or documents on a website and notifying those entitled to see the information or documents that they have done so.

Background
While it would be a considerable advance for office holders to be able to send documents by email this might not be the most efficient means of disseminating the same document or documents to a large number of people. There could be problems using email if there were a large number of documents requiring transmission or any of the documents were voluminous. In such situations it could be more efficient to put the documents on a website, notify those entitled to see the documents that they were there, and give them any necessary password access.

Risk Assessment

There is no provision under current legislation permitting the use of websites to disseminate information in insolvency proceedings. Without such provision in cases where the volume or size of documents to be transmitted or the sheer number of people entitled to receive copies makes it impractical to send them by email office holders could be forced to revert to sending them by paper and post with all the expense that this would entail.

iii. Permitting remote attendance at meetings

Objective
To reduce costs by approving the use of virtual meetings conducted wholly or partly using media such as teleconferencing and video conferencing.

Background
Meetings of creditors, and in the case of companies, members, must be held at various stages during most insolvency proceedings. In all types of insolvency proceedings where meetings are required, bar one, the meetings have to be held at a physical venue. Anyone wishing to participate must either travel to that venue

or send someone else, termed a proxy, to vote on their behalf. The exception is that in the case of company administrations, the legislation has been amended to allow anything which can be done at a creditors' meeting to be done by correspondence between the administrator and the creditors. While this represents a step forward from the previous rigid requirement for all meetings to be at a physical venue it is still a far from perfect solution since correspondence does not lend itself to discussion or settling issues involving choice between alternatives.

Risk Assessment
The risk is that without any change to the law those entitled to attend meetings will continue to be deterred from doing so by the cost and time involved in travelling to a physical venue. For example, creditors who would otherwise like to take part may not be able to do so because they would have to take time off work and perhaps lose pay. Furthermore the cost of hiring suitable venues at which to hold physical meetings will remain to be borne by insolvent's estates and hence ultimately their creditors. The problem of having to pay for the hire of a venue is compounded by the need to hire one large enough to accommodate all those who might turn up, even if it turns out that only a minority of those entitled to attend do so.

Removing the need for liquidators and trustees in bankruptcy to obtain sanction to compromise sums due to insolvent estates

Objective
To give liquidators and trustees freedom to reach compromises over payment of debts and settlement of claims due to insolvent estates without having to go through the formality of seeking sanction to do so.

Background
One type of asset which can exist in the case of a company winding up or a bankruptcy is a debt due to the company or individual. The debtor may not be in a position to pay the entire sum due or he may not be agreeable to do so if there is a dispute over payment. The cost of taking action to recover the full amount might well outweigh any likely gains so that it may make economic sense to reach a compromise and settle for a lesser sum. Under the current legislation there is a requirement for the office holder to seek sanction from the liquidation/creditors' committee if there is one, or if not the creditors or the Court to reach such a compromise.

Risk Assessment
Unless the law is changed, liquidators and trustees will continue to have to waste time obtaining sanction to accept compromise offers from debtors with the attendant danger of the debtor changing his or her mind and refusing to pay anything. Liquidators and trustees charge for their time spent obtaining sanction, leaving less money for creditors. In cases where the task of giving sanction falls on creditors they will continue having to spend time and money considering requests for it.

Abolition of requirement for a meeting to receive liquidator's annual account

Objective
To enable liquidators to report on their progress in voluntary liquidations without the time, inconvenience and expense involved in having to call annual meetings.

APPENDIX 1

Background
There are two types of voluntary liquidation. A members' voluntary liquidation (MVL) is where it is expected that the company will be able to pay its debts in full plus interest within twelve months. A creditors' voluntary liquidation (CVL) is where the company is insolvent. If an MVL lasts for longer than one year the liquidator has to summon a general meeting of the company within three months and he must do likewise within three months of the end of each succeeding year. If a CVL lasts for longer than one year the liquidator must summon general meetings of the company and its creditors within three months and he must do likewise within three months of the end of each succeeding year. The purpose of these meetings is to enable the liquidator to lay before each of them an account of his acts and dealings, and of the conduct of the winding up, during the preceding year. It is understood that such meetings are poorly attended and that the laying amounts to nothing more than laying of a copy of the receipts and payments account which Article 162 of the Insolvency (NI) Order 1989 obliges the liquidator to send to the Registrar of Companies and which is therefore publicly accessible.
It is proposed to replace the requirements to call meetings with a requirement to provide progress reports free of charge to creditors and members which would include both the receipts and payments account and in addition details of the remuneration taken by the liquidator over the course of the year.

Risk Assessment
Unless the law is changed, liquidators will remain obliged to comply with the pointless formality of having to convene meetings to receive documents which could equally well be sent out by email or in the ordinary post. Money which could be going to creditors will continue to be wasted hiring venues for such meetings and to pay liquidators for arranging and conducting them.

Repeal of the Deeds of Arrangement Provisions

Objective
To de-clutter the statute book.

Background
Deeds of Arrangement are instruments made for the benefit of creditors, including the assignment of property or deeds or agreements for a composition with creditors. They have fallen completely into disuse, having been superseded by other procedures such as Debt Management Plans and Individual Voluntary Arrangements. It is therefore proposed to repeal Chapter 1 of Part 8 of the Insolvency (Northern Ireland) Order 1989 which deals with Deeds of Arrangement.

Risk Assessment
Unless the legislation for Deeds of Arrangement is repealed the statute book will continue to be cluttered with provisions which are not used in contravention of the government's Better Regulation Policy.

Removal of the requirement for reports to be filed in court in Individual Voluntary Arrangements where there is no moratorium

Objective

To save on the time and expense of a pointless filing exercise.

Background
An individual voluntary arrangement (IVA) is basically a compact between a debtor and his or her creditors to pay them part or all of what they are owed, usually over a period of time. In some IVAs an interim order is obtained from the Court protecting the debtor against action by creditors until they can draw up their IVA and have it put to the creditors collectively for approval. In others there is no interim order and no court involvement. However in such cases the insolvency practitioner who has charge of setting up the individual voluntary arrangement, termed the nominee, is still required to send his report on the merits of the debtor's proposal to the court and the result of the vote taken at the meeting of creditors called to decide whether to approve the debtor's proposal has to be reported by the chairman to the Court. We propose that in cases where there is no interim order the nominee should send his report on the merits of the debtor's proposal to the creditors instead of to the Court, and that the chairman of a creditors' meeting should no longer be required to report the outcome to the Court. We also propose to replace the requirement in Fast Track Voluntary Arrangements for the Official Receiver to report to the court on whether the creditors have accepted or rejected the bankrupt's proposal with a requirement to notify this information to the Department of Enterprise, Trade and Investment. Fast Track Voluntary Arrangements are a category of Voluntary Arrangement available only to bankrupts where the Official Receiver acts as nominee and supervisor.

Risk Assessment
Unless the law is changed insolvency practitioners acting as nominees to attempt to set up IVAs for clients will still be obliged in cases where there is no court involvement to engage in a pointless exercise to file a report in Court which is not subsequently used by the Court or anyone else. The cost of doing this will have to be borne initially by the nominee, and will ultimately leave less money for creditors. The Court will continue to have to pay staff to engage in filing reports sent in by nominees and chairmen of meetings which might as well be put in the waste bin for all the use that is made of them.

3. Options

There are two options in relation to each objective.

Legitimising the use of electronic communications

Option 1: Do nothing.

The uncertainty over whether it is permissible to use electronic means to communicate documents in insolvency proceeding would remain. Office-holders would continue to be reluctant to use modern paperless methods of communication. The added expense of mailing documents through the ordinary post would continue to fall on creditors. Insolvency administration in Northern Ireland would languish in a backwater of inefficiency while their counterparts in England and Wales are free to make full use of electronic communications.

Option 2: Legislate to permit the use of electronic communications.

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It is the lack of clarity in current insolvency legislation over whether documents which are required to be in writing are valid if sent electronically which is inhibiting the use of electronic communications. Since the problem is in legislation it can only be cured through legislation.

Permitting the use of websites to disseminate information

Option 1: Do nothing.

Office holders would be denied the opportunity to use this highly efficient low cost method of disseminating information in suitable cases. They would continue to have to waste money sending large documents through the post. The large amounts of paper required would continue to deplete natural resources and damage the environment. Creditors/members would be denied the savings which would result from the use of websites.

Option 2: Legislate to permit the use of websites to disseminate information

Primary legislation is couched in terms of documents being sent, furnished or delivered. It would be stretching the meaning of those words beyond their limits to suggest that they could be interpreted to mean that requirements to send documents could be complied with by putting them on a website. Giving notice, or delivering, sending or serving a document is defined in the Insolvency Rules (Northern Ireland) 1991 to mean the sending of the notice or document by post unless personal service is expressly required. The only way to expand the meaning of sending in the primary legislation and in the Rules to take in communication by website is through legislation.

Permitting remote attendance at meetings

Option 1: Do nothing.

Creditors wishing to participate in meetings would be denied the convenience of being able to do so from their own homes or offices. Creditors/members would continue to have to bear the costs involved in travelling to meetings and the cost of the office-holder's time in convening and conducting them.

Option 2: Legislate to permit remote attendance at meetings

Both the primary legislation and the Insolvency Rules (Northern Ireland) 1991 were drafted in an era when meeting meant a gathering of people at a place or venue. They do not envisage or deal with meetings being held in any other way. To put beyond doubt that decisions taken at meetings held in other ways are valid legislation would therefore be required.

Removing the need for liquidators and trustees in bankruptcy to obtain sanction to compromise sums due to insolvent estates

Option 1: Do nothing.

Liquidators and trustees who realise that it would be pointless or too expensive to pursue full recovery of debts due would continue to be forced to go though the useless formality of seeking sanction to settle for a

lesser sum. Creditors/members would be denied the opportunity to benefit from the savings that would result if liquidators and trustees did not have to spend time pursuing this formality.

Option 2: Legislate to remove the requirement for sanction

The requirements for sanction are in legislation. They are in the paragraph (2) of Schedule 2 and paragraphs (6) and (8) of Schedule 3 to the Insolvency (Northern Ireland) Order 1989. Therefore the only way to achieve the policy objective of removing the requirement for sanction in relation to compromising the realisation of assets/claims is through legislation.

Abolition of requirement for meeting to receive liquidator's annual account

Option 1: Do nothing.

Time and money would continue to be wasted to the detriment of creditors/members arranging meetings to receive the account when it could be issued through the post, or by electronic means if the proposal to allow communications by electronic means is adopted.

Option 2: Legislate to remove the requirement for a meeting to receive the liquidator's annual account

The requirements to hold meetings to receive the account are in Articles 79 and 91 of the Insolvency (Northern Ireland) Order 1989. Therefore legislation is essential if these requirements are to be removed.

Repeal of the Deeds of Arrangement Provisions

Option 1: Do nothing.

The redundant provisions for this otiose procedure would remain on the statute book. Potential insolvency practitioner candidates would continue to be required to learn a body of law they are extremely unlikely to encounter in practice.

Option 2: Legislate to remove the requirement for a meeting to receive the liquidator's annual account

No way exists to repeal legislation except by legislation.

Removal of the requirement for reports to be filed in court in Individual Voluntary Arrangements where there is no moratorium

Option 1: Do nothing.

Nominees in individual voluntary arrangements where there is no interim order will continue to have to send their reports on what the debtor is proposing to the court, which makes no use of it, and the creditors, to whom it would be of interest, won't have a statutory right to see it in full in advance of their meeting to decide on whether to accept the debtor's proposals. Chairmen of creditors' meetings will continue to have to

carry out the pointless formality of filing a report on the outcome with the Court. The Court will continue to be burdened with filing documents it does not need.

Option 2: Legislate to remove the requirement for reports to be filed in court in Individual Voluntary Arrangements where there is no moratorium

The requirement for the nominee in an individual voluntary arrangement with no interim order to send a report to the Court is in Article 230A of the Insolvency (Northern Ireland) Order 1989. The requirement for the chairman of the meeting of creditors to report the result to the Court is in Article 233. The requirement for the Official Receiver to notify the court whether a Fast Track Voluntary Arrangement has been approved or rejected by the creditors is in Article 237C. Therefore any change to these requirements can only be achieved through legislation.

4. Benefits

Legitimising the use of electronic communications

Option 1

We have not been able to identify any benefits for Option 1. It would amount to compelling insolvency practitioners to use paper and post and withholding from them the right to choose to use more modern and cheaper methods of communication.

Option 2

Clarifying that electronic communications can be used if the sender and recipient agree to it would enable office-holders and those communicating with them to switch to using electronic communication ie email, instead of conventional mailing. The major benefit is that documents would be with recipients virtually instantaneously whereas it could take upwards of a day for them to arrive if sent by ordinary post. Use of electronic communication should be feasible in most cases since it is mostly creditors that office-holders communicate with and the majority of creditors are business people who could be expected to possess computers.

Financial savings would result through,

- Saving in time taken by insolvency practitioner staff to print out paper copies of documents for mailing
- Saving on the cost of paper and envelopes
- Saving on the cost of postage

These savings would benefit the creditors of insolvent companies and bankrupts, and the creditors of solvent companies by leaving more money in estates for distribution to them.

Eg. Under Rule 1.29 of the Insolvency Rules (Northern Ireland) 1991, the supervisor of a company voluntary arrangement has to send a notice and report to the creditors and members within 28 days after final completion or termination of the arrangement.

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If there were 25 creditors, and it cost £5.00 to produce each copy notice and report and £1.00 to post it the total saving from being able to email the notice and report would be £150.

The total annual savings are expected to be substantial.

There would be the incidental and unquantifiable benefit of saving in resources and damage to the environment from not using paper.

Question for Consultees:

(1). If you are an insolvency practitioner can you give any estimate of how much money you would save in the year through being able to use electronic communications to transmit documents in insolvency proceedings?

(2). We hope to include in our final Regulatory Impact Assessment a calculation of the total overall savings to be expected from the increased use of electronic communication following enactment of legislation to legitimise its use.

We intend to base our calculation on the total numbers of each type of insolvency procedure in Northern Ireland for 2010/11. Other factors to be taken into account would be the number of creditors/members per case, the number of times they would be written to, and the estimated cost per notice.
The following is a table of the figures used by the Insolvency Service in England and Wales in their Regulatory Impact Assessment when enacting similar legislation for England and Wales.

Insolvency procedure	Creditors/ Members per individual case	No. of times each creditor/ member written to	Estimated cost for each written communication with a creditor/member (£)	% of members/creditors expected to consent to use of electronic communication
CVL	35	8	3	40
Comp. WU	25	3	1	40
Administration	60	5	4	40
Ad/receivership	35	2	3	40
CVA	35	5	4	40
MVL	60	5	4	20
Bankruptcy (Dr)	15	5	1	60
Bankruptcy (Cr)	15	5	1	60
DROs	15	5	1	60
IVAs	15	8	4	60

If you are an insolvency practitioner, can you please state whether on the basis of your experience you consider that the same figures are appropriate for Northern Ireland. If not please insert whatever figures you consider to be correct in the table.

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Permitting the use of websites to disseminate information

Option 1

We have not been able to identify any benefits for Option 1. Taking that option would simply deny to office-holders the opportunity to take full advantage of up-to-date methods of communication.

Option 2

It is expected that this would become the method of choice for large documents, large numbers of documents or where a large number of people were to be given the opportunity to read a set of documents. Our policy aim is to give office-holders every opportunity and indeed encouragement to move fully into the electronic communications era. Communication by website represents an innovative way to save office-holders having to revert to traditional mailing methods where the scale of what is involved would make sending communications by email impractical.

There will be both financial and non-financial benefits for office-holders in being able to communicate documents where appropriate by using websites. It would be far more convenient for office holders if they were able to place large documents on a website and inform those entitled to see the documents by email that they had done so rather than to have to spend time printing and packaging multiple sets of lengthy paper documents for conventional mailing. It would be cheaper too, and it is the creditors who would ultimately gain through the saving made. As an example, sending out a 90 page document to 45 creditors,

If the office-holder employs a member of staff on the national minimum wage of £6.08 to copy and package the document and it takes them three hours the cost in staff time alone would be £18.24.

The total bill would be,

	£
Staff time	18.24
Cost of copying £0.44 x 90 x 45	17.82
Cost of envelopes	9.00
Cost of postage £4.00 x 45	180.00
Total	225.06

This is money which could be re-directed into the creditors' pockets if the documents were put on the office-holder's website and an email circulated to the 45 creditors informing them that it was there and giving them a password to view it.

Creditors and other recipients would gain in other ways. The most significant advantage for them would be the greatly increased speed of communication. They would no longer have to wait days for documents to arrive through the post.

Not all creditors are interested in reading lengthy reports and accounts which may nonetheless have to be sent to them in compliance with legislative requirements. Recipients would have the choice of not going on

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to the website to look at a document they were not interested in rather than being obliged to receive and dispose of a large volume of paper. Those who were interested would be able to conduct electronic searches of web documents to locate subject matters of interest to them. They would be able to copy and paste extracts from web documents into correspondence of their own.

There would be major benefits in terms of saving resources, reducing energy consumption and safeguarding the environment through doing away with the need for large volumes of paper.

Question for Consultees:

(3). If you are an insolvency practitioner can you provide any information on the annual cost of sending notices and documents by post which you would communicate through the use of a website if that option was available to you?

(4). We hope to include in our final Regulatory Impact Assessment a calculation of the total overall savings to be expected from the use of websites to disseminate information and documents in insolvency proceedings.

We intend to base our calculation on the total numbers of each type of insolvency procedure in Northern Ireland for 2010/11. Other factors to be taken into account would be the number of creditors/members per case, the numbers of cases in which websites would be used, the number of times each creditor/members is normally written to and in those cases where websites would be used, the number of written communications which would be placed on a website.
The following is a table of the figures used by the Insolvency Service in England and Wales in their Regulatory Impact Assessment when enacting similar legislation for England and Wales.

Insolvency procedure	Creditors/Members per individual case	% of cases in which websites will be used	No. of times each creditor/ member written to	No. of written communications per case which would be placed on a website	Savings per website communication (£)
CVL	35	10	8	4	2
Comp. WU	25	0	3	0	1
Administration	60	30	5	3	3
Ad/receivership	35	10	2	1	2
CVA	35	30	5	4	3
MVL	60	10	5	2	2
Bankruptcy	15	0	4	0	1
IVAs	15	30	8	4	3

If you are an insolvency practitioner, can you please state whether on the basis of your experience you consider that the same figures are appropriate for Northern Ireland. If not please insert whatever figures you consider to be correct in the table.

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Permitting remote attendance at meetings

Option 1

We have not been able to identify any benefits for Option 1. Taking that option would simply deny to creditors/members the opportunity to take full advantage of up-to-date methods of communication.

Option 2

It would be a major advance towards giving creditors a greater say in the conduct of insolvency proceedings if they were able to participate at meetings without having to travel to a physical venue. It is possible under the current law for a creditor to instruct a proxy to vote according to their instructions at a meeting. The disadvantages of voting by proxy are that it forces the creditor to vote in advance and cuts them off from participating in or attempting to influence any debate.

There are various ways in which creditors could take part in meetings without having to be physically present with the others taking part. Participation could be by video conference, by telephone, or by using on-line methods such as internet chat rooms.

The main benefits from permitting remote attendance at meeting would be for creditors. They would save on travelling expenses to attend meetings. There is no provision under the current legislation for creditors to be reimbursed for the cost of attending meetings. It costs £16 for a return train ticket from Londonderry to Belfast. It costs the same to travel from Omagh to Befast by bus and back. The Inland Revenue motoring allowance is £0.40 per mile. A 50 mile journey by private car could therefore be expected to cost £20. It would of course cost even more to travel to Northern Ireland if the creditor had to travel from Great Britain or the Irish Republic. All of these travel costs would be saved were it to become possible to take part in meetings without having to travel anywhere.

An even greater benefit for creditors is that they would not have to waste time and lose income through having to travel to a physical meeting. Meetings could be expected to last for the same length of time whether taking place at a physical venue or otherwise. However creditors may have to travel long distances to go to physical meetings. If they are in employment they may have take time off work with resulting loss of income or else have to use up leave allowances. If they are in business it will mean loss of time which could be profitably devoted to running their business. Parents with young children might have to employ a baby sitter to look after their children while away at a creditors' meeting. It is impossible to quantify what the total savings to creditors from this factor would be, but they could be expected to be significant.

Being able to attend meetings conducted remotely would encourage participation by creditors who would not take part if they had to incur the cost and expense of travelling to a physical meeting. It would remove any disadvantage which rural dwellers currently face through having to travel long distances to meetings.

There would be an intangible benefit for all creditors with any interest in participating in meetings in that they would be able to do so from the comfort of their own familiar surroundings in their own offices or homes. Elderly and disabled people who were not able to travel to a physical meeting would be able to exercise their right to participate in meetings. It would become easier for overseas creditors or members of

companies to participate, which is an important consideration with business, and insolvency, increasingly having a transnational dimension.

Remote meetings are environmentally friendly. Any reduction in the need to travel by vehicle means a reduction in the carbon footprint.

There would be benefits for office-holders. It is thought that the majority of meetings are held at office-holders' premises. However meetings do take place at other venues and these have to be hired at a cost. That cost has to be borne in the first-instance by the office-holder, and ends up coming out of the funds which would otherwise be available for creditors. An exacerbating factor is that the office-holder is unlikely to know how many creditors will actually turn up so that he is obliged to hire a venue sufficiently large to accommodate the maximum number who could turn up and that may cost a lot of money. The cost of hiring a venue would be completely eliminated were a meeting to be conducted remotely.

Question for Consultees:

(5). If you are an office holder in how many cases annually do you have to hire a venue to conduct meetings?

(6). What is your annual cost for hiring venues to hold meetings?

(7). Can you give examples of what it has cost you to hire venues for meetings?

(8). How much would you expect to save each year if the option of holding meetings remotely was available?

(9). We hope to include in our final Regulatory Impact Assessment a calculation of the total overall savings to be expected from allowing meetings in insolvency proceedings to be held remotely.

We intend to base our calculation on the total numbers of each type of insolvency procedure in Northern Ireland for 2010/11. Other factors to be taken into account would be the number of meetings per case, the percentage of meetings in which electronic meeting provision would be used, and the average savings per meeting.
The following is a table of the figures used by the Insolvency Service in England and Wales in their Regulatory Impact Assessment when enacting similar legislation for England and Wales.

Insolvency procedure	Number of meetings with creditors/members per individual case in 2010/11	% of total meetings in which electronic meeting provision would be used	Average saving per meeting (£)
CVL	1.875*	2%	350**
Comp. WU	0.25	2%	350
Administration	0.6	2%	350
Ad/receivership	1.0	2%	350
CVA	1.0	2%	350
MVL	0	0%	-
Bankruptcy	0.19	2%	350
IVAs	0.2	2%	350

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*Includes meetings under Art. 81 or 84 of the Insolvency (NI) Order 1989 at the start of the liquidation (excluding conversions under paragraph 84 of Schedule B1 to the 1989 Order), and all Article 92 final meetings.

** The assumed basic minimum saving is £350 per meeting. The total calculated benefits will assume no capital costs overhead for office-holders in arranging telephonic, video conference or other form of meeting not involving attendance. They will take account of office-holder savings on hire of venue for meetings and costs involved in managing creditor/member attendance (eg staff time, refreshments etc) savings for remote creditors/members who would not need to incur travel expense or time costs in attending.

If you are an insolvency practitioner, can you please state whether on the basis of your experience you consider that the same figures are appropriate for Northern Ireland. If not please insert whatever figures you consider to be correct in the table.

Removing the need for liquidators and trustees in bankruptcy to obtain sanction to compromise sums due to insolvent estates

Option 1

We have not been able to identify any benefits for Option 1. It impugns the professional integrity and commercial judgement of insolvency professionals.

Option 2

Enabling liquidators and trustees to come to compromise arrangements over the settlement of debts and claims due to estates without having to seek permission from creditors or the Court would cut down on bureaucracy and leave liquidators and trustees free to act in accordance with their own commercial judgment. It would save the time spent by liquidators and trustees applying for sanction. The cost of the liquidator's time spent in complying with the requirement to obtain sanction is a cost which is ultimately borne by the creditors (or members in the case of a members' voluntary liquidation) as the funds available for distribution are reduced. It would save creditors' time deliberating a decision in cases where the task of granting sanction would have fallen to them. As in practice the Department of Enterprise, Trade and Investment acts on behalf of the Court to grant sanction it would save the Department's time in cases where the task would have fallen to the Court. There are probably not a huge number of applications for sanction to compromise sums due to insolvent estates. However it is to be expected that there would be some modest benefits and that these would accrue to creditors as a result of insolvency practitioners no longer having to be paid to make such applications. The danger of the need to obtain sanction delaying appropriate action being taken in relation to the assets, resulting in their value diminishing with resulting financial loss to the estate, would be avoided.

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Question for Consultees:

(10). If you are an insolvency practitioner and there have been any instances where a debtor has withdrawn an offer to pay part of what they owed while you were seeking sanction what were the losses to the estates?

(11). If you are an insolvency practitioner how much do you expect not having to obtain sanction would save you in the year?

We would wish to include in the Regulatory Impact Assessment a calculation of the overall savings resulting from doing away with the requirements,

- under paragraph (3) of Schedule 2 to the 1989 Order for liquidators to obtain sanction to compromise calls, debts, liabilities and claims and all questions in any way affecting the assets or the winding up of the company and to take security for discharge of call, debts, liabilities and claims.

- under paragraph (6) of Schedule 3 to the 1989 Order for trustees to obtain sanction to refer to arbitration or compromise debts, claims or liabilities subsisting between the bankrupt and any person who may have incurred any liability to the bankrupt.

- under paragraph (8) of Schedule 3 to the 1989 Order for trustees to obtain sanction to make a compromise or other arrangement with respect to any claim made or capable of being made by the trustee on any person.

(12) Please state if you applied the Department of Enterprise, Trade and Investment or a creditors' committee or a meeting of creditors for sanction for any of the above during 2010/11. If you did please give a breakdown of the numbers which related to paragraph (3) of Schedule 2, to paragraph (6) of Schedule 3, and to paragraph (8) of Schedule 3, and to whom the applications were made.

(13) Please state if you applied for sanction for any of the above other than to the Department during 2010/11.

(14) The Insolvency Service in England and Wales estimated the cost of obtaining sanction for compromise in cases where there was a creditors committee at £500 based on an estimated 4 letters being sent to the creditors' committee during the process and IP administrative time spent in preparing relevant information for committee members. The cost of obtaining sanction was estimated at £600 where there was no committee due to the need to write to all creditors, perhaps convene a meeting of creditors and in some cases make an application to court. If you had any applications for sanction under the above during 2010/11 please state if you agree that these figures would be appropriate for Northern Ireland.

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Abolition of requirement for meeting to receive liquidator's annual account

Option 1

We have not been able to identify any benefits for Option 1. It would simply maintain a pointless formality.

Option 2

The creditors would benefit. They would actually see, or at least have the opportunity of seeing the progress reports. It is believed that not many of them attend the meetings currently held to receive liquidators' reports. Creditors would save on the time and expense of travelling to such meetings, and would not have to take time off from their work or businesses with resulting loss of income. Money which would be saved through not having to hire venues for such meetings could instead go to creditors.

Questions for Consultees:

(15) If you are an insolvency practitioner how much money on average do you estimate you would save in the year by not having to call a general meeting at the end of each year in a voluntary liquidation to receive an account of your acts and dealings, and of the conduct of the winding up.

(16) We hope to include in our final Regulatory Impact Assessment a calculation of the total overall savings to be expected from doing away with the requirement to for liquidators to lay annual accounts before meetings in voluntary liquidations.

If you are an insolvency practitioner can you please complete the following table for the company voluntary winding up cases you were dealing with during 2010/11,

	During 2010/11	Cost of Meeting (£)*	Estimated Total Savings
Number of MVLs (Article 79) which had lasted longer than 12 months and in which a meeting therefore had to be held			
Number of CVLs (Article 91) which had lasted longer than 12 months and in which a meeting therefore had to be held			

*The cost of each type of meeting was given as £354 in the Regulatory Impact Assessment prepared for England and Wales. This was based on 3 hours of the office-holders administrative time in arranging and conducting a meeting, at a charge out rate of £100 per hour, plus £54 per meeting for room hire fees.

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Repeal of the Deeds of Arrangement Provisions

Option 1

We have not been able to identify any benefits for Option 1. There is no point in keeping redundant legislation on the statute book.

Option 2

The benefit would be aesthetic; the tidying up of the legislation through the removal of provision for something which isn't used. The examination syllabus would be simplified for potential insolvency practitioners. There would be no financial benefits.

Removal of the requirement for reports to be filed in court in Individual Voluntary Arrangements where there is no moratorium

Option 1

We have not been able to identify any benefits for Option 1. It would perpetuate a pointless formality.

Option 2

It is not expected that there will be any significant financial benefits. The real benefits will be the removal of two nuisance requirements in interim order cases, one for nominees to send copies of their report on the merits of debtors' proposals to the Court; the other for the chairmen of creditors' meetings held in such cases to report the outcome to the Court. The Courts and Tribunals Service will be spared the administrative burden of having to file and store the reports, although the financial saving resulting from this is not expected to be significant.

(2) We hope to include in our final Regulatory Impact Assessment a calculation of the total overall savings to be expected from doing away with, in the case of individual voluntary arrangements where there is no interim order, the requirement for nominees to file reports in court on the merits of debtors' proposals and for chairmen to report to the court on the outcome of creditors' meetings. The total number of individual voluntary arrangements entered into in Northern Ireland during 2010/11 was 1005.

Questions for Consultees:

(17) If you are an insolvency practitioner, can you please state how many IVAs you set up during 2010/11 did not involve an interim order.

(18) The Insolvency Service in England and Wales estimated that doing away with the requirements under their equivalents to Articles 230A and 233 of the Insolvency (NI) Order 1989 for the nominee to file a report in court and the chairman of the creditor's meeting to report the result to the court would result in a saving of £4.50 per case. Please state if you agree with this figure.

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5. Business sectors affected

Groups affected by the proposed changes are:

- Office-holders
- Creditors, that is individuals or companies who are owed money
- Contributories that is those, generally shareholders, liable to contribute money in the event of a company being wound up
- The Royal Mail through a decline in demand for its services if more communications are being sent electronically
- Paper and stationery suppliers through reduced demand for their product
- Paper shredding services who will experience reduced demand for their services if documents are being sent electronically
- Local Councils if there is less demand for landfill because the volume of paper documents to be disposed of has gone down
- Paper recycling companies who will have a reduced volume of raw material if paper reports no longer are in vogue
- The Courts and Tribunals Service through not having to spend time filing as many documents
- Hotels and other establishments offering suitable venues for holding meetings who will experience a decline in business if meetings are being held other than at physical venues

6. Other Impact Assessments

Equality Impact and Rural Proofing

Equality Impact Screening has been carried out and the need for a full Equality Impact Assessment ruled out.

Rural Proofing has likewise been screened out.

7. Costs

Legitimising the use of electronic communications

(i) Compliance costs – Option 1

Doing nothing would not involve any compliance costs.

(ii) Compliance costs – Option 2

It is not be strictly accurate to describe any costs which would be incurred under option 2 as compliance costs. This proposal is not about compliance. It is about giving those involved in insolvency proceedings greater choice as to the methods they use to communicate. Far from anyone being compelled to use

electronic communications there will still be a restriction on their ability to do so in that they will need the express permission of the intended recipient.

All office-holders have computers, so that sending and receiving documents by email should be a straightforward matter not involving any additional expenditure. We have only been able to identify the potential for two cost items. One is that some small changes may need to be made to the IT systems currently used by insolvency practitioners in their case management systems to enable creditors' consent to the use of electronic communication to be recorded. We understand that many insolvency practitioners use bespoke case management systems bought from a very small number of providers. It is therefore our understanding that if any changes were needed, for example to provide additional fields for information, they would be to the system devised by, and bought from these providers. The cost would therefore be smaller than if each and every insolvency practitioner or firm were required to pay the cost of having its own unique system updated. In any event, we consider that the small cost, which would be a one-off cost, would be eclipsed by the savings which will increase over time.

There will be some indirect costs in terms of insolvency practitioners needing to acquaint themselves with new legislation to see what exceptions and caveats apply to use of electronic communications. However such costs should be minimal.

(iii) Other costs-Option 1

None

(iv) Other costs-Option 2

There will be costs to Royal Mail and to paper and stationery suppliers in terms of loss of business. It is not possible to quantify these costs and it would not be justifiable to adhere to outdated methods of communications in insolvency administration to assist these other businesses.

(v) Costs for a typical business – Option 1

Existing costs would remain unchanged.

(vi) Costs for a typical business – Option 2

Any cost to insolvency practitioners, creditors and others should be negligible. No-one will be obliged to purchase IT equipment in order to be able to access communications. Even if they don't wish to avail of the free access to IT provided in public libraries they will still be entitled to have paper versions of documents sent to them. If a creditor does decide to print a hard copy of a document the cost of doing so will fall on him personally and not on the general body of creditors which will be fairer. Alternatively it would be open to him to ask the insolvency office-holder for a hard copy.

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Questions for consultees

(19). If you are an insolvency practitioner do you think that being able to make increased use of electronic communications following enactment of legislation to recognise this as valid in insolvency proceedings would involve you in any additional costs.

(20). If you think that there would be additional costs please state what these would be for and provide an estimate of what you think would be the amount.

Permitting the use of websites to disseminate information

(i) Compliance costs – Option 1

Doing nothing would not involve any compliance costs.

(ii) Compliance costs – Option 2

Communication in this way would again be a matter of choice not compliance. It is thought that most if not all insolvency practitioners in Northern Ireland already have websites. If there are any who do not and they want to be able to communicate in this way they would need to engage a website designer to set up a website for them. They would have two options. They could either go for a simple website costing about £700 or a content management website costing in the region of £2000. With a simple website they would need to engage the designer to place documents on the website. However this is a small job taking less than an hour. A website designer would typically charge £30 to £35 per hour. There is an annual hosting charge for websites of around £80.

If an insolvency practitioner had an ordinary website costing £800 and it took half an hour to put a document on it the total cost of communicating a document in this way would therefore be £15 to £18. This assumes that the insolvency practitioner uses email and not the ordinary post to inform those entitled to see the document of its availability on the website.

We cannot identify that there would be any costs for creditors, most of whom could be expected to be engaged in business and to have computers so that they would be in a position to look at a website. Anyone without a computer would be able to utilize public library facilities free of charge. Alternatively they would have the right to request paper copies of the documents displayed on the website.

(iii) Other costs – Option 1

Existing costs would remain unchanged.

(iv) Other costs – Option 2

Again there will be costs to Royal Mail and to paper and stationery suppliers in terms of loss of business. Again it is not possible to quantify these costs and supporting these other businesses would not be sufficient

reason to justify holding back on permitting the use of up to date communications technology in insolvency administration.

(v) Costs for a typical business – Option 1

Businesses would have to carry on using their existing methods of communications at what they presently cost plus any increases over future years. If postage charges increase the cost to business of option 1 will rise.

(iii) Costs for a typical business – Option 2

As identified for compliance costs at (ii).

Questions for consultees

If you are an insolvency practitioner please state,

(21). whether being able to communicate documents by website would involve you in any additional costs, either to set up a website or to place documents on it

(22). if there would be any costs involved, the amount

Permitting remote attendance at meetings

(i) Compliance costs – Option 1

With the inexorable rise in the cost of travel it is to be expected that attending physical meetings will become progressively more expensive for creditors/members as time goes on.

(ii) Compliance costs – Option 2

Office-holders will not be forced to have virtual meetings. They will be given the option of doing so. However creditors/members will have to go along with whatever the office-holder decides unless 10% by value of the creditors or contributories or 10% of members with voting rights request a physical meeting.

The cost would depend on the technology used.

Video conferencing would be ideal. However it can be expensive to install, depending on the degree of sophistication of the system chosen. A system utilising an existing PC and screen could cost as little as £1,000 to £1,500. One company is leasing a video conference facility at £115 per month plus VAT. At the other extreme a specialist video conference room can cost as much as £300,000. The other drawback apart from the capital cost is that for all those participating to be able to do so by video conferencing each of them, and not just the office-holder would have to have a video conferencing facility. It is expected that this method would only be used by large firms of insolvency practitioners who already have video conferencing facilities installed for other purposes, and that it would only be used when they were meeting with

representatives from large organisations who were similarly equipped. It is not expected that anyone, either insolvency practitioners or others, would go to the expense of purchasing video conferencing facilities for the sole purpose of taking part in meetings during insolvency proceedings. In that sense no capital cost would arise from the proposal. There would be associated operating costs for use of broadband or ISDN phone lines. The Insolvency Service is not in a position to quantify what those costs would be; it would be a matter for the individual insolvency practitioner to decide on whether video conferencing would be the best choice taking into account creditors' circumstances and the costs involved.

Another option would be teleconferencing. Conference calls can be made to and from ordinary landline telephones or mobile phones. However special speaker phones are even better. One company advertises on the internet that a conventional one hour meeting involving six people costs on average £1,600 whereas the same people could meet for the same length of time by teleconference for under £30. The cost of a teleconference would fall on the office-holder so that the creditors would not be directly out of pocket as they would be if they had to travel to a meeting. The creditors would still end up paying the cost of a video conference as this would come out of the insolvent's estate, but a total of £30 is likely to be far less than the total travelling expenses and loss of earnings resulting from having to travel to a physical meeting.

There are other options involving computer link-ups. The Insolvency Service is not in a position to comment on the methods or the costs involved. It would be a matter for insolvency practitioners to decide on the most appropriate and cost effective method depending on the circumstances of the individual case.

(iii) Other costs – Option 1

Existing costs would remain unchanged.

(iv) Other costs – Option 2

It is to be expected that there would be a marginal cost to petrol retailers and bus and train companies as people attend virtual meetings instead of travelling to physical ones. Providers of physical venues would suffer some loss of business, which again would be absolutely marginal.

(v) Costs for a typical business – Option 1

Both office holders and creditors/members would simply go on incurring the costs they have always incurred through holding conventional meetings plus any rises resulting from inflation. There would be no new charges.

(vi) Costs for a typical business – Option 2

All of the options for remote holding of meetings would necessitate incurring costs to a service provider. Either the Official Receiver or the insolvency practitioner depending on which was office-holder, would have to meet them in the first instance. They would then be reimbursed out of the assets in the case so that the cost would ultimately fall to the creditors. It is expected that the cost to both insolvency practitioners and creditors/members would be much less than for holding a conventional meeting.

APPENDIX 1

Question for consultees

(23). If you are an insolvency practitioner what do you foresee as the capital costs and annual recurring costs of availing of the option to hold meetings remotely?

Removing the need for liquidators and trustees to obtain sanction to compromise sums due to insolvent estates

(i) Compliance costs – Option 1

Existing costs would remain unchanged.

(ii) Compliance costs – Option 2

This is a de-regulation measure not involving any compliance costs.

(iii) Other costs – Option 1

None

(iv) Other costs – Option 2

None

(v) Costs for a typical business – Option 1

Existing costs would remain unchanged.

(vi) Costs for a typical business – Option 2

None

Abolition of requirement for meeting to receive liquidator's annual account

(i) Compliance costs – Option 1

Existing costs would remain unchanged.

(ii) Compliance costs – Option 2

It is not expected that preparation of progress reports will involve office-holders in significantly more expenditure than preparation of the accounts currently laid at meetings. Whether or not the substitution of a requirement to send these progress reports to members and creditors would involve insolvency office-holders in any costs would depend on the method used to send the reports. If the reports were sent by email there would be no costs; if disseminated on a web-site or by ordinary post there could be costs.

APPENDIX 1

(iii) Other costs – Option 1

Existing costs would remain unchanged.

(iv) Other costs – Option 2

Hotels and other establishments currently used by insolvency practitioners as venues for meetings to receive the liquidator's annual account would lose the business. In terms of their overall turnover it is expected that the impact would be absolutely marginal.

(v) Costs for a typical business – Option 1

Existing costs would remain unchanged.

(vi) Costs for a typical business – Option 2

As stated under compliance costs.

Repeal of the Deeds of Arrangement Provisions

(i) Compliance costs – Option 1

None

(ii) Compliance costs – Option 2

None

(iii) Other costs – Option 1

None

(iv) Other costs – Option 2

None

(v) Costs for a typical business – Option 1

None

(vi) Costs for a typical business – Option 2

None

APPENDIX 1

Removal of the requirement for reports to be filed in court in Individual Voluntary Arrangements where there is no moratorium

(i) Compliance costs – Option 1

Existing costs would remain unchanged.

(ii) Compliance costs – Option 2

Insolvency practitioners acting as nominees to attempt to set up individual voluntary arrangements not involving an interim order will still be required to prepare a report on the merits of the debtor's proposal. The difference is that they would no longer have to file it in Court. There will be a requirement for them to send the report to the creditors. However they are already required by Rule 5.16(4) of the Insolvency Rules (Northern Ireland) 1991 to send notice of the creditors' meeting to all creditors and one of the documents which has to accompany that notice is the nominee's comments on the proposal as currently annexed to his report to the Court.

The removal of the requirement for the chairman at meetings held to consider debtors' proposals to report the outcome to the Court would not result in any costs for anyone.

(iii) Other costs – Option 1

Existing costs would remain unchanged.

(iv) Other costs – Option 2

None

(v) Costs for a typical business – Option 1

Existing costs would remain unchanged.

(vi) Costs for a typical business – Option 2

None.

8. Consultation with small business: the Small Business Impact Test

The entire raft of proposals has the potential to impact on two types of small business; small insolvency practices and creditors. It is not envisaged that there will be any significant adverse impact on small firms of insolvency practitioners or on insolvency practitioners who practice on their own account. Using websites as a means of communication and the technology needed to avail of some of the options for holding remote meetings could involve expense. However it will still be perfectly possible for insolvency practitioners to carry on communicating in the way they have always done and to hold physical meetings if they wish thereby avoiding any additional expense. The other measures largely consist of the abolition of burdens on insolvency practitioners and should therefore be to their advantage.

APPENDIX 1

None of the proposals will have any adverse impact on small businesses who are creditors. Even if they do not have IT facilities they will not be at a disadvantage as they will still be entitled to request that documents be sent to them in paper form.

9. Enforcement and Sanctions

Only one of the proposals obliges anyone to do anything and the need for enforcement therefore only exists in relation to that provision. The provision in question is the one substituting a requirement for liquidators in members' and creditors' voluntary liquidations to issue a progress report to creditors/members instead of having to lay accounts at a meeting. It would be made an offence for a liquidator in a members' or creditors' voluntary liquidation to fail to prepare and send out a progress report.

10. Monitoring and Review

The proposals serve two purposes. Some of them are to enable office-holders to take advantage of developments in communications technology. There is no pressure on office-holders to use such technology; and they are not being placed under any targets as regards the extent to which they do so. It is inconceivable that we would ever want to again restrict office holders to using paper based methods of communication.

The other proposals are to abolish procedural requirements which no longer serve any useful purpose. It is inconceivable that we would want to revive redundant procedures. Review would therefore serve no useful purpose.

However to check that no unforeseen difficulties have arisen it is intended to review the following after three years,

- The use of electronic communications
- That creditors and members are not being disadvantaged by the use of websites to disseminate information
- That creditors are not being adversely affected by remote attendance at meetings being permitted
- That valuable opportunities for communication with liquidators have not been prejudiced by the abolition of the requirement for a meeting to receive the liquidator's annual account
- Removal of the requirement for reports to be filed in court in Individual Voluntary Arrangements where there is no moratorium

11. Consultation

This partial RIA is an annex to the consultation on the Modernisation and Streamlining of Insolvency Procedures – Proposals to Amend the Insolvency (Northern Ireland) Order 1989. The list of consultees is also in an annex to the consultation.

APPENDIX 1

12. Summary and Recommendation

Legitimising the use of electronic communications

Option	Description	Total cost per annum	Total benefit per annum
1	No change	Cost of preparing and mailing documents.	None
2	Legislate to permit use of electronic communications	None	Expected to be substantial

Permitting the use of websites to disseminate information

Option	Description	Total cost per annum	Total benefit per annum
1	No change	Cost of preparing and mailing documents.	None
2	Legislate to permit use of websites to disseminate information	£15 x total number of documents put on websites.	Saving in cost of preparing and mailing documents; expected to exceed cost of putting same documents on website

Permitting remote attendance at meetings

Option	Description	Total cost per annum	Total benefit per annum
1	No change	Those attending meetings continue to incur cost of travel and time off work.	None
2	Legislate to permit remote attendance at meetings	£30 x total number of remote meetings	Saving in cost of travel, loss of earnings and cost of hiring venues less the cost of holding meetings by alternative means – the saving is expected to be substantial

APPENDIX 1

Removing the need for liquidators and trustees to obtain sanction to compromise sums due to insolvent estates

Option	Description	Total cost per annum	Total benefit per annum
1	No change	Insolvency practitioners will continue to have to spend time, at a financial cost obtaining sanction to compromise sums	None
2	Legislate to remove the need for office holders to obtain sanction to compromise sums due to insolvent estates	None	Saving in cost of insolvency practitioners obtaining sanction

Abolition of requirement for meeting to receive liquidator's annual account

Option	Description	Total cost per annum	Total benefit per annum
1	No change	Insolvency practitioners will continue to have to spend time, at the expense of creditors conducting meetings and will incur costs hiring venues for these.	None
2	Legislate to remove the requirement for the liquidator's annual account to be laid at a meeting	None	Savings on cost of liquidator's time and hire of venues for holding meetings

Repeal of the Deeds of Arrangement Provisions

Option	Description	Total cost per annum	Total benefit per annum
1	No change	None	None
2	Repeal the Deeds of Arrangement Provisions	None	Tidying up of statute book

APPENDIX 1

Removal of the requirement for reports to be filed in court in Individual Voluntary Arrangements where there is no moratorium

Option	Description	Total cost per annum	Total benefit per annum
1	No change	In IVAs with no interim order nominees continue to have to file reports in court and chairmen of meeting have to notify outcome to court	None
2	Removal of requirements to file reports in court in IVAs with no moratorium	Reports to be sent to creditors instead - if electronic means used zero cost	Removal of inconvenience of having to send reports and notification to court and saving in Court time filing these.

It is recommended that option 2, that is, legislating in favour of change, should be taken for all six proposals, as the benefits of doing so outweigh the costs.

12. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

***Signed*_____**

Date

Minister's name, Minister of Enterprise, Trade and Investment, Department of Enterprise, Trade and Investment

Contact point

Jack Reid
Insolvency Service
Fermanagh House
Ormeau Avenue
Belfast
BT2 8NJ

Tel. 028 90548543

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APPENDIX 1

Annex 3 DETI Policy & Legislation Equality Screening Form

DETI EQUALITY SCREENING FORM

Part 1. Policy scoping

The first stage of the screening process involves scoping the policy under consideration. The purpose of policy scoping is to help prepare the background and context and set out the aims and objectives for the policy, being screened. At this stage, scoping the policy will help identify potential constraints as well as opportunities and will help the policy maker work through the screening process on a step by step basis.

Public authorities should remember that the Section 75 statutory duties apply to internal policies (relating to people who work for the authority), as well as external policies (relating to those who are, or could be, served by the authority).

Information about the policy

Name of the policy

The Insolvency (Northern Ireland) Bill

Is this an existing, revised or a new policy?

A new policy.

What is it trying to achieve? (intended aims/outcomes)

The proposed Bill will, where it is appropriate to do so, replicate the provisions, of the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010, applying in England and Wales since April 2010.
The Bill will make some of the procedures in corporate and individual insolvencies more straightforward and will permit greater use to be made of modern methods of electronic communication. The amendments proposed to our main piece of primary legislation, the Insolvency (Northern Ireland) Order 1989, will,

- allow for electronic communication and exchange of

information between insolvency office-holders and creditors (and others who send or receive information in insolvency cases);

- enable meetings of creditors to be conducted remotely in appropriate cases which would save creditors having to travel to a single location;
- recognise that some decisions are best left to the professional judgement of insolvency office-holders who are experienced members of a regulated profession; and;
- remove unnecessary burdens on insolvency practitioners and others while not removing any necessary protections for the creditors;
- repeal of Deeds of Arrangement Provisions.

Are there any Section 75 categories which might be expected to benefit from the intended policy?
If so, explain how.

- The legislation is of a technical nature and will apply equally to everyone who intends to make use of it. However the proposal to allow remote holding of creditors' meetings could potentially benefit any creditor who happened to be elderly (age), disabled, or who had dependants.

Who initiated or wrote the policy?

DETI.

Who owns and who implements the policy?

DETI owns and will implement the policy. However similar proposals were implemented by the Insolvency Service for England and Wales in April 2010; it is policy in Northern Ireland to maintain parity of legislation with our counterparts in England and Wales.

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Implementation factors

Are there any factors which could contribute to/detract from the intended aim/outcome of the policy/decision? No.

If yes, are they

☐ financial

☐ legislative

☐ other, please specify _____

Main stakeholders affected

Who are the internal and external stakeholders (actual or potential) that the policy will impact upon?

☐X staff

☐X service users

☐ other public sector organisations

☐ voluntary/community/trade unions

☐X other, please specify – the policy will impact on Insolvency Practitioners dealing with creditors and company shareholders in the course of insolvency proceedings and vice versa.

Other policies with a bearing on this policy

• what are they? It is an over-arching policy that Northern Ireland should participate in the overall UK strategy for electronic delivery of services to the public and in facilitating electronic commerce in the UK.

• who owns them? OFMDFM

APPENDIX 1

Available evidence

Evidence to help inform the screening process may take many forms. Public authorities should ensure that their screening decision is informed by relevant data.

What evidence/information (both qualitative and quantitative) have you gathered to inform this policy? Specify details for each of the Section 75 categories. There is no relevant data in respect of Section 75 groups. The proposed provisions are to allow for increased use of electronic communications and are therefore technical in nature. As such, it is felt that the legislation will not have any adverse differential impact on any of the equality groups. *

Section 75 category	Details of evidence/information
Religious belief	N/A – See above *
Political opinion	N/A – See above *
Racial group	N/A – See above *
Age	N/A – See above *
Marital status	N/A – See above *
Sexual orientation	N/A – See above *
Men and women generally	N/A – See above *
Disability	N/A – See above *
Dependants	N/A – See above *

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Needs, experiences and priorities

Taking into account the information referred to above, what are the different needs, experiences and priorities of each of the following categories, in relation to the particular policy/decision? Specify details for each of the Section 75 categories. N/A – There is no relevant data in respect of Section 75 groups.*

Section 75 category	Details of needs/experiences/priorities
Religious belief	N/A – See above *
Political opinion	N/A – See above *
Racial group	N/A – See above *
Age	N/A – See above *
Marital status	N/A – See above *
Sexual orientation	N/A – See above *
Men and women generally	N/A – See above *
Disability	N/A – See above *
Dependants	N/A – See above *

APPENDIX 1

Part 2. Screening questions

Introduction

In making a decision as to whether or not there is a need to carry out an equality impact assessment, the public authority should consider its answers to the questions 1-4 detailed below.

If the public authority's conclusion is **none** in respect of all of the Section 75 equality of opportunity and/or good relations categories, then the public authority may decide to screen the policy out. If a policy is 'screened out' as having no relevance to equality of opportunity or good relations, a public authority should give details of the reasons for the decision taken.

If the public authority's conclusion is **major** in respect of one or more of the Section 75 equality of opportunity and/or good relations categories, then consideration should be given to subjecting the policy to the equality impact assessment procedure.

If the public authority's conclusion is **minor** in respect of one or more of the Section 75 equality categories and/or good relations categories, then consideration should still be given to proceeding with an equality impact assessment, or to:

- measures to mitigate the adverse impact; or
- the introduction of an alternative policy to better promote equality of opportunity and/or good relations.

In favour of a 'major' impact

a) The policy is significant in terms of its strategic importance;
b) Potential equality impacts are unknown, because, for example, there is insufficient data upon which to make an assessment or because they are complex, and it would be appropriate to conduct an equality impact assessment in order to better assess them;
c) Potential equality and/or good relations impacts are likely to be adverse or are likely to be experienced disproportionately by groups of people including those who are marginalised or disadvantaged;
d) Further assessment offers a valuable way to examine the evidence and develop recommendations in respect of a policy about which there are concerns amongst affected individuals and representative groups, for example in respect of multiple identities;

e) The policy is likely to be challenged by way of judicial review;
f) The policy is significant in terms of expenditure.

In favour of 'minor' impact

a) The policy is not unlawfully discriminatory and any residual potential impacts on people are judged to be negligible;
b) The policy, or certain proposals within it, are potentially unlawfully discriminatory, but this possibility can readily and easily be eliminated by making appropriate changes to the policy or by adopting appropriate mitigating measures;
c) Any asymmetrical equality impacts caused by the policy are intentional because they are specifically designed to promote equality of opportunity for particular groups of disadvantaged people;
d) By amending the policy there are better opportunities to better promote equality of opportunity and/or good relations.

In favour of none

a) The policy has no relevance to equality of opportunity or good relations.
b) The policy is purely technical in nature and will have no bearing in terms of its likely impact on equality of opportunity or good relations for people within the equality and good relations categories.

Taking into account the evidence presented above, consider and comment on the likely impact on equality of opportunity and good relations for those affected by this policy, in any way, for each of the equality and good relations categories, by applying the screening questions detailed below and indicate the level of impact on the group i.e. minor, major or none.

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Screening questions

1 What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories? minor/major/none		
Section 75 category	Details of policy impact	Level of impact? minor/major/none
Religious belief		None
Political opinion		None
Racial group		None
Age		Minor (and beneficial)
Marital status		None
Sexual orientation		None
Men and women generally		None
Disability		Minor (and beneficial)
Dependants		Minor (and beneficial)

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APPENDIX 1

2 Are there opportunities to better promote equality of opportunity for people within the Section 75 equalities categories?		
Section 75 category	If **Yes**, provide details	If **No**, provide reasons
Religious belief		No. This legislation is of a technical nature and will apply equally to those who chose to use it.
Political opinion		As above
Racial group		As above
Age		As above
Marital status		As above
Sexual orientation		As above
Men and women generally		As above
Disability		As above
Dependants		As above

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3 To what extent is the policy likely to impact on good relations between people of different religious belief, political opinion or racial group?		
Section 75 category	Details of policy impact	Level of impact minor/major/none
Religious belief		None. This legislation is of a technical nature and will apply equally to those who chose to use it.
Political opinion		As above
Racial group		As above

4 Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group?		
Good relations category	If **Yes**, provide details	If **No**, provide reasons
Religious belief		No. This legislation is of a technical nature and will apply equally to those who chose to use it.
Political opinion		As above
Racial group		As above

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Additional considerations

Multiple identity

Generally speaking, people can fall into more than one Section 75 category. Taking this into consideration, are there any potential impacts of the policy/decision on people with multiple identities?
(*For example; disabled minority ethnic people; disabled women; young Protestant men; and young lesbians, gay and bisexual people).*

No. This legislation is of a technical nature and will apply equally to those who chose to use it.

Provide details of data on the impact of the policy on people with multiple identities. Specify relevant Section 75 categories concerned.

None. This legislation is of a technical nature and will apply equally to those who chose to use it

APPENDIX 1

Part 3. Screening decision

If the decision is **not** to conduct an equality impact assessment, please provide details of the reasons.

The policy is purely technical in nature. Only one aspect of the policy will have any impact on people in terms of the equality and good relations categories. It is that enacting legislation to allow creditors in insolvency proceedings to take part in virtual meetings can be expected to benefit anyone who happens to be elderly (age), disabled or have dependants or all by saving them having to travel to a central venue. The impact is expected to be both positive, and minor in terms of the numbers involved.

If the decision is not to conduct an equality impact assessment the public authority should consider if the policy should be mitigated or an alternative policy be introduced.

If the decision is to subject the policy to an equality impact assessment, please provide details of the reasons.

All public authorities' equality schemes must state the authority's arrangements for assessing and consulting on the likely impact of policies adopted or proposed to be adopted by the authority on the promotion of equality of opportunity. The Commission recommends screening and equality impact assessment as the tools to be utilised for such assessments. Further advice on equality impact assessment may be found in a separate Commission publication: Practical Guidance on Equality Impact Assessment.

APPENDIX 1

Mitigation

When the public authority concludes that the likely impact is 'minor' and an equality impact assessment is not to be conducted, the public authority may consider mitigation to lessen the severity of any equality impact, or the introduction of an alternative policy to better promote equality of opportunity or good relations.

Can the policy/decision be amended or changed or an alternative policy introduced to better promote equality of opportunity and/or good relations?

N/A

If so, give the **reasons** to support your decision, together with the proposed changes/amendments or alternative policy.

N/A

Timetabling and prioritising

Factors to be considered in timetabling and prioritising policies for equality impact assessment.

If the policy has been **'screened in'** for equality impact assessment, then please answer the following questions to determine its priority for timetabling the equality impact assessment. N/A

On a scale of 1-3, with 1 being the lowest priority and 3 being the highest, assess the policy in terms of its priority for equality impact assessment.

Priority criterion	**Rating (1-3)**
Effect on equality of opportunity and good relations	
Social need	
Effect on people's daily lives	
Relevance to a public authority's functions	

Note: The Total Rating Score should be used to prioritise the policy in rank order with other policies screened in for equality impact assessment. This list of priorities will assist the public authority in timetabling. Details of the Public Authority's Equality Impact Assessment Timetable should be included in the quarterly Screening Report.

Is the policy affected by timetables established by other relevant public authorities?

No.

If yes, please provide details

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Part 4. Monitoring

Public authorities should consider the guidance contained in the Commission's Monitoring Guidance for Use by Public Authorities (July 2007).

The Commission recommends that where the policy has been amended or an alternative policy introduced, the public authority should monitor more broadly than for adverse impact (See Benefits, P.9-10, paras 2.13 – 2.20 of the Monitoring Guidance).

Effective monitoring will help the public authority identify any future adverse impact arising from the policy which may lead the public authority to conduct an equality impact assessment, as well as help with future planning and policy development.

Part 5. Disability Duties

Under the Disability Discrimination Act 1995 (as amended by the Disability Discrimination (Northern Ireland) Order 2006), public authorities, when exercising their functions, are required to have due regard to the need:

- **to promote positive attitudes towards disabled people; and**
- **to encourage participation by disabled people in public life.**

5. Does this policy/legislation have any potential to contribute towards promoting positive attitudes towards disabled people or towards encouraging participation by disabled people in public life? If yes, please give brief details.

This legislation is purely of a technical nature. However as previously stated it would benefit any creditors with a disability which would hinder or prevent them attending meetings held at a central venue.

Signed:
Head of Division
Division: BUSINESS REGULATION

Date: 1 DECEMBER 2011

PLEASE FORWARD A COPY OF THIS COMPLETED FORM TO:

DETI EQUALITY & DIVERSITY UNIT
NETHERLEIGH
MASSEY AVENUE
BELFAST BT4 2JP

ANY QUERIES: STEPHEN WILSON EXT 29373
stephen.wilson@detini.gov.uk
STEPHEN SHOOTER EXT 29644
stephen.shooter@detini.gov.uk

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Annex 4 Rural Impact Screening

Rural Impact Screening for the Insolvency Bill

	Screening Questions	Response to Screening Questions			Full Impact Assessment Required		Justification / Key issues and groups to focus on
		Yes	No		Yes	No	
Rural	**1. Does the policy apply in rural areas and communities?** **IF NO: set out the reasons why** **If Yes: see (a) & (b)**	x				x	The Department of Enterprise, Trade and Investment is proposing to make an Assembly Bill to permit greater use of electronic communication in of carrying out procedures in corporate and individual insolvencies. This facility will be available equally to everyone in Northern Ireland regardless of where they live. However, it could be of greater benefit to those living in rural areas, as it will cut down on the need to travel to physical meetings. There will be no negative impacts on those living in rural areas.

Screening Questions	Response to Screening Questions		Full Impact Assessment Required		Justification / Key issues and groups to focus on
	Yes	No	Yes	No	
a. **Does the policy have the potential to have a negative impact on rural areas and communities?**		x		x	The policy will not negatively impact on any area and will apply equally to everyone in Northern Ireland regardless of their geographical location.
b. **Does the policy have the potential to have a positive impact on rural areas and communities?**	x			x	The policy will apply equally to everyone in Northern Ireland regardless of their geographical location. However, it could be said that there may be a minimally more positive impact for rural dwellers, as they would benefit more from not having to travel longer distances to attend a physical meeting.
CONCLUSION					**That a rural impact assessment is not required**

When Is a Rural Impact Assessment Required?

If the answer to question **1** is **yes**, consideration should be given to undertaking a rural impact assessment. The following guidance applies:

If the answer to **a.** is **yes**, a rural impact assessment must be undertaken and the checklist completed.

If the answer to **b**. is **yes**, the policy document should include a reference to how and why the impact will be positive.

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Annex 5 : List of Consultation Questions

Electronic communications generally

Q 1 – Would you take advantage of proposals to make communication in insolvency procedures more flexible, as set out on pages 10 & 11?

Q2 – If certainty were provided that you could send communications electronically, would you take advantage of the provision?

Q 3– Do you consider that this would provide savings? If so, can you give some estimate of what those savings might amount to?

Websites (see pages XXX)

Q 4 – If insolvency office-holders were able to provide information via a website, would you be agreeable to this?

Removal of Sanction (pages XXX)

Q 5 - Do you have experience, as a creditor, of involvement in the process of giving sanction to a liquidator or trustee? If so, did you consider it a useful process?

Q 6 – If you are an insolvency practitioner, what is your experience as to this process? Can you identify examples of instances where the present process has worked against the best interests of the estate?

Annual meetings (pages XXX)

Q 7 – In your experience, how often do creditors/members attend the annual meetings at which a liquidator's receipts and payments accounts are laid?

Q 8- Do you agree that the information presently laid at the meeting should instead be sent to the creditors/members as part of a proposed progress report?

Deeds of Arrangement (pages XXX)

Q 9- Do you agree that the Deeds of Arrangement provisions should be repealed?

Abolition of requirement for certain reports to be routinely filed in court in Individual Voluntary Arrangements.

Q. 10- Do you agree that nominees should no longer be required to send reports on debtor proposals to the court in non-interim order IVAs?

Q. 11- Do you agree that the chairman of the creditors' meeting should no longer be required to report the result to the court in non-interim order IVAs?

Q. 12- Do you agree that the Official Receiver should be required to report the result of the vote on whether to accept or reject a FTVA to the Department instead of to the court?

Updating of the definitions of debt and liabilities in the 1989 Order

Q. 13- Do you agree that Articles 2(3) and 5(1) should be amended to bring them into line with the way in which Rule 13.12(1) & (2) of the Rules applying in England and Wales has been amended?

Equality and Rural Proofing

Q. 14- Do you agree that the proposals will not have any negative impact on any of the section 75 groups?

Q. 15 Do you agree that the proposals will not have any negative impact on those living in rural areas?

Annex 6

The Consultation Code of Practice Criteria

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4. Consultation processes should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The complete code is available on the BERR web site, address http://www.berr.gov.uk/files/file47518.pdf

Department of Enterprise, Trade and Investment Post-consultation briefing

Insolvency Bill

Briefing from DETI Insolvency Service for the ETI Committee on 27 September 2012

1. Purpose of Briefing

(i) to inform the ETI Committee of the outcome of the policy consultation on proposals to amend the Insolvency (Northern Ireland) Order 1989;

(ii) to consult the Committee about the Department's plans to go ahead with a Bill and to give effect to its proposals (a set of Rules, which would be drafted by DETI's Insolvency Service and made by the Department of Justice would also be required to make linked amendments to the Insolvency Rules (Northern Ireland) 1991).

2. Previous Briefing

2.1 On 8 March 2012 the Committee considered a written brief about the Department's plans to carry out a policy consultation on proposed amendments to insolvency law. The Committee asked for DETI officials to provide an oral briefing after the consultation had taken place. Officials are on standby to provide this on Thursday 27 September 2012.

3. Background

3.1 The Insolvency (Northern Ireland) Order 1989 (S.I. 1989 No. 2405 (N.I. 19)) ("the 1989 Order") is the main piece of primary legislation dealing with insolvency in Northern Ireland. It is supplemented by detailed rules contained in the Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364).

3.2 It has always been practice to keep Northern Ireland insolvency legislation as far as possible in line with that applying in England and Wales. This ensures equality of treatment under the law in the two jurisdictions and means that creditors in the one jurisdiction who want to take action over not being paid by someone in the other jurisdiction are not dealing with a system which is completely alien to them.

3.3 Insolvency legislation makes available a range of procedures for dealing with companies in financial difficulties. There is administration, administrative receivership, company voluntary arrangements, creditors' voluntary winding up, members' voluntary winding up and winding up by the High Court. For individuals there is bankruptcy, the making of a Debt Relief Order and individual voluntary arrangements.

4. Proposed Changes to the insolvency legislation

4.1 The proposed changes are,

(a) To establish that documents stored and transmitted electronically in the course of insolvency proceedings are as good and valid in law as paper documents. This would be done by amending the 1989 Order to clarify that, subject to certain exceptions, such as where a document has to be served personally, references in it to a thing in writing include that thing in electronic form. The 1991 Rules would also be amended to clarify that notices and documents can be sent or delivered by electronic means.

(b) To give office-holders the option of communicating documents by displaying them on a website and sending notification to those entitled to see the documents that they had done so, along with the password needed to access the website. Office-holders are the individuals in charge of insolvency proceedings and depending on the type of insolvency and the circumstances of the particular case can be either the Oficial Receiver, who is a civil servant and officer of the court, or a private sector insolvency practitioner.

(c) To enable use to be made of means such as video and teleconferencing to save participants at meetings of creditors or members or contributories of companies subject to insolvency proceedings having to travel to a central location.

(d) To enable liquidators and trustees to reach compromises over what sums they should accept in settlement of debts due to the company or bankrupt's estate without having to seek sanction to do so from, as the case may be, company members, creditors, or this Department.

(e) To put in place a requirement where a members' or creditors' voluntary liquidation lasts longer than one year for the liquidator to send members and creditors a progress report which would include a receipts and payments account and details of what remuneration he had taken during the preceding year. This new requirement would be included in the Insolvency Rules and would replace the existing requirement in the 1989 Order for the liquidator to summon annual meetings of the company members in these types of liquidation to lay before them an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(f) To repeal the Deeds of Arrangement provisions.

(g) To do away with the requirement to file a report in court on the prospects for approval and implementation of the debtor's proposal in individual voluntary arrangements where the debtor has not applied to the court for an interim order to give him temporary protection from his creditors while attempting to set up the arrangement.

(h) To do away with the requirement for the Official Receiver to report to the court on whether or not proposals for fast track voluntary arrangements have been approved by creditors.

(i) To clarify that where a company goes into liquidation after it has been in administration or vice versa creditors will only be able to enter claims in the insolvency if the debts due to them were incurred before the date on which the company entered the earlier proceedings. It will be the liquidator or administrator who will be responsible for paying for any goods or services supplied after that date.

(j) To amend the law defining when a liability in tort is provable in a winding up or administration in the same way as the law in England and Wales has, on legal advice, been amended.

4.2 All of the above changes are in line with ones made in GB by the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010 No. 18) which came into force on 6 April 2010.

5. Consultation

5.1 Consultation on the proposed amendments was carried out over the period 8 May to 31 July 2012. Consultation took the form of a letter issued by email or, where necessary, hard copy, to approximately 460 organisations and individuals referring to a consultation document and a list of questions placed on the DETI website. The consultation was also advertised in the Belfast Telegraph, Newsletter and Irish News.

5.2 While the consultation was underway DETI officials met with a representative from the Northern Ireland Courts and Tribunal Service to discuss issues around both what documents they could accept by electronic means and the security of sending and receiving documents by such means. The official afterwards confirmed by letter that he "was content with the proposals contained in the consultation", and that he recognised "the important aspect of consent in any other electronic communication and that this will allow the Court/Bankruptcy Office to refuse any communication not deemed appropriate".

6. Outcome of Consultation

6.1 A total of 17 responses were received. Five made no comment. Four took the form of brief letters of approval. Eight answered the individual questions in the consultation document.

6.2 The overall impression from the letters and answers is one of agreement that it would be beneficial for the proposed changes to go ahead. Four respondents entered the proviso that there was a need to ensure that this did not result in members of the public, including in particular older people and those living in rural areas, who do not have access to computers being placed at a disadvantage. Two respondents had concerns about a linked aspect of the proposed change to reporting requirements in relation to individual voluntary arrangements not involving an interim order. This was that the requirement for the chairman of the creditors' meeting which is held to decide whether or not to approve the debtor's proposed arrangement should no longer be required to report the result to the court. The Chancery and Probate Liaison Committee stated that the Chairman should still be required to report the result to the court where there was a pending bankruptcy petition. The Crown Solicitor did not agree that there should be any alteration to the requirement to report the result to the court. The Crown Solicitor stated that it was imperative that the result should be reported to the court as not reporting it could lead to, and indeed in one case had already led to, a petition for bankruptcy proceeding without either the petitioner, or the Master in Bankruptcy, knowing the outcome of the meeting held to approve the individual voluntary arrangement.

7. The Department's reaction to the responses

7.1 The respondents who raised the issue of access to computers were the Chancery and Probate Liaison Committee, Citizens Advice Bureau, Mr Craig Dunsford, who is a barrister and the Crown Solicitor. The first three suggested that research into levels of access to computers would need to be carried out.

7.2 All premises in Northern Ireland have had access to what is termed first generation broadband since December 2005.

7.3 OFCOM's Communications Market Report for Northern Ireland for 2012 states clearly that Northern Ireland has the highest estimated proportion of homes in the UK able to receive superfast broadband services, at 94%. However the same report states that take-up of fixedline broadband in Northern Ireland is only 66% as against the UK average of 72% and take-up of mobile broadband in Northern Ireland is only 7% as against 13% in the UK as a whole.

7.4 Figures we have obtained from the Northern Ireland Statistics and Research Agency (NISRA) show,

- That 74% of those aged over 16 in Northern Ireland, have access to the internet. This contrasts with 83.7% in the UK as a whole according to tables produced by the Office for National Statistics.
- That 71% of Northern Ireland households can access the internet from home. This breaks down into 72% of urban households and 70% of rural households
- That in Northern Ireland 75% of individuals from urban households and 71% of individuals from rural households have internet access.

- That in Northern Ireland 42% of those in the 60+ age group have internet access. This breaks down into 44% of individuals aged 60+ from urban households and 38% of those aged 60+ from rural households. Due to differences in the way in which the figures are presented it is not possible to give a direct comparison with the Office for National Statistics figures for the UK as a whole. The latter show that 61.3% of those aged 65 to 74 in the UK as a whole are internet users. The figure for those aged over 75 is 27.4%
- That in Northern Ireland 92% of those in the 16 to 29 age group have internet access

7.5 Consistent with the NISRA report, OFCOM's Communications Market Report 2012: Northern Ireland, referred to above, also shows that broadband uptake among the older generation lags behind that in GB with 44% of those aged 55+ in Northern Ireland having broadband in their homes as against the UK average of 59%.

7.6 The statistics show that the percentage of the adult population in Northern Ireland with access to the internet is about 10% less than in the UK as a whole. They show levels of access in rural communities to be marginally lower than those for urban communities and they show a progressive level of decline in levels of access among older age groups.

7.7 The Department accepts that the overall level of access to on-line technology is lower in Northern Ireland and that the level of access among those who are middle aged or older is much less than among younger sections of the population. However we do not regard this as a reason to deny those who prefer to use electronic communications the right to do so, however large or small a proportion of the population they may be. We think that the two groups, those who wish to changeover to using electronic communications, and those who wish to communicate in the traditional way, on paper through the ordinary post can both be accommodated without any need for interference with the rights of either group. We think that the same safeguards as have been put in place in the corresponding GB legislation should be sufficient to accomplish this result.

7.8 The safeguards which have been put in place in the GB legislation, and which we intend to replicate in our legislation, to protect the interests of those who do not have computer access are,

Emailing of documents

It will only be possible to send notices or documents by email with the prior consent of the intended recipient. This means that anyone entitled to receive a notice or document who has stated that they do not consent to receive it in electronic form or who has simply not replied to requests to provide their consent will have to be sent the notice or document in paper form through the ordinary post. They will therefore be treated in exactly the same way as they would under the current legislation. A further safeguard in the case of office-holders, that is professionals in charge of insolvency proceedings, is that not only will they need the intended recipient's consent before they can send a document by electronic means, but any documents which are sent by such means will have to carry a statement advising the recipient that they have the right to ask for a hard copy and giving them a telephone number, and email and postal addresses which they can use to do so. If the recipient requests a hard copy it will have to be supplied to them free of charge within 5 business days of the request being received by the office-holder.

Communication of documents by website

If an office-holder chooses to communicate a document by website, he will have to send all those entitled to see the document a separate notice which will include a statement advising them of their right to request a hard copy of the document and providing postal and email addresses and a telephone number to use for the purpose. The hard copy will have to be issued, free of charge, within 5 business days of receipt of the request.

Anyone who does not have a computer will therefore be able to ring the office holder and ask for a paper copy. This will enable them to take part in the insolvency proceedings in the same manner and to the same extent as they would under the current legislation. The fact that paper copies will only be available if specifically requested means that there will be no waste as only those who genuinely want paper copies will be getting them. Money will not be wasted printing and mailing bulky documents to people who are not interested in them and who could not be bothered to reply if asked to consent to view them on a website.

Virtual Meetings

In the case of a meeting of creditors, a physical meeting will have to be held instead if 10% or more of the creditors by value request one. In the case of a meeting of company contributories, a physical meeting will have to be held instead if 10% or more of the contributories by value request one.

In the case of a meeting of company members, a physical meeting will have to be held if 10% or more of those with voting rights request it.

7.9. We have written to Master Kelly about the concerns which the Chancery and Probate Liaison Committee and the Crown Solicitor have raised about doing away with reporting the outcome of creditors' meetings to the court in non-interim order voluntary arrangements. Our view is that altering the law so that the Chairman of the Committee would only be required to report the result to the court in cases where there was a pending bankruptcy petition could create difficulties because if a petition had only been filed recently the chairman might not be aware of it. It would be possible to include in the proposed legislation a requirement for the chairman to check with the court before deciding whether or not he needed to send a report whether any petition was pending or not. However doing this would be likely to place the chairman under an even greater burden than the existing requirement to simply send a copy of his report to the court in all cases. For this reason we are recommending to the Master that the law should be left as it is.

7.10 A summary of the responses to each of the questions asked in the consultation document, together with DETI's initial comments, is available on the Department's website at www.insolvencyservice.detini.gov.uk/consultees

8. Next Steps

8.1 An official in Legislative Programme Secretariat has advised that there are two options for obtaining necessary Executive agreement. The first would be for the Department to seek Executive agreement in two stages. The first stage would be to ask the Executive to agree the policy proposals prior to the issue of formal instructions for drafting of the Bill. The second stage would be to seek Executive agreement to introduce the Bill after drafting was complete. The other option would be to wait until drafting was complete and to seek agreement to both the policy and to the Bill being introduced at that stage.

8.2 Subject to any views which the Committee may have on the matter our Minister considers that it would be better to forge ahead with getting the Bill drafted and to postpone seeking Executive agreement to the policy until we are at the stage of seeking agreement to introduce the Bill. The factors which our Minister has taken into account in reaching this decision are that by not seeking policy agreement at this stage we would shave one to two months off the time to introduction. The proposals are specific to insolvency and are not politically contentious. Nothing has emerged from the consultation to warrant any major alteration to the original proposals, and the Executive has already been advised of what these are in a paper seeking agreement to carry out the policy consultation which they considered and agreed when they met on 26 April 2012.

8.3 If we are able to postpone seeking Executive agreement to the policy as suggested we would anticipate being able to formally instruct Legislative Counsel to proceed with drafting of the Bill in October, and that the Bill and associated Explanatory Memorandum would be complete and settled by the end of December 2012. We would then have to seek our Minister's approval to introduce the Bill, brief this Committee again, and obtain Executive approval. We estimate that this process could take around three months. Allowing for the time to carry out the procedure to actually introduce the Bill we estimate that it should be possible to introduce the Bill in April 2013.

September 2012

Briefing from Department of Enterprise, Trade and Investment on the Insolvency (Amendment) Bill

Insolvency (Amendment) Bill

Briefing to the Committee For Enterprise, Trade And Investment

Purpose

1. The purpose of this briefing is:

- To update the Committee on progress with the Bill;
- To let the Committee know about additional measures which have been included in the Bill;
- To advise the Committee of the outcome of consultation carried out on some of these measures; and
- To let the Committee know that it is intended to seek Executive agreement to introduce the Bill.

Previous briefing

2. The Committee has been briefed on two previous occasions. The first was on 8 March 2012, when the Committee considered written briefing about proposed changes to insolvency law and a planned consultation. The second was on 27 September 2012 when the Committee was briefed orally, and in writing, about the outcome of the consultation.

3. When we briefed the committee on 27 September 2012 the Department's plans were for an Assembly Bill which would replicate the GB Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010. This would have allowed for:

- legal recognition of the validity of documents stored and transmitted by electronic means;
- the use of websites to transmit information and notices in the course of insolvency proceedings;
- remote holding of meetings in insolvency proceedings;
- changes to simplify certain insolvency procedures; and
- the repeal of Deeds of Arrangement, which are an obsolete procedure for coming to an accommodation with creditors.

4. On advice from OFMDFM, we intended to defer seeking policy agreement from the Executive until we were at the stage of seeking their agreement to introduce the Bill. The Committee agreed to our proceeding to get a Bill drafted on this basis and Legislative Counsel was formally instructed to proceed with the drafting of a Bill.

5. While drafting was underway, it was identified that there was a need for a number of minor amendments to correct errors and anomalies in existing insolvency legislation.

We were advised of action being taken in GB to:

- repeal references in insolvency legislation to earnings in respect of a type of holiday scheme for employees which is now illegal; and
- categorise deposits with banks and other financial institutions, which are covered by the Financial Services Compensation scheme, as preferential debts.

6. Additional instructions were issued to Legislative Counsel to deal with these matters and an agreed version of the Bill was available in June 2013, which we planned to introduce in autumn that year.

Deregulation Bill

7. Subsequently, however, a draft Deregulation Bill was published at Westminster on 1 July 2013. It was identified that certain measures included in this Bill would need to be replicated for Northern Ireland as soon as possible. It was decided that the best way to achieve this would be by including them in the Insolvency Bill and the decision was taken to postpone its introduction to allow the necessary consultation to take place.

Amendments since the last Briefing on 27 September 2012

8. As a result, there have been a number of amendments to the Bill. These are set out in the following paragraphs:

Retention for requirement for the Court to be notified of creditors' decision whether to approve proposals for individual voluntary arrangements

9. The previous written briefing provided for the Committee, advised that the Chancery and Probate Liaison Committee and the Crown Solicitor had misgivings about a proposal to do away with the requirement for the Court to be notified of the outcome of creditors' meetings in certain individual voluntary arrangement cases. They were concerned that doing away with the requirement to report to the court on whether creditors had accepted a debtor's proposal to enter an individual voluntary arrangement could lead to the court not knowing about the voluntary arrangement and making a bankruptcy order when it should not have done so.

10. As a result, it has been decided not to proceed with that particular proposal and to leave, unaltered, the requirement for the Court to be informed of the outcome of the creditors' meeting in all individual voluntary arrangement cases.

11. The requirement for the Official Receiver to inform the Court of the creditors' decision in what are termed "fast-track" voluntary arrangements is also being retained. A "fast-track" voluntary arrangement is a type of arrangement which is administered by the Official Receiver and is available to bankrupts only.

Provision to repeal references in the Insolvency (Northern Ireland) Order 1989 to a form of holiday arrangement which is now illegal (clause 10 of the Bill)

12. There are four references in the Insolvency (Northern Ireland) Order 1989 to wages and salaries, including sums which would have been treated as earnings in respect of holiday periods for the purposes of the statutory provisions, relating to social security. These references are redundant as the type of holiday scheme they were designed to cover, whereby employee's rights to a holiday accrued in respect of the succeeding year, is illegal under the Working Time Regulations (Northern Ireland) 1998. Provision has, therefore, been included in the Bill to repeal them.

13. The corresponding references in the Insolvency Act 1986 applying in GB are set to be repealed by the Deregulation Bill.

Repeal of provision for early discharge from bankruptcy (clause 12 of the Bill)

14. Provision has been included to repeal Article 253(2) of the Insolvency (Northern Ireland) Order 1989. Paragraph (1) of that Article provides for discharge from bankruptcy to take place automatically on the first anniversary of the making of the Bankruptcy Order. However, paragraph (2) provides that discharge can take place earlier if the Official Receiver files notice with the court stating that investigation of the affairs of the bankrupt is not necessary or is concluded.

15. Minister Foster wrote to Mr McGlone on 26 November 2012 to advise that it was intended to include a clause in the Bill to repeal paragraph (2) on the basis that the provision had been little used in this jurisdiction and the corresponding provision applying in England and Wales was to be repealed.

Amendment to prevent trustees in bankruptcy having any claim against banks in respect of payments made out of bankrupts accounts (Clause 13 of the Bill)

16. In a letter sent to Mr McGlone on 9 October 2013, Minister Foster referred to the need for an amendment to insolvency legislation to safeguard banks against claims by trustees in bankruptcy.

17. A person against whom a bankruptcy order has been made, remains bankrupt for a period of time afterwards, normally one year. At the end of that period they are said to be discharged. Article 280 of the Insolvency (Northern Ireland) Order, as it currently stands, allows a person appointed as trustee to "claim for the bankrupt's estate any property which has been acquired by, or has devolved upon, the bankrupt" up until the date of his discharge.

18. Once a trustee serves notice on a bankrupt claiming such property, the trustee's title to the property is backdated to the date on which the property was acquired by, or devolved on, the bankrupt. This means that if the bankrupt is no longer in possession of the property, the trustee can attempt to recover the property from whoever now has it. It also means that if the property consisted of money and it has been processed through a bank account belonging to the bankrupt, the trustee could consider taking action against the bank for the loss of the money.

19. Article 280, as it currently stands, would only afford the bank protection from such a claim if the bank had not had notice of the bankruptcy. It is more than likely that the bank will have had notice as the Official Receiver routinely notifies the main banks each time a Bankruptcy Order is made. It is also the case that an undischarged bankrupt attempting to open a bank account is also obliged to declare the fact of their bankruptcy in their application.

20. Although it is believed that a claim has rarely, if ever, been brought by a trustee in bankruptcy against a bank, the risk of it happening is a major impediment on banks' willingness to let bankrupts have accounts.

21. With the aim of removing this obstacle to banks allowing bankrupts to have accounts, provision has been included in the Bill to prevent trustees in bankruptcy having any claim against a bank, even if the bank has had notice of the customer's bankruptcy, unless that the trustee has first served a specific notice of claim on the bank.

This amendment corresponds to that made by paragraph 16 of Schedule 5 to the Deregulation Bill.The changes which were made as a consequence of publication of the Westminster Deregulation Bill on 1 July 2013 are set out in the following paragraphs.

Provision to make bank deposits covered by the Financial Services Compensation Scheme a preferential debt (clause 14 of the Bill)

22. We have asked Minister Foster to agree to this clause being removed. The background to its inclusion was as follows.

23. The Financial Services Compensation Scheme (FSCS) protects customers of banks, and other financial institutions, by providing for them to be reimbursed in respect of money deposited in accounts covered by the scheme if the bank or other financial institution becomes insolvent. An upper limit, currently £85,000, applies.

24. Treasury policy is that given the role which the scheme has in compensating customers it should have the right to claim against any funds in the insolvency in priority to other creditors.

25. The Insolvency Act 1986, in its application to England and Wales, and the Bankruptcy (Scotland) Act 1985, have been amended to make deposits covered by the FSCS a preferential (in Scotland, preferred) debt.

26. This will give the FSCS priority over ordinary unsecured creditors to seek recompense out of whatever funds an insolvent bank or financial institution has left in respect of the payments made under the scheme to that bank or financial institution's customers.

27. The FRCS operates for the benefit of bank customers on a UK wide basis and the Treasury is anxious that claims in insolvency arising from payments made under it should be accorded the same priority throughout the UK. As a result, the necessary amendments were included in the Bill.

28. However, the Economic Secretary to the Treasury, Andrea Leadsom, has written to Minister Foster to advise that to comply with an EU Bank Recovery and Resolution Directive which is close to being adopted, it will be essential to have legislation in place throughout the UK by 31 December 2014 to make deposits covered by the FSCS preferential debts and to create a further category of sub-preference for sums in excess of the amount covered by the scheme or deposits with branches of a European Economic Area bank located outside the Area.

29. The difficulty is that it is not likely that our Bill will be law by that date. To prevent the breach of EU Law which would result, Treasury officials have offered to include the necessary amendments to the Insolvency (Northern Ireland) Order 1989 in a statutory instrument which they plan to make under the European Communities Act 1972.

30. Adopting this course would entail taking clause 14, which deals with making deposits covered by the FSCS preferential debts, out of our Bill.

31. Minister Foster will be writing to the ETI Committee to inform them if she agrees to clause 14 being removed and the matter being dealt with in the proposed UK wide Statutory Instrument to be made by the Treasury. If Minister Foster agrees to the clause being removed we will ask Legislative Counsel to do this before the Bill is introduced.

32. If it is decided that the matter should be dealt with in the Statutory Instrument which Treasury plan to make, we will advise the Committee accordingly. Changes to the licensing system for insolvency practitioners

33. Under current legislation, a person is qualified to act as an insolvency practitioner either by:

(i) being authorised to act as an insolvency practitioner by a professional body recognised by the Department for the purpose. Seven bodies are currently recognised. They are:

- The Association of Chartered Certified Accountants;
- The Insolvency Practitioners Association;
- The Institute of Chartered Accountants in England & Wales;
- The Institute of Chartered Accountants in Ireland;
- The Institute of Chartered Accountants of Scotland;
- The Law Society; and
- The Law Society of Northern Ireland.

(ii) being authorised by what is termed a competent authority, of which there is currently only one, this Department; or

(iii) being authorised by a competent authority in Great Britain.

34. Minister Foster wrote to Mr McGlone on 31 August 2013 to advise that amendments to the licensing system for insolvency practitioners needed to be made in consequence of the Deregulation Bill.

Amendment to remove licensing by competent authorities (repeal of Articles 351 to 354 of the Insolvency (Northern Ireland) Order 1989 by clause 15 (5) of, and Schedule 3 to, the Bill)

35. Provision to repeal the provisions for authorisation of insolvency practitioners by competent authorities has been included in the Bill. The effect will be to make the recognised professional bodies the sole licensing authority for insolvency practitioners in Northern Ireland.

36. There are currently just two insolvency practitioners in Northern Ireland who are authorised by the Department. Neither of them are solicitors, so they would not be eligible for authorisation by the Law Society or the Law Society of Northern Ireland. The other five recognised professional bodies have all confirmed that they would be willing to authorise them provided they are fit and proper persons to be insolvency practitioners.

37. Repeal of the corresponding provisions applying in GB has been included at paragraph 20 of Schedule 5 to the Deregulation Bill.

Amendment to create the option of being authorised as an insolvency practitioner to act solely in personal or corporate insolvencies (Clause 15 of the Bill)

38. Under current legislation, it is only possible to be authorised to take both individual and corporate insolvency cases. This makes it necessary to study and pass examinations in both areas of insolvency practice.

39. Provision has been included in the Bill to provide the option of partial authorisation as an insolvency practitioner. A partially authorised insolvency practitioner will be able to act only in relation to companies or only in relation to individuals, whereas a fully authorised insolvency practitioner will be able to act in relation to any type of insolvency. Partially authorised practitioners will not be able to act in relation to partnerships or members of a partnership with liabilities to the partnership.

40. Provision has been included to give the Department power to recognise professional bodies as being capable of providing either full and partial authorisation or partial authorisation only.

41. Provision has also been included to ensure that the existing recognised professional bodies will be treated as being capable of providing their insolvency specialist members with full or partial authorisation. This will allow insolvency practitioners, authorised by recognised professional bodies under the existing legislation, to continue to be treated as fully authorised.

42. Clause 15 corresponds to clause 10 of the Deregulation Bill.

Correction of omission in Article 363 of the Insolvency (Northern Ireland) Order 1989 (clause 16 of the Bill)

43. Part 12 of the Insolvency (Northern Ireland) Order 1989 deals with entitlement to practise as an insolvency practitioner. Power to make regulations to give effect to that Part should have been included in Article 363 of the Insolvency (Northern Ireland) Order 1989. Provision amending Article 363 to give the Department the necessary power to make such regulations has, therefore, been included in the Bill. Amendment to order making power so that it can be exercised as intended in the case of any credit union (clause 17)

44. In her letter sent to Mr McGlone on 9 October 2013, Minister Foster also referred to the need to put right an error in Article 10(2) of the Insolvency (Northern Ireland) Order 2005. Article 10(2) in its current form reads:

"(2) The Department may by order provide for a company arrangement or administration provision to apply (with or without modification) in relation to a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24)."

45. Article 10(2) of the Insolvency (Northern Ireland) Order 2005 was intended to provide the Department with an order making power identical in extent to that conferred on the Treasury by section 255(1)(a) of the Enterprise Act 2002 (c.40). This enables the Treasury, with the concurrence of the Secretary of State to, by order, provide for a company arrangement, or administration provision, to apply to "a society registered under the Industrial and Provident Societies Act 1965 (c.12)."

46. Application of the Treasury's order making power under section 255(1)(a) of the Enterprise Act 2002 to societies registered under the Industrial and Provident Societies Act 1965 was sufficient to ensure that orders under that provision could be made in respect of credit unions in GB. This is because all credit unions in GB are registered under the Industrial and Provident Societies Act 1965.

47. It was not realised at the time that Article 10(2) of the Insolvency (Northern Ireland) Order 2005 was being drafted that some credit unions in Northern Ireland are registered under the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985 No. 1205 (N.I. 12)) and not under the Industrial and Provident Societies Act (Northern Ireland) 1969. As a result, citing the latter was not sufficient to ensure that the order making power under Article 10(2) applied to all credit unions in Northern Ireland.

48. The result of this oversight is that Article 10(2) in its present form would give DETI the right to make orders enabling credit unions registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 to enter a company arrangement or administration but it would not do so in the case of credit unions registered under the Credit Unions (Northern Ireland) Order 1985.

49. HM Treasury are consulting on plans to apply the "bank insolvency" regime under Part 2 of the Banking Act 2009(c.1) to credit unions. They have advised that before this can happen it will be essential for legislation to be in place enabling credit unions in Northern Ireland to enter administration. This necessitates an amendment to Article 10 of the Insolvency (Northern Ireland) Order 2005 to make possible the making of an order allowing all credit unions to enter administration.

50. To remedy the deficiency, an amendment is included in the Bill to extend the Department's order making power under Article 10(2) to credit unions registered under the Credit Unions (Northern Ireland) Order 1985.

Lord Chief Justice's right to be consulted (clause 18 of the Bill)

51. There are provisions in various pieces of legislation, applying in Northern Ireland, that disqualify individuals from holding certain offices and positions if they are bankrupt. Article 24 of the Insolvency (Northern Ireland) Order 2005 enables Northern Ireland Departments to make orders amending or modifying the effect of such provisions. Paragraph 5(d) of Article 24 provides that such orders can allow for disqualification to be "subject to the discretion of a specified person, body or group" and paragraph (7) as amended, provides that the discretion can be made subject to appeal to a specified court or tribunal.

52. At the suggestion of the Minister for Justice, an amendment to Article 24(7) has been included in the Bill to require the Lord Chief Justice to be consulted about the making of any Order creating a right of appeal to a court.

Statutory Demands to be in writing (paragraphs 4, 7 and 8 of Schedule 2 to the Bill)

53. Provision is included in the Bill to:

(i) Amend Article 103 of the Insolvency (Northern Ireland) Order 1989 to clarify that a statutory demand for payment served on a company before proceedings are taken to have it wound up for non payment of debt must be in writing; and

(ii) Amend Article 242 of the Insolvency (Northern Ireland) Order 1989 to clarify that a statutory demand for payment served on an individual before proceedings are taken to have them adjudged bankrupt must be in writing.

Correction of error in Article 185 of the Insolvency (Northern Ireland) Order 1989 (paragraph 5 of Schedule 2 to the Bill coupled with repeal of words in Article 185 by Schedule 3)

54. Article 185 of the Insolvency (Northern Ireland) Order 1989 makes it possible for unregistered companies to be wound up in Northern Ireland. For most practical purposes the term unregistered company could be defined to mean a company incorporated elsewhere than in the United Kingdom.

55. Paragraph (2) of Article 185 in its current form states:

"(2) If an unregistered company has a principal place of business situated in England and Wales or Scotland, it shall not be wound up under this Part unless it has a principal place of business situated in Northern Ireland, and the principal place of business in Northern Ireland is, for all the purposes of the winding up, deemed to be the registered office of the company".

56. Paragraph (2) in its current form is flawed. It provides that if an unregistered company has principal places of business in both GB and Northern Ireland the one in Northern Ireland is to be deemed to be its registered office. However, it would be perfectly possible for an unregistered company which does not have a principal place of business in GB to be wound up in Northern Ireland. There is nothing to deem the principal place of business in Northern Ireland of such a company as its registered office.

57. The Bill puts this right by first of all removing the provision for the principal place of business to be deemed to be the registered office out of paragraph (2). This will leave paragraph (2) to read,

"(2) If an unregistered company has a principal place of business situated in England and Wales or Scotland, it shall not be wound up under this Part unless it has a principal place of business situated in Northern Ireland."

58. A new paragraph (2A) is inserted to provide for the principal place of business in Northern Ireland of any unregistered company, not just unregistered companies with principal places of business in both GB and Northern Ireland, to be deemed to be its registered office.

Correction of error in paragraph 1A of Schedule B1 to the Insolvency (Northern Ireland) Order 1989 (paragraph 13 of Schedule 2 to the Bill)

59. There is an error in paragraph 1A of Schedule B1 to the Insolvency (Northern Ireland) Order 1989. Schedule B1 establishes the legal framework for the conduct of company administrations. Paragraph 1A of Schedule B1 currently states:

"A company incorporated outside Northern Ireland that has a principal place of business in England and Wales or Scotland (or both in England and Wales and in Scotland) may not enter administration under this Schedule unless it also has a principal place of business in Northern Ireland. "

60. Paragraph 1A, in its current form, purports to apply to companies incorporated outside Northern Ireland. It says that for such a company to be able to enter administration in Northern Ireland it is not sufficient that it has a principal place of business in GB. It has to have a principal place of business in Northern Ireland as well.

61. Paragraph 1A should be stated to apply to companies incorporated outside the United Kingdom, not companies incorporated outside Northern Ireland. Companies incorporated within the United Kingdom but outside Northern Ireland are already barred from entering administration in Northern Ireland by the virtue of the fact that paragraph (1A) of schedule B1 defines "company" for the purposes of that schedule to mean a company registered under the Companies Act 2006 in Northern Ireland.

62. An amendment has therefore been included in the Bill to provide for paragraph 1A to apply to companies incorporated outside the United Kingdom instead of to companies incorporated outside Northern Ireland.

Repeal of superfluous definition of "nominee" in the 1989 Order (repeal of definition in Articles 5(1) and 9(1) of the Insolvency (Northern Ireland) Order 1989 by Schedule 3 of the Bill

63. An individual or company wishing to enter a voluntary arrangement to pay creditors has to nominate an insolvency practitioner to oversee implementation of the arrangement. The nominated insolvency practitioner is known as the "nominee".

64. Article 5 of the Insolvency (Northern Ireland) Order 1989 provides an interpretation for Parts 2 to 7 of the Order, which are the Parts dealing with company insolvency. Article 9 provides an interpretation for Parts 7A to 10 which are the Parts dealing with individual insolvency.

65. "Nominee" is defined in Article 5(1) (company insolvency) to mean "a person acting as defined in Article 15(2)" and in Article 9(1) (individual insolvency) to mean "a person acting as defined in Article 227(2)." The references to Articles 15(2) and 227(2) are at odds with each other. There are two types of individual voluntary arrangement; one involves an application to the court for what is termed an interim order which protects the debtor from action by their creditors while they are attempting to set up the arrangement. However, an individual voluntary arrangement can also be set up without an interim order.

66. In the case of a voluntary arrangement involving an interim order the provision corresponding to Article 15(2) would be Article 230(1) and in the case of an individual voluntary arrangement not involving an interim order, the corresponding provision would be Article 230A(3). Conversely the provision corresponding to Article 227(2) would be Article 14(2), not Article 15(2).

67. As well as being confusing the definitions given in Articles 5(1) and 9(1) are superfluous because the term "nominee" is satisfactorily defined elsewhere in the Insolvency (Northern Ireland) Order 1989. The term is not used in that Order except in Parts 2 and 8 and in Schedule A1 and is adequately defined in each. It has therefore been decided to include repeal of the Article 5(1) and 9(1) definitions in the Bill.

Repeal of the provision enabling individuals other than insolvency practitioners to act as nominees and supervisors in voluntary arrangements (repeal of Article 348A by Schedule 3 to the Bill)

68. There is currently provision in the Insolvency (Northern Ireland) Order 1989 allowing individuals, other than qualified insolvency practitioners, to act as nominees and supervisors in voluntary arrangements if authorised by a body recognised for the purpose.

69. The Bill repeals Article 348A of the Insolvency (Northern Ireland) Order 1989. This Article provides for the Department to be able to recognise bodies for the purpose of authorising individuals, who are not insolvency practitioners, to act as nominees or supervisors in relation to corporate or individual voluntary arrangements.

70. This repeal corresponds to that made by paragraph 18 of Schedule 5 to the Deregulation Bill.

Consultation

71. Full public consultation on the Department's original plans for an Assembly Bill which would replicate the GB Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 was carried out during the period 8 May to 31 July 2012. We briefed the Committee about the outcome on 27 September 2012.

72. Since then further consultations have been carried out on:

- The proposed changes to the licensing system for insolvency practitioners;
- The proposed legislative amendment to facilitate banks letting bankrupts having accounts; and
- The amendment to correct the error in Article 10(2) of the Insolvency (Northern Ireland) Order 2005

Consultation on the proposed changes to the licensing system for insolvency practitioners

73. An informal consultation with Northern Ireland's insolvency practitioners, and their recognized professional bodies was carried out between 16 September and 28 October 2013 on the proposals to:

- Remove licensing by competent authorities;
- Create the option of being authorised to act as an insolvency practitioner to act solely in personal or corporate insolvencies; and
- Repeal the provision enabling individuals other than insolvency practitioners to act as nominees in voluntary arrangements

74. There were six responses. Two were from insolvency practitioners, which agreed with all three amendments. The other four responses were from the recognized professional bodies. All four agreed with the first and third proposals, however, only one, the Association of Chartered Certified Accountants, supported the proposal to provide the option of being licensed as an insolvency practitioner to take only personal or corporate insolvencies. The Institutes of Chartered Accountants for England and Wales, Scotland and Ireland all came out against this proposal. They gave as their reasons:

- That insolvency practitioners needed to have the knowledge to deal with cases where there was an overlap between personal and corporate insolvency;
- Concern that the proposal could lead to a fall in professional standards;
- That reducing the standard of education and training needed to become an insolvency practitioner is not in the public interest; and
- Increased costs for recognized professional bodies.

75. A summary of the consultation responses is available on the Department's website at http://www.detini.gov.uk/deti-insolvency-index.htm

The Department's position

76. The Department's view remains that it should legislate to implement all three proposed changes to the licensing system for insolvency practitioners.

77. Responses to the consultation were unanimously in favour of the first and third amendments. It is true that reaction to the second was mixed, with half of the responses being against the amendment. However, concerns similar to those raised by the three Institutes of Chartered Accountants in their responses to the Northern Ireland consultation, were brought to the attention of a joint Parliamentary Committee set up at Westminster to examine the Deregulation Bill and were not considered an impediment to the provision for partial authorization being included in the Bill as introduced on 23 January 2014.

78. There are strong arguments in favour of partial authorization; personal and corporate insolvencies are dealt with under separate procedures. There are, therefore, clearly defined areas of operation for both types of practitioner. In addition, removing the requirement for individuals who are seeking to work as insolvency practitioners, to qualify in both personal and corporate insolvency, will potentially open up the market for insolvency practitioners to the benefit of both clients and creditors.

79. There is, however, one final compelling factor. We will have no option except to go ahead with partial authorization for insolvency practitioners if this is passed into law in the rest of the United Kingdom through the proposed Deregulation Bill. Under Article 10(4) of the EU Directive on Services it is a requirement "that authorization should enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory". Authorization can only be restricted to a specific part of a national territory if doing so can be "justified by an overriding reason relating to the public interest".

80. Provision to permit partial authorization of insolvency practitioners has been included in the Westminster Deregulation Bill. Nothing has emerged from the consultation carried out in Northern Ireland which would constitute an overriding reason relating to the public interest for not allowing insolvency practitioners with partial authorization under GB legislation to practice on the same basis in Northern Ireland. Departmental Solicitors have advised that in order for them to be able to do so, it is essential to amend the Insolvency (Northern Ireland) Order 1989, to allow for partial authorization.

Consultation on the proposed legislative amendment to facilitate banks letting bankrupts having accounts

81. An informal consultation on the proposal for a legislative amendment to prevent trustees in bankruptcy bringing retrospective claims against banks in respect of payments made out of bankrupts' accounts was carried out between 10 October and 21 November 2013.

82. There were seven responses. One came from the Law Society of Northern Ireland, two from insolvency practitioners, one from Chartered Accountants Ireland, one from the Institute of Chartered Accountants in England and Wales and two from debt advice organizations.

83. Apart from the law Society which had no comment, all those who responded to the consultation strongly supported the proposed amendment. A summary of the consultation responses is available on the Department's website at http://www.detini.gov.uk/deti-insolvency-index.htm

Chancery and Probate Liaison Committee

84. The Chancery and Probate Liaison Committee, which is chaired by the Honourable Mr Justice Deeny and made up of users of his court, mainly members of the legal profession, discussed the matter on 12 December 2013.

85. The Honourable Mr Justice Deeny expressed concerns about the proposed amendment. His concerns centred on:

- The possibility of cheques issued by bankrupts not being honoured;
- Banks not being responsible for the loss incurred by those receiving cheques which were dishonoured on presentation; and
- Withdrawal of trustees' rights to take action in respect of monies passing through bankrupts' accounts leading to banks failing to exercise necessary control over bankrupts' accounts.

The Department's Position

86. The Department's view is that it should proceed with the amendment. All those who responded directly to the consultation were in favour of it being made. None raised any

issue concerning the possibility of its leading to an increase in the number of cheques being dishonoured.

87. The aim of the amendment is to prevent trustees in bankruptcy having any claim against banks in respect of payments processed through bankrupts' accounts unless they have claimed the specific sum involved before it was paid out. Our view is that compelling reasons exist to proceed with the amendment.

88. The measure is designed to give banks greater confidence that letting bankrupts have accounts will not result in adverse consequences. Having a bank account is considered a vital element in participating in to-day's society. Benefits, pensions and wages are all paid into a bank account. We consider that it would be unfair that legislation should form an impediment to banks letting any section of society, including undischarged bankrupts, avail of access to a bank account.

89. We have been presented with no evidence that bankrupts manifest a greater propensity to issue cheques which are not honoured than other sections of society. A bankrupt issuing a cheque knowing his account was not in funds would be subject to the same sanction under the law, including a criminal one, as anyone else.

90. A similar amendment has been included in the Deregulation Bill as introduced at Westminster. Assuming that this Bill, inclusive of this amendment, becomes law, not going ahead with a similar amendment in Northern Ireland would deny to bankrupts here the benefits of a measure taken to assist those in similar circumstances elsewhere in the United Kingdom.

91. There is also pressure from debt advice charities in Northern Ireland to allow bankrupts greater opportunity to have bank accounts. The hardship caused to bankrupts as a result of banks not allowing them to have accounts is an issue which has been highlighted in the media.

92. We do not consider that the amendment would, in practice, result in any impairment to trustees' ability to recover assets for the benefit of creditors or in any loss to creditors. Despite the banks' unease over the possibility of retrospective claims being brought against them by trustees in respect of payments made out of a bankrupt's account, we are not aware of any instance where this has happened in practice.

93. Consultees were asked, in a partial Regulatory Impact Assessment, if they were aware of any claims for loss or after acquired property made against banks. One of the two insolvency practitioners who replied made no comment on the matter beyond stating that he approved of the proposed amendment and would be happy to see it inserted as proposed in Northern Ireland. The other stated: "We do not believe the proposed legislative change will severely reduce the statutory powers available to a Trustee when attempting to deal with after acquired property. We would like to see a reporting requirement on the banks whereby any transactions over a certain threshold would be reported to a Trustee, however, we accept that this would be resisted by the banking sector due to practicalities of policing and potential costs."

94. Chartered Accountants Ireland, which is one of the Regulatory Professional Bodies for insolvency practitioners, stated that it "agreed that a bank should be protected against any claim by a trustee regarding a transaction entered into before the trustee serves specific notice on the bank."

Consultation on the proposed amendment to correct the error in Article 10(2) of the Insolvency (Northern Ireland) Order 2005

95. An informal consultation on the proposed amendment was carried out with Northern Ireland's insolvency practitioners and their recognized professional bodies, credit unions, the Irish

League of Credit Unions and the Ulster Federation of Credit Unions between 16 October and 26 November 2013.

96. Only one response was received. Strabane Credit Union stated that its Board of Directors agreed with the amendment to insolvency law.

97. A summary of the consultation responses is available on the Department's website at http://www.detini.gov.uk/deti-insolvency-index.htm

The Department's Position

98. The Department considers that the amendment should be made.

Other changes

99. The Department has not consulted on the other two changes made since the Committee was last briefed on 27 September 2012, which are of a minor technical nature.

Early Discharge from Bankruptcy

100. The Insolvency Service in England and Wales did deal with the proposal to do away with early discharge in a consultation paper entitled 'Reforming Debtor Petition Reform and Early Discharge from Bankruptcy'. Those who responded were unanimous in welcoming the repeal with stakeholders citing the high costs of administering the provision far exceeding any benefit.

101. For example, Christians Against Poverty stated that they could not see any tangible benefit which could justify the costs to the Insolvency Service or to creditors. Citizens Advice stated that they had no evidence to suggest that repealing the early discharge provisions would create any significant detriment to the consumer. The Consumer Credit Counselling Service favoured doing away with early discharge as they felt that it would help ensure that everyone made bankrupt on their own petition was treated equally and would give those petitioning for their own bankruptcy greater certainty as to how long they could expect to remain bankrupt.

102. The early discharge procedure has only ever been used twice in this jurisdiction and, moreover, it would not be possible to consult the group which would be mainly affected by the proposal, that is, future bankrupts. As a result, we consider that a consultation on the matter would provide little additional comment and would create needless delay.

The Bill

103. The Department's Solicitors and the Attorney General have both confirmed that he Bill is within the legislative competence of the Northern Ireland Assembly.

Offences and Penalties

104. Clause 3 of the Bill substitutes new Articles 79 and 91 in the Insolvency (Northern Ireland) Order 1989. Article 79 applies in the case of a members' voluntary winding up. Article 91 applies in the case of a creditors' voluntary winding up. A creditors' voluntary winding up takes place where a company is insolvent. The substitute Articles impose a requirement for liquidators acting in members' and creditors' voluntary liquidations to issue progress report if the winding up takes longer than one year.

105. Failure by a liquidator to issue a progress report is made a criminal offence punishable by a fine.

106. New Article 349B inserted into the Insolvency (Northern Ireland) Order 1989 by Clause 15 of the Bill makes it an offence to act as an insolvency practitioner in contravention of paragraphs (1) or (2) of that Article. This offence applies to insolvency practitioners whose authorisation is either to take only individual cases or to take only company cases.

107. They will not be allowed to accept appointments to act for individuals or companies which they know to be members of a partnership to which they owe money. Neither will they be allowed to continue to act for a company or individual if they discover that they are a member of a partnership to whom they owe money unless granted permission to do so by the High Court. The offence would be dealt with under Article 348 of the Insolvency (Northern Ireland) Order 1989 which makes it an offence, punishable by a fine or imprisonment, to act as insolvency practitioner when not qualified to do so.

Next steps

108. Minister Foster will submit a paper to the Executive seeking agreement to the Bill policy and to the Bill being introduced in the Northern Ireland Assembly.

109. The Executive will also be asked to consider cross-cutting issues such as consequential amendments to legislation for which other Departments are responsible and the creation of offences, which involves the Department of Justice.

Update from Department of Enterprise, Trade and Investment in regards to Insolvency (Amendment) Bill - Letter sent to Chancery and Probate Liaison Committee

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REQUEST TO DETI FROM THE ETI COMMITTEE

At its meeting on 18 November the ETI Committee discussed the Insolvency (Amendment) Bill.

Members asked the Department for a copy of the letter it sent in reply to the consultation response from the Chancery and Probate Liaison Committee.

DEPARTMENTAL RESPONSE

Attached is a copy of the letter issued to the Chancery and Probate Liaison Committee on 3 September 2012 in reply to the Committee's response to the Public Consultation on proposals to be dealt with in the Insolvency (Amendment) Bill.

The Department does not seek to apply any restrictions on disclosure of this letter in terms of section 36 of the Freedom of Information Act 2000.

Reply prepared by: Jackie Kerr, Business Regulation Division, Ext 29455

Date: 16 December 2014

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Insolvency Service

Department of
Enterprise, Trade and Investment

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3 September 2012

Dear Mr Bloomer,

CONSULTATION ON MODERNISATION AND STREAMLINING OF INSOLVENCY PROCEDURES – PROPOSALS TO AMEND THE INSOLVENCY (NORTHERN IRELAND) ORDER 1989

I refer to the email reply on behalf of the Chancery and Probate Liaison Committee which you sent to me on 19 July 2012. I am grateful for the positive responses which Master Kelly and Mr Stephen Gowdy have given.

A summary of all responses received, which includes the Department's comments, has been placed on the Department's website at,

www.insolvencyservice.detini.gov.uk/consultees

I would like to comment on the answers given to specific questions as follows,

Question 1

It is our clear intention that physical delivery of paper will be the default position for ordinary communication. It will only be permissible to email documents with the prior consent of the intended recipient. If a document is communicated through being displayed on a website those entitled to see the document will have to be sent a notice which will include a statement advising them that they are entitled to request a hard copy of the document and a telephone number, e-mail address and postal address which they can use to do this.

Question 4

Our intention is that it will be possible to use websites to communicate documents to specific groups of persons. It is not our intention that websites should supplant or replace any form of public advertising. Specifically we do not intend to make it possible to use websites as a substitute where there is a legislative requirement to advertise in newspapers or publish information in the Belfast Gazette. It is our intention to permit the use of websites to comply with statutory requirements to provide information to particular groups such as creditors. However it will still be possible for those without access to a computer to see the information. If information is displayed on a website all of those entitled to see it will have to be sent a notice

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informing them of its availability on the website and giving them the necessary password to access it. The notice will have to carry a message advising that it is possible to request the document in hard copy and giving the telephone number and e-mail and postal addresses which can be used to do this. The office holder will be required to send a hard copy, free of charge, within 5 business days of receiving a request for one.

Question 11

I have serious misgivings about the suggestion that the requirement for the chairman to report the result of the creditors' meeting to the court in a non-interim order IVA case should be abolished except where there is a pending bankruptcy petition.
I recognise that this would go some way towards achieving what has been done in GB where the reporting requirement has been done away with completely. However I wonder if we can be sure that the chairman would always be in a position to know whether or not a bankruptcy petition had been filed.
Under Rule 6.017 of the Insolvency Rules (NI) 1991 a petition is not to be heard until at least 14 days after it is served on the debtor. What would happen if a petition had been filed, just three days before the meeting of creditors was held in a non-interim order IVA case? It is quite possible that the debtor might not have been served with the petition and might therefore know nothing about it. He would not be in a position to tell the chairman of the meeting that a petition was pending against him. In the absence of any information to the contrary the chairman would likely conclude that there was no pending petition and that it was in order for him not to report the result of the meeting to the court.

Two alternative approaches suggest themselves to me.

1. To put in place a requirement for the Chairman to check with the Court within a stipulated time period after the day on which the meeting was held (say two days) if any bankruptcy petition was pending against the debtor. If the answer was yes, the chairman would then be obliged so to report the result of the meeting to the court. If the answer was no the chairman would not be required to do so.

2. To leave the present requirement for the chairman to file a copy of his report in court unchanged.

My preference would be to take the second option and leave the law as it is. It seems to me that in order to be certain that no petition for bankruptcy had been filed the Chairman would have to make a check with the Court and this could entail as much if not more work and expense than simply filing a copy of his report in Court.

The Bankruptcy Master is obviously the person who will be mainly interested in this matter. I would be grateful if you would bring the points I have raised to Master Kelly's attention and let me have confirmation of her wishes.

Questions 14 and 15

A "first generation" broadband service has been available to all premises in Northern Ireland since December 2005 under a contract between this Department and BT. The Communications Market Report 2012: Northern Ireland, published by OFCOM, shows that 94% of premises in Northern Ireland now have access to what is termed "superfast" broad band. This is the highest percentage of "superfast" availability anywhere in the UK.

Figures we have obtained from the Northern Ireland Statistics and Research Agency (NISRA) show,

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1. That 74% of those aged over 16 in Northern Ireland, have access to the internet. Tables produced by the Office for National Statistics show the corresponding figure for the whole of the UK as 83.7%.

2. That in Northern Ireland 75% of individuals from urban households and 71% of individuals from rural households have internet access.

3. That in Northern Ireland 42% of those in the 60+ age group have internet access. This breaks down into 44% of individuals aged 60+ from urban households and 38% of those aged 60+ from rural households. Due to differences in the way in which the figures are presented it is not possible to give a direct comparison with the Office for National Statistics figures for the UK as a whole. The latter show that 61.3% of those aged 65 to 74 in the UK as a whole are internet users. The figure for those aged over 75 is 27.4%.

Consistent with the NISRA report OFCOM's Communications Market Report 2012: Northern Ireland, referred to above, also shows that broadband uptake among the older generation lags behind that in GB with 44% of those aged 55+ in Northern Ireland having broadband in their homes as against the UK average of 59%.

On the basis of these figures we have concluded that,

- While Northern Ireland lags behind the UK as a whole by about 10% in terms of internet access it is still the case that nearly three quarters of those aged 16 or over in Northern Ireland have access to the internet
- There is little difference in levels of internet access between urban and rural parts of Northern Ireland
- That broadband up-take by older sections of the community in Northern Ireland is around 15% lower than in the UK as a whole.

We plan to include the same safeguards in our legislation to protect the interests of those who do not have access to a computer as those present in the equivalent legislation applying in England and Wales. We consider these safeguards to be adequate, even if a higher proportion of the population in general, and the older population in particular, does not have access to a computer.

I have reproduced in an annex to this letter provisions inserted into the GB Insolvency Rules 1986 which,

- Make it possible to send documents electronically (email) only if the intended recipient consents to this
- Require those entitled to see information displayed on a website to be notified separately of their right to receive the information in hard copy form

And from the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 requirements for a physical meeting to be held,

- in company insolvency proceedings if it is requested by, in the case of a meeting of creditors or contributories, 10% or more of the creditors or contributories, and in the case of a meeting of members, members with not less than 10% of the total voting rights
- in bankruptcies and individual voluntary arrangements if it is requested by 10% or more of the creditors in terms of value

It is intended to insert similar provisions into the Insolvency Rules (Northern Ireland) 1991 and the planned Assembly Act.

Yours sincerely

Department of
Enterprise, Trade and Investment
www.detini.gov.uk

Jack Reid

Jack Reid
Legislation Unit

Annex

Communication by e-mail

Extract from Rule 12A.10 - Electronic delivery in insolvency proceedings - general

"(1) Unless in any particular case some other form of delivery is required by the Act or the Rules or an order of the court and subject to paragraph (3), a notice or other document may be given, delivered or sent by electronic means provided that the intended recipient of the notice or other document has
(a) consented (whether in the specific case or generally) to electronic delivery (and has not revoked that consent); and
(b) provided an electronic address for delivery."

Rule 12A.11 – Electronic delivery by office-holders

"(1) Where an office-holder gives, sends or delivers a notice or other document to any person by electronic means, the notice or document must contain or be accompanied by a statement that the recipient may request a hard copy of the notice or document and specifying a telephone number, e-mail address and postal address which may be used to request a hard copy.

(2) Where a hard copy of the notice or other document is requested, it must be sent within 5 business days of receipt of the request by the office-holder.

(3) An office-holder must not require a person making a request under paragraph (2) to pay a fee for the supply of the document."

Display of information on a website

Extracts from Rule 12A.12 – Use of websites by office-holder

"(2) An office-holder required to give, deliver or send a document to any person may (other than in a case where personal service is required) satisfy that requirement by sending that person a notice-

(a) stating that the document is available for viewing and downloading on a website;
(b) specifying the address of that website together with any password necessary to view and download the document from that site; and

(c) containing a statement that the person to whom the notice is given, delivered or sent may requires a hard copy of the document and specifying a telephone number, e-mail address and postal address which may be used to request a hard copy."

"(4) Where a hard copy of the document is requested it must be sent within 5 business days of the receipt of the request by the office-holder."

"(5) An office-holder must not require a person making a request under paragraph (4) to pay a fee for the supply of the document."

Extracts from Rule 12A.13 – Special provision on account of expense as to website use

"(1) Where the court is satisfied that the expense of sending notices in accordance with Rule 12A.12 would, on account of the number of persons entitled to receive them, be disproportionate to the benefit of sending notices in accordance with that Rule, it may order that the requirement to give, deliver or send a relevant document to any person may (other than in a case where personal service is required) be satisfied by the office-holder sending each of those persons a notice-

(a) stating that all relevant documents will be made available for viewing and downloading on a website;
(b) specifying the address of that website together with any password necessary to view and download a relevant document from that site; and
(c) containing a statement that the person to whom the notice is given, delivered or sent may at any time request that hard copies of all, or specific, relevant documents are sent to that person, and specifying a telephone number, e-mail address and postal address which may be used to make that request."

(3) Where hard copies of relevant documents have been requested, they must be sent by the office-holder-
(a) within 5 business days of the receipt by the office-holder of the request to be sent hard copies, in the case of relevant documents first appearing on the website before the request was received, or
(b) within 5 business days from the date a relevant document first appears on the website in all other cases

"(4) An office-holder must not require a person making a request under paragraph (3) to pay a fee for the supply of the document."

Remote Meetings

Extracts from section 246A inserted into the Insolvency Act 1986 by Article 3 of the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010

"(1) Subject to subsection (2), this section applies to-

(a) Any meeting of the creditors of a company summoned under this Act or the rules, or
(b) any meeting of the members or contributories of a company summoned by the office-holder under this Act or the rules, other than a meeting of the members of a company in a members' voluntary winding up.

(9) If-
(a) the notice of a meeting does not specify a place for the meeting.
(b) the convener is requested in accordance with the rules to specify a place for the meeting, and
(c) that request is made-

Department of
Enterprise, Trade and Investment
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(i) in the case of a meeting of creditors or contributories, by not less than ten percent in value of the creditors or contributories, or

ii) in the case of a meeting of members, by members representing not less than ten percent of the total voting rights of all the members having at the date of the request a right to vote at the meeting,

it shall be the duty of the convener to specify a place for the meeting."

Extracts from section 379A inserted into the Insolvency Act 1986 by Article 3 of the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010

"(1) Where-

(a) a bankruptcy order is made against an individual or an interim receiver of an individual's property is appointed, or
(b) a voluntary arrangement in relation to an individual is proposed or is approved under Part 8,
This section applies to any meeting of the individual's creditors summoned under this Act or the rules.

(8) If-
(a) the notice of a meeting does not specify a place for the meeting.
(b) the convener is requested in accordance with the rules to specify a place for the meeting, and
(c) that request is made by not less than ten percent in value of the creditors,
it shall be the duty of the convener to specify a place for the meeting."

Rule 12A.22 Remote attendance at meetings of creditors

(1) This Rule applies to a request to the convener of a meeting under section 246A(9) or 379A(8) to specify a place for the meeting.

(2) The request must be accompanied by—

(a) in the case of a request by creditors, a list of the creditors making or concurring with the request and the amounts of their respective debts in the insolvency proceedings in question,

(b) in the case of a request by contributories, a list of the contributories making or concurring with the request and their respective values (being the amounts for which they may vote at the meeting),

(c) in the case of a request by members, a list of the members making or concurring with the request and their voting rights, and

(d) from each person concurring, written confirmation of that person's concurrence.

(3) The request must be made within 7 business days of the date on which the convener sent the notice of the meeting in question.

(4) Where the convener considers that the request has been properly made in accordance with the Act and this Rule, the convener must—

(a) give notice to all those previously given notice of the meeting—

(i) that it is to be held at a specified place, and

(ii) as to whether the date and time are to remain the same or not;

(b) set a venue (including specification of a place) for the meeting, the date of which must be not later than 28 days after the original date for the meeting; and

(c) give at least 14 days' notice of that venue to all those previously given notice of the meeting;

and the notices required by sub-paragraphs (a) and (c) may be given at the same or different times.

(5) Where—

(a) a request to which this Rule relates is made in respect of a final meeting under section 106, 146 or 331;

(b) an application is made under Rule 4.131 or 6.142 in respect of remuneration or expenses reported in the draft report for that meeting; and

(c) the meeting cannot be held until the application (including any appeal) has been disposed of and any order of the court complied with,

paragraph (4)(a) does not apply and the duty to set a venue (including specification of a place) for the meeting applies in relation to the meeting when it is finally held.

(6) Where the convener has specified a place for the meeting in response to a request to which this Rule applies, the chairman of the meeting must attend the meeting by being present in person at that place.

(7) Rules 2.37(3), (4), (5) and (6), 4.61 and 6.87 (expenses of summoning meetings) do not apply to the summoning and holding of a meeting at a place specified in accordance with section 246A(9) or 379A(8).

Correspondence from the Department of Enterprise Trade and Investment regarding the Insolvency (Northern Ireland) Order 2005

Mr Jim McManus
ETI Committee Clerk
Northern Ireland Assembly
Parliament Buildings
Stormont
Belfast
BT4 3SW

10 October 2014

Dear Jim

SL1 – The Insolvency (Northern Ireland) Order 2005 (Consequential Amendments) Order (Northern Ireland) 2014

1.1 The Department of Enterprise, Trade and Investment (the Department) proposes to make a Statutory Rule in exercise of the powers conferred by Article 30 of the Insolvency (Northern Ireland) Order 2005.

1.2 The Statutory Rule will be subject to negative resolution in the Assembly.

Purpose of the Statutory Rule

2.1 This Order will amend disqualification provisions contained in various pieces of primary and subordinate legislation which apply if an office-holder becomes bankrupt.

2.2 Forty such provisions are amended with effect that either bankruptcy, or being subject to a bankruptcy restrictions order, will result in disqualification. In ten cases reference to a bankruptcy restrictions order as grounds for disqualification is re-defined to refer to such orders made under Schedule 4A to the Insolvency Act 1986 as well as ones made under Schedule 2A to the Insolvency (Northern Ireland) Order 1989. In one case, where being subject to a bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986 was already grounds for disqualification, being subject to such an order under Schedule 2A to the Insolvency (Northern Ireland) Order 1989 is added.

2.3 In the remaining one case provision was amended with effect that bankruptcy will no longer result in disqualification and the office-holder will only be disqualified if he becomes subject to a bankruptcy restrictions order.

Background

3.1 The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10), ("the 2005 Order") made on 7 June 2005, amended the main piece of primary legislation applying to insolvency in Northern Ireland, the Insolvency (Northern Ireland) Order 1989, S.I. 1989/2405 (N.I. 19) by inserting a new Schedule 2A. New Schedule 2A makes it possible for the Department to apply to the High Court for a bankruptcy restrictions order.

3.2 A bankruptcy restrictions order imposes a number of insolvency based restrictions on a bankrupt for a period of between 2 to 15 years and continues in force after a bankrupt's discharge from bankruptcy. As an alternative the Department can accept a bankruptcy restrictions undertaking from the bankrupt which will have the same effect. A bankruptcy

restrictions order would be applied for, or an undertaking accepted, where evidence had emerged, following investigation, that a bankrupt has been irresponsible, reckless or otherwise culpable.

3.3 The 2005 Order also reduced the period of time after which most bankrupts are discharged from bankruptcy from three years to one year.

3.4 These changes reflect changes made in Great Britain by the Enterprise Act 2002 (c.40).

3.5 Following the making of the Enterprise Act 2002, a review of disqualification provisions existing in legislation, applying in Great Britain, resulted in the making of the Enterprise Act 2002 (Disqualification from Office: General) Order 2006 (S.I. 2006/1722). The aim of the review was to reduce the stigma of bankruptcy by removing unnecessary, or outdated, restrictions resulting from bankruptcy while ensuring that restrictions were in place for those subject to a bankruptcy restrictions order.

3.6 The Department carried out a similar exercise by inviting all Northern Ireland Departments to review existing bankruptcy disqualification provisions in legislation under their policy control. As a result of the review, a number of Departments identified bankruptcy provisions they wished to have amended.

3.7 To effect these amendments this Department made the Insolvency (Disqualification from Office: General) Order (Northern Ireland) 2008 (S.R. 2008 No. 94), which was made under Article 24 of the 2005 Order.

3.8 It was not possible, however, to amend a number of the statutory provisions identified in the review using the 2008 Order due to the definition of "disqualification provisions" in Article 24 being too narrow and not covering provisions such as Regulation 5 of, and paragraph 105 of Schedule 5 to, the Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004 dealing with the terms and conditions of a general medical services contract. Nor did it cover provisions dealing with the fitness of providers of certain health and social services establishments and agencies.

3.9 However, in light of further discussions with Departmental Solicitor's Office, it has transpired that the Department is able to capture these classes of office-holder using the power, under Article 30 of the 2005 Order, to make supplementary, incidental or consequential provisions. The power contained in Article 30 of the 2005 Order is very wide and can be used to take account of bankruptcy restrictions orders.

Consultation

4.1 As well as DETI the following Departments have legislation which would be amended by the proposed Order:

- Office of the First Minister & Deputy First Minister
- Department of Agriculture & Rural Development
- Department of the Environment
- Department of Finance & Personnel
- Dept of Health, Social Services & Public Safety
- Department of Justice
- Department for Regional Development
- Department for Social Development
- The Northern Ireland Assembly
- The Northern Ireland Office

The Order also amends the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011, which was made by the Northern Ireland Assembly Commission.

All Departments were invited to agree to the proposed amendments to the legislation for which they are responsible and were asked if they wished consultation to be carried out. All Departments consulted agreed the proposed amendments and most considered a consultation was not required. Some Departments did consult specific stakeholders and all replies were favourable.

Officials in OFMDFM responsible for one of the pieces of legislation asked the insolvency Service to carry out a limited targeted consultation. This consultation was carried out, however, no replies were received.

Position in Great Britain

5.1 This Order is in line with the Enterprise Act 2002 (Disqualification from Office: General) Order 2006 (S.I. 2006/1722) applying in GB.

Equality Impact

6.1 Formal equality screening has not been carried out as the proposed provisions will not have any differential impact on any of the section 75 groups.

Regulatory Impact

7.1 A Regulatory Impact Assessment has not been prepared for this Order as it will not impose any costs on business and will not impact on charities, social enterprise or voluntary bodies.

Financial Implications

8.1. There are no identifiable costs to the public or the Assembly

EU Implications

9.1 None.

Section 24 of the Northern Ireland Act 1998

10.1. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that the proposed Rule does not contravene this section.

Section 75 of the Northern Ireland Act 1998

11.1. The Department has considered section 75 of the Northern Ireland Act 1998 and is satisfied that the proposed Rule will have no negative implications for any of the Section 75 groups.

Operational Date

12.1 It is proposed that the Regulations will come into operation in November 2014.

I would be grateful if you would bring this matter to the attention of the Enterprise, Trade

and Investment Committee.

Yours sincerely

Richard Monds

Director of Insolvency
cc Human Rights Commission

Letter from the Minister regarding the inclusion of clause repealing the early discharge provision in bankruptcy

From the Office of the Minister

Department of
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Our Ref: DETI SUB 539/2012

Patsy McGlone MLA
Chairperson
ETI Committee
Room 375
Parliament Buildings
BELFAST
BT4 3XX

26 November 2012

Dear Patsy

INSOLVENCY BILL – INCLUSION OF A CLAUSE REPEALING THE EARLY DISCHARGE PROVISION IN BANKRUPTCY

I am writing to inform you of my Department's intention to include an additional clause in its Insolvency Bill. The ETI Committee gave approval for the Office of Legislative Counsel to proceed with drafting the Bill on 27 September 2012.

Officials have since been informed that an amendment has been included in the Enterprise and Regulatory Reform Bill, currently before the House of Lords, to repeal the early discharge from bankruptcy provision in the Insolvency Act 1986 applying in England and Wales.

In the vast majority of cases, bankrupts are automatically discharged after twelve months. Current insolvency legislation in both England and Wales and in Northern Ireland also makes it possible for bankrupts who co-operate with the official receiver and pose no risk to business to be discharged earlier than that. Research in England and Wales has found that the costs of the procedure to discharge someone, perhaps only four months early, outweigh the limited benefits. This has led to the Insolvency Service in England and Wales deciding that provision to repeal their early discharge provision should be included in the Enterprise and Regulatory Reform Bill.

I propose to include such a clause in the Northern Ireland Insolvency Bill to repeal the Northern Ireland early discharge provision, namely Article 253(2) of the Insolvency (Northern Ireland) Order 1989. The early discharge provision has only ever been used twice in this jurisdiction and its removal is non-contentious. Inclusion of such a clause in the Insolvency Bill allows removal of unnecessary regulation to be carried out in a timely manner.

Yours sincerely

ARLENE FOSTER MLA
Minister of Enterprise, Trade and Investment

Letter from the Minister regarding Insolvency Practitioners

From the Office of the Minister

Department of
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Our Ref: DETI SUB 385/2013

Mr Patsy McGlone MLA
Chair, Committee for Enterprise, Trade and Investment
Room 375
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Stormont
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BT4 3XX

3rd August 2013

Dear Chairman,

PROPOSAL TO AMEND THE LAW RELATING TO THE LICENSING OF INSOLVENCY PRACTITIONERS

My officials briefed the ETI Committee about policy proposals to be included in a Bill to amend insolvency law on 8 March 2012. They briefed the Committee about the outcome of a policy consultation on the original proposals on 27 September 2012. A Bill has since been drafted. I intend to forward a copy to you along with briefing about the content, prior to introduction, which is planned to take place before the end of this year.

However another separate matter has now arisen, which I would like to have dealt with in the Bill.

A Deregulation Bill to be introduced at Westminster in January 2014 will make the following changes to the licensing system for insolvency practitioners in GB,

- It will do away with licensing by competent authorities, of which there is currently only one in GB, the Secretary of State for Business Innovation and Skills
- It will create an option to be licensed as an insolvency practitioner to act solely in personal or corporate insolvencies
- It will repeal legislative provision allowing for authorisation of individuals who are not insolvency practitioners to act as nominees and supervisors in voluntary arrangements

In Northern Ireland as in GB there is a system of dual licensing for insolvency practitioners. Most of the 43 insolvency practitioners based in Northern Ireland are authorised by one of seven Recognised Professional Bodies. Just four are authorised by my Department, which is the sole competent authority in Northern Ireland.

There is a drawback to licensing by competent authorities. They have a much more limited range of sanctions available to them to be used in the case of misdemeanours on the part of those they authorise than is available to Recognised Professional Bodies.

There is a drawback to it only being possible to be authorised as an insolvency practitioner to take both personal and corporate insolvencies. It means that those wishing to enter the profession have to take examinations in both disciplines even if they only intend to practise in one.

The provision allowing for authorisation of individuals who are not insolvency practitioners to act as nominees or supervisors in voluntary arrangements is flawed in that it does not properly implement intended policy. The Insolvency Service in GB had intended that it should only be possible to be authorised to act as nominee or supervisor in relation to either personal or corporate insolvency, not both, and only after passing the relevant examinations of the Joint Insolvency Examination Board. Furthermore the provision will be redundant if it becomes possible to be licensed as an insolvency practitioner to deal with the full range of individual or corporate insolvency procedures after passing the relevant examinations of the Joint Insolvency Examination Board. As the corresponding provision in Northern Ireland's insolvency legislation is modelled on the GB one it will carry the same errors.

It would be highly desirable, if not essential for provision to make the Recognised Professional Bodies the sole licensing authority for insolvency practitioners in Northern Ireland, to allow for partial licensing of insolvency practitioners and to do away with authorisation to act as nominee or supervisor to be brought into effect at the same time in Northern Ireland as in GB.

If this does not happen there is a risk that the 64 insolvency practitioners currently authorised by the Secretary of State in GB could apply to my Department for authorisation. They could do so because authorisation is not specific to Northern Ireland but is valid throughout the UK. If it were to happen it would both undermine the action being taken in GB to make the Recognised Professional Bodies the sole licensing authority for insolvency practitioners and result in a workload which would be far beyond my Department's licensing unit's capacity to cope with.

Advice from Departmental Solicitors is that not providing partial licensing at the same time would result in different and incompatible systems of licensing in Northern Ireland and GB.

It is a requirement under Article 10 of the EU Directive on Services in the Internal Market (2006/123/EC) for authorisation to be valid throughout the territory of an EU Member State.

The way in which I plan to ensure that in the necessary repeals and amendments are brought into effect at the same time in Northern Ireland as in GB is to table them at Consideration Stage for inclusion into the forthcoming Bill to amend insolvency law. This would allow them to be brought into operation at a future date to coincide with the GB amendments and repeals being brought into force.

It is not possible to include the amendments and repeals in the Bill as it stands as it has been finalised by Legislative Counsel and is at the point of being put to the Attorney General to certify that it is within the Assembly's competence.

It is not believed that the amendments and repeals will have any adverse effect on anyone. My officials have checked with the five Recognised Professional Bodies which the four practitioners licensed by the Department would be eligible to apply to for authorisation on my Department ceasing to carry out licensing. All five have provided written confirmation they would be willing to assume responsibility for authorising the insolvency practitioners currently authorised by my Department provided that they are fit and proper persons to be in that profession. The fees charged by some of the Recognised Professional Bodies for authorisation are less than those charged by my Department; none are appreciably dearer.

However it is still considered that it would be desirable and prudent to consult with those who would be affected be the proposed changes.

I enclose for your information a copy of a consultation document which my officials will be issuing to all insolvency practitioners and Recognised Professional Bodies.

The consultation is informal in nature and will last for six weeks.

Full public consultation is not considered necessary in view of the fact that the proposals only affect insolvency practitioners and Recognised Professional Bodies.

I plan to let you know the outcome of the consultation either at the stage of briefing you on the Insolvency Bill prior to introduction or else separately and prior to seeking Executive approval to table the amendments and repeals referred to in this letter at Consideration stage.

ARLENE FOSTER MLA
Minister of Enterprise, Trade and Investment

Letter from the Minister regarding proposed legislative amendments to safeguard banks

From the Office of the Minister

Department of
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Our Ref: DETI SUB 466/2013

Patsy McGlone MLA
Chair, Committee for Enterprise, Trade and Investment
Room 375
Parliament Buildings
BELFAST
BT4 3XX

9 October 2013

Dear Patsy

PROPOSED LEGISLATIVE AMENDMENTS TO SAFEGUARD BANKS FROM INCURRING LOSS AS A CONSEQUENCE OF ALLOWING BANKRUPTS TO HAVE ACCOUNTS AND TO CORRECT AN ERROR IN ARTICLE 10(2) OF THE INSOLVENCY (NORTHERN IRELAND) ORDER 2005

I wrote to you on 31 August 2013 about a consultation to be carried out on proposed changes to the licensing system for insolvency practitioners. I explained that the need for these changes stemmed from the planned introduction of a Deregulation Bill at Westminster. My intention at the time I wrote to you was that the legislative amendments and repeals needed to implement the changes would be included in a forthcoming Bill to amend insolvency law through amendments at Consideration Stage.

It has now emerged that there are two other matters which will need to be dealt with in the Bill.

One of these also has its origin in the Deregulation Bill. It is a legislative amendment to prevent trustees in bankruptcy having any claim against banks in respect of payments made out of bankrupts' accounts unless that the trustee has specifically claimed the sum involved. This is an important matter because the difficulty which bankrupts can encounter finding a bank which is willing to let them have an account is a matter of concern both to them and to debt advisers and the risk of claims by trustees has been identified as a major factor contributing to banks unwillingness to let bankrupts have accounts. Advice NI has already written to officials to alert them to the amendment being included in the Deregulation Bill to deal with the issue.

The other matter is the need to correct an error in Article 10(2) of the Insolvency (Northern Ireland) Order 2005 (S.I. 2005 No. 1455 (N.I. 10) which would prevent that Article applying, as it should, to all credit unions in Northern Ireland. This again is an important matter because the Treasury plan to legislate to apply the "bank insolvency" regime under Part 2 of the Banking Act 2009(c.1) to credit unions. They have advised that before they can do this legislation needs to be in place to enable credit unions in

Northern Ireland to enter administration. The Article 10(2) power would be needed to make such legislation.

CONSULTATION AND THE PROCEDURE TO AMEND THE BILL

It would be essential to consult with those who would be affected by the proposed amendment to safeguard banks from claims by trustees in bankruptcy and to correct the Article 10(2) power so that it covers all credit unions.
I enclose for your information copies of consultation letters which my officials will be issuing,

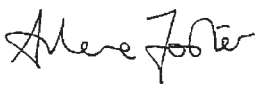
1. to insolvency practitioners and their recognised professional bodies, banks and debt advice organisations about the proposed amendment to safeguard banks from claims by trustees
2. to credit unions, their representative bodies and insolvency practitioners and their representative bodies about the proposed amendment to correct the error in Article 10(2) of the Insolvency (Northern Ireland) Order 2005.

As regards procedure to legislate in relation to all three additional matters the position has changed since I wrote to you 31 August. The amendments which will be required to deal with the alterations to the system for licensing insolvency practitioners are more extensive than first thought. There are the two additional matters which are the subject of this letter to be dealt with. Consultation is required on all three matters. My officials have been advised by Legislation & Policy Unit in OFMdFM that it would not be in order to attempt to seek permission from the Executive to introduce a Bill until these consultations are concluded.

Taking these factors into account I have decided that it would better to postpone introduction of the Insolvency (Amendment) Bill until consultation on all three matters is complete and a fresh Bill to include the necessary amendments has been produced. This will mean a target date of early 2014 to introduce the Bill rather than December 2013.

I will let you know the outcome of the consultations on all three additional matters when briefing you about the Insolvency Bill prior to introduction.

Yours sincerely



ARLENE FOSTER MLA
Minister of Enterprise, Trade and Investment

Letter from the Minister regarding the Insolvency (Amendment) Bill - May 2014

From the Office of the Minister

Department of
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Our Ref: DETI SUB 245/2014

Patsy McGlone MLA
Chair, ETI Committee
Room 375
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27 May 2014

Dear Patsy

INSOLVENCY (AMENDMENT) BILL

You will be aware of my intention to introduce a Bill in the Assembly to make a number of changes to Northern Ireland insolvency law.

The original purpose of the Bill was to make changes comparable to those made in GB by the Legislative Reform (Miscellaneous Provisions) Order 2010. The original proposals were considered by your Committee on 8 March 2012 and my officials provided briefing about the outcome of policy consultation on 27 September 2012.

However, while the Bill was being drafted it emerged that further changes needed to be included, both to put right errors and anomalies identified in our own insolvency legislation, and to keep abreast of developments in GB.

Subsequently, further amendments were identified as a result of the publication of the Deregulation Bill at Westminster. Initially, the intention was to make these additional amendments at consideration stage. However, when it emerged that they were more extensive than first thought, and that consultation would be required, I agreed to introduction of the Bill being postponed.

A fresh draft of the Bill, inclusive of the amendments required on foot of the Deregulation Bill, has now been prepared.

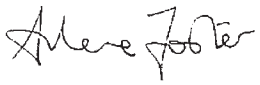
I enclose, therefore, on an in confidence basis a copy of this Bill together with the Explanatory and Financial Memorandum and a briefing paper for your Committee.

Should you wish, my officials are available to brief your Committee on the details of the Bill. I should be grateful, therefore, if you would advise whether or not you would like me to ask them to arrange such a briefing.

On advice from an official in Office of the First Minister and deputy First Minister it was decided that agreement from the Executive to the Bill policy would not be sought, as is customary, prior to the Bill being drafted.

I will, therefore, be seeking agreement from the Executive to the Bill policy as well as to its introduction. I will also need to seek agreement to the Bill dealing with a number of cross-cutting issues, including the creation of additional offences.

Yours sincerely



ARLENE FOSTER MLA
Minister of Enterprise, Trade and Investment

Insolvency (Amendment) Bill

[25/03/2014 15:07:47]

CONTENTS

Insolvency (Amendment)

A

B I L L

TO

Amend the law relating to insolvency; and for connected purposes.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Provisions relating to communication

Attendance at meetings and use of websites

1.—(1) In Part 7 of the Insolvency Order, after Article 208 (unenforceability of liens on books, etc.) insert—

"Remote attendance at meetings

Remote attendance at meetings: company insolvency

208ZA.—(1) This Article applies to—

(a) any meeting of the creditors of a company summoned under this Order or the rules; or

(b) any meeting of the members or contributories of a company summoned by the office-holder under this Order or the rules, other than a meeting of the members of a company in a members' voluntary winding up.

(2) Where the person summoning a meeting ("the convener") considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(3) Where a meeting is conducted and held in the manner referred to in paragraph (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(4) For the purposes of this Article—

(a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending

the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and

(b) a person is able to exercise the right to vote at a meeting when—

(i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

(ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(5) The convener of a meeting which is to be conducted and held in the manner referred to in paragraph (2) shall make whatever arrangements the convener considers appropriate to—

(a) enable those attending the meeting to exercise their rights to speak or vote; and

(b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(6) Where in the reasonable opinion of the convener—

(a) a meeting will be attended by persons who will not be present together at the same place, and

(b) it is unnecessary or inexpedient to specify a place for the meeting,

any requirement under this Order or the rules to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.

(7) In making the arrangements referred to in paragraph (5) and in forming the opinion referred to in paragraph (6)(b), the convener must have regard to the legitimate interests of the creditors, members or contributories and others attending the meeting in the efficient despatch of the business of the meeting.

(8) If—

(a) the notice of a meeting does not specify a place for the meeting,

(b) the convener is requested in accordance with the rules to specify a place for the meeting, and

(c) that request is made—

(i) in the case of a meeting of creditors or contributories, by not less than 10 per cent. in value of the creditors or contributories, or

(ii) in the case of a meeting of members, by members representing not less than 10 per cent. of the total voting rights of all the members having at the date of the request a right to vote at the meeting,

it shall be the duty of the convener to specify a place for the meeting.

(9) In this Article, "the office-holder", in relation to a company, means—

(a) its liquidator, provisional liquidator, administrator, or administrative receiver; or

(b) where a voluntary arrangement in relation to the company is proposed or has taken effect under Part 2, the nominee or the supervisor of the voluntary arrangement.

Use of websites

Use of websites: company insolvency

208ZB.—(1) Where any provision of this Order or the rules requires the office-holder to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website—

(a) in accordance with the rules; and

(b) in such circumstances as may be prescribed.

(2) In this Article, "the office-holder" means—

(a) the liquidator, provisional liquidator, administrator, or administrative receiver of a company; or

(b) where a voluntary arrangement in relation to a company is proposed or has taken effect under Part 2, the nominee or the supervisor of the voluntary arrangement.".

(2) In Part 10 of the Insolvency Order, after Article 345 (formal defects) insert—

"Remote attendance at meetings

Remote attendance at meetings: individual insolvency

345A.—(1) Where—

(a) a bankruptcy order is made against an individual or an interim receiver of an individual's property is appointed, or

(b) a voluntary arrangement in relation to an individual is proposed or is approved under Chapter 2 of Part 8,

this Article applies to any meeting of the individual's creditors summoned under this Order or the rules.

(2) Where the person summoning a meeting ("the convener") considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(3) Where a meeting is conducted and held in the manner referred to in paragraph (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(4) For the purposes of this Article—

(a) a person exercises the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and

(b) a person exercises the right to vote at a meeting when—

(i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

(ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(5) The convener of a meeting which is to be conducted and held in the manner referred to in paragraph (2) shall make whatever arrangements the convener considers appropriate to—

(a) enable those attending the meeting to exercise their rights to speak or vote; and

(b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(6) Where in the reasonable opinion of the convener—

(a) a meeting will be attended by persons who will not be present together at the same place, and

(b) it is unnecessary or inexpedient to specify a place for the meeting,

any requirement under this Order or the rules to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.

(7) In making the arrangements referred to in paragraph (5) and in forming the opinion referred to in paragraph (6)(b), the convener must have regard to the legitimate interests of the creditors and others attending the meeting in the efficient despatch of the business of the meeting.

(8) If—

(a) the notice of a meeting does not specify a place for the meeting,

(b) the convener is requested in accordance with the rules to specify a place for the meeting, and

(c) that request is made by not less than 10 per cent. in value of the creditors,

it shall be the duty of the convener to specify a place for the meeting.

Use of websites

Use of websites: individual insolvency

345B.—(1) This Article applies where—

(a) a bankruptcy order is made against an individual or an interim receiver of an individual's property is appointed, or

(b) a voluntary arrangement in relation to an individual is proposed or is approved under Chapter 2 of Part 8,

and "the office-holder" means the official receiver, the trustee in bankruptcy, the interim receiver, the nominee or the supervisor of the voluntary arrangement, as the case may be.

(2) Where any provision of this Order or the rules requires the office-holder to give, deliver, furnish or send a notice or other document or

information to any person, that requirement is satisfied by making the notice, document or information available on a website—

(a) in accordance with the rules; and

(b) in such circumstances as may be prescribed.".

References to things in writing

2.—(1) After Article 2A of the Insolvency Order (proceedings under EC Regulation: modified definition of property) insert—

"References to things in writing

2B.—(1) A reference in this Order to a thing in writing includes that thing in electronic form.

(2) Paragraph (1) does not apply to the following provisions—

(a) Article 97(2) (dissent from arrangement under Article 96);

(b) Article 103(1) (definition of inability to pay debts; the statutory demand);

(c) Article 186(1) (inability to pay debts: unpaid creditor for £750 or more);

(d) Article 187 (inability to pay debts: debt remaining unsatisfied after action brought); and

(e) Article 242(1) and (2) (definition of "inability to pay", etc.; the statutory demand).".

(2) Paragraph 1(2) of Schedule B1 to the Insolvency Order (interpretation) is repealed.

Requirements relating to meetings

Removal of requirement for annual meetings in a members' voluntary and a creditors' voluntary winding up

3.—(1) For Article 79 of the Insolvency Order (general company meeting at each year's end) substitute—

"Progress report to company at year's end

79.—(1) Subject to Articles 82 and 88, in the event of the winding up of a company continuing for more than one year, the liquidator must—

(a) for each prescribed period produce a progress report relating to the prescribed matters; and

(b) within such period commencing with the end of the period referred to in sub-paragraph (a) as may be prescribed send a copy of the progress report to—

(i) the members of the company; and

(ii) such other persons as may be prescribed.

(2) A liquidator who fails to comply with this Article shall be guilty of an offence.".

(2) For Article 91 of the Insolvency Order (meetings of company and creditors at each year's end) substitute—

"Progress report to company and creditors at year's end

91.—(1) If the winding up of a company continues for more than one year, the liquidator must—

(a) for each prescribed period produce a progress report relating to the prescribed matters; and

(b) within such period commencing with the end of the period referred to in sub-paragraph (a) as may be prescribed send a copy of the progress report to—

(i) the members and creditors of the company; and

(ii) such other persons as may be prescribed.

(2) A liquidator who fails to comply with this Article shall be guilty of an offence.".

(3) In Schedule 7 to the Insolvency Order (punishment of offences)—

(a) for the entry relating to Article 79(3) substitute—

"79(2)	Liquidator failing to send progress report to members at year's end.	Summary.	Level 3 on the standard scale.";

(b) for the entry relating to Article 91(3) substitute—

"91(2)	Liquidator failing to send progress report to members and creditors at year's end.	Summary.	Level 3 on the standard scale.".

Requirements in relation to meetings under Articles 81 and 84 of the Insolvency Order

4. In Articles 81(2)(b)(i) and 84(1)(b)(i) of the Insolvency Order (notice of meeting of creditors), the words "by post" are repealed.

Reports in individual voluntary arrangements

Individual voluntary arrangements: removal of requirement to submit a nominee's report to the High Court

5.—(1) In Article 230A of the Insolvency Order (debtor's proposal and nominee's report)—

(a) in paragraph (2), for "to the High Court" substitute "under paragraph (3)";

(b) in paragraph (3), for "report to the Court" substitute "report to the debtor's creditors".

(2) In Article 231 of the Insolvency Order (summoning of creditors' meeting), for paragraph (1) substitute—

"(1) Where it has been reported to the High Court under Article 230 or to the debtor's creditors under Article 230A that a meeting of the debtor's

creditors should be summoned, the nominee (or the nominee's replacement under Article 230(3) or 230A(4)) shall summon that meeting for the time, date and place proposed in the nominee's report unless, in the case of a report to which Article 230 applies, the High Court otherwise directs.".

(3) In Article 233(2) of the Insolvency Order (report of decisions to court), for "the debtor's proposal" substitute "a voluntary arrangement proposed under Article 230".

Fast-track voluntary arrangements: notification of the Department

6. In Article 237C of the Insolvency Order (result) after "Court" insert ", and notify the Department,".

Powers of liquidator and trustee

Powers of liquidator exercisable with or without sanction in a winding up

7.—(1) Schedule 2 to the Insolvency Order is amended as follows.

(2) In Part 1 (powers exercisable with sanction), paragraph 3 is repealed.

(3) In Part 3 (powers exercisable without sanction in any winding up), after paragraph 7, insert—

"7A. Power to compromise, on such terms as may be agreed—

(a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and

(b) subject to paragraph 2 in Part 1 of this Schedule, all questions in any way relating to or affecting the assets or the winding up of the company,

and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.".

Powers of trustee exercisable with or without sanction in a bankruptcy

8.—(1) Schedule 3 to the Insolvency Order is amended as follows.

(2) In Part 1 (powers exercisable with sanction)—

(a) paragraph 6 is repealed; and

(b) in paragraph 8, the words "or by the trustee on any person" are repealed.

(3) In Part 2 (powers exercisable without sanction), after paragraph 10, insert—

"10A. Power to refer to arbitration, or compromise on such terms as may be agreed, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.

10B. Power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to

the bankrupt's estate made or capable of being made by the trustee on any person.".

Miscellaneous

Definition of debt

9.—(1) The Insolvency Order is amended as follows.

(2) In Article 2 (general interpretation), for paragraph (3) substitute—

"(3) In determining for the purposes of any provision of this Order whether any liability in tort is a bankruptcy debt, the bankrupt is deemed to become subject to that liability by reason of an obligation incurred at the time when the cause of action accrued.

(3A) In determining for the purposes of any provision in this Order whether any liability in tort is a debt provable in the winding up of a company or where a company is in administration, that liability is provable if either—

(a) the cause of action has accrued—

(i) in the case of a winding up which was not immediately preceded by an administration, at the date on which the company went into liquidation;

(ii) in the case of a winding up which was immediately preceded by an administration, at the date on which the company entered administration;

(iii) in the case of an administration which was not immediately preceded by a winding up, at the date on which the company entered administration;

(iv) in the case of an administration which was immediately preceded by a winding up, at the date on which the company went into liquidation; or

(b) all the elements necessary to establish the cause of action exist at that date except for actionable damage.".

(3) In Article 5(1) (interpretation for Parts 2 to 7), in the definition of "debt"—

(a) for "Article 2(3)" substitute "Article 2(3A)";

(b) in sub-paragraph (a) for the words from "date" to the end substitute "relevant date;";

(c) in sub-paragraph (b) for "that date" in the first place it occurs substitute "the relevant date";

(d) in sub-paragraph (c) for the words from "company" to the end substitute "relevant date;".

(4) In Article 5, after paragraph (1) insert—

"(1A) For the purposes of the definition of "debt" in paragraph (1), "the relevant date" means—

(a) in the case of a winding up which was not immediately preceded by an administration, the date on which the company went into liquidation;

(b) in the case of a winding up which was immediately preceded by an administration, the date on which the company entered administration;

(c) in the case of an administration which was not immediately preceded by a winding up, the date on which the company entered administration;

(d) in the case of an administration which was immediately preceded by a winding up, the date on which the company went into liquidation.".

(5) In Article 347 (the relevant date), after paragraph (6) insert—

"(7) Nothing in this Article affects the definition of "the relevant date" in Article 5(1A).".

Treatment of liabilities relating to contracts of employment

10.—(1) The Insolvency Order is amended as follows.

(2) In Article 31 (vacation of office by administrator), as continued in operation by virtue of Article 4(1) of the Insolvency (Northern Ireland) Order 2005 (special administration regimes), paragraph (10) is repealed (what "wages or salary" includes for the purposes of paragraph (9)(a)).

(3) In Article 54 (receivership: agency and liability for contracts), paragraph (2D) is repealed (what "wages or salary" includes for the purposes of paragraph (2C)(a)).

(4) In Schedule B1 (administration of companies) in paragraph 100 (vacation of office by administrator: charges and liabilities), sub-paragraph (6)(d) is repealed (what "wages or salary" includes for the purposes of sub-paragraph (5)(c)) but not the "and" following it.

(5) In Schedule 4 (categories of preferential debt), in paragraph 15 (what "wages or salary" includes for the purposes of determining what is a category 5 preferential debt), paragraph (b) is repealed including the preceding "and".

Deeds of arrangement

11.—(1) Chapter 1 of Part 8 of the Insolvency Order (deeds of arrangement) is repealed.

(2) The Department may by order make such amendments (including repeals and revocations) to any statutory provision as it considers appropriate in consequence of this section.

(3) No order may be made under this section unless a draft of the order has been laid before and approved by resolution of the Assembly.

Bankruptcy: early discharge procedure

12. Article 253(2) of the Insolvency Order (duration of bankruptcy) is repealed.

After-acquired property of bankrupt

13.—(1) Article 280 of the Insolvency Order (power of trustee in bankruptcy to claim, for the bankrupt's estate, property which has been acquired by, or has devolved upon, the bankrupt after commencement of the bankruptcy) is amended as follows.

(2) In paragraph (3) (property to vest in trustee on service of notice on bankrupt), for "paragraph 4" substitute "paragraphs (4) and (4A)".

(3) In paragraph (4) (trustee not entitled to remedy against certain persons and certain bankers)—

(a) omit sub-paragraph (b) (provision about bankers) and the preceding "or";

(b) in the words after sub-paragraph (b)—

(i) omit "or transaction";

(ii) omit "or banker" (in both places where the words occur).

(4) After paragraph (4) insert—

"(4A) Where a banker enters into a transaction before the service on the banker of a notice under this Article the trustee is not in respect of that transaction entitled by virtue of this Article to any remedy against the banker.

This paragraph applies whether or not the banker has notice of the bankruptcy.".

Preferential debts

14.—(1) The Insolvency Order is amended as follows.

(2) In Article 346 (categories of preferential debt), in paragraph (1), after "production" insert "; deposits covered by Financial Services Compensation Scheme".

(3) In Schedule 4 (categories of preferential debts) after paragraph 17 insert—

"Category 7: Deposits covered by Financial Services Compensation Scheme

18. So much of any amount owed at the relevant date by the debtor in respect of an eligible deposit as does not exceed the compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to the person or persons to whom the amount is owed.

Interpretation for Category 7

19.—(1) In paragraph 18 "eligible deposit" means a deposit in respect of which the person, or any of the persons, to whom it is owed would be eligible for compensation under the Financial Services Compensation Scheme.

(2) For this purpose a "deposit" means rights of the kind described in—

(a) paragraph 22 of Schedule 2 to the Financial Services and Markets Act 2000 (deposits); or

(b) section 1(2)(b) of the Dormant Bank and Building Society Accounts Act 2008 (balances transferred under that Act to authorised reclaim fund).".

Authorisation of insolvency practitioners

15.—(1) Part 12 of the Insolvency Order (insolvency practitioners and their qualification) is amended as set out in subsections (2) to (5).

(2) In Article 349 (persons not qualified to act as insolvency practitioners), for paragraph (2) substitute—

"(2) A person is not qualified to act as an insolvency practitioner at any time unless at that time the person is appropriately authorised under Article 349A of this Order or section 390A of the Insolvency Act 1986 (authorisation).".

(3) After Article 349 insert—

"Authorisation

349A.—(1) In this Part—

"partial authorisation" means authorisation to act as an insolvency practitioner—

(a) only in relation to companies, or

(b) only in relation to individuals;

"full authorisation" means authorisation to act as an insolvency practitioner in relation to companies, individuals and insolvent partnerships;

"partially authorised" and "fully authorised" are to be construed accordingly.

(2) A person is fully authorised under this Article to act as an insolvency practitioner by virtue of being a member of a professional body recognised under Article 350(1) and being permitted to act as an insolvency practitioner for all purposes by or under the rules of that body.

(3) A person is partially authorised under this Article to act as an insolvency practitioner—

(a) by virtue of being a member of a professional body recognised under Article 350(1) and being permitted to act as an insolvency practitioner in relation only to companies or only to individuals by or under the rules of that body, or

(b) by virtue of being a member of a professional body recognised under Article 350(2) and being permitted to act as an insolvency practitioner by or under the rules of that body.

Partial authorisation: acting in relation to partnerships

349B.—(1) A person who is partially authorised may not accept an appointment to act as an insolvency practitioner in relation to a company or an individual if at the time of the appointment the person is aware that the company or individual—

(a) is or was a member of a partnership; and

(b) has outstanding liabilities in relation to the partnership.

(2) Subject to paragraph (7), a person who is partially authorised may not continue to act as an insolvency practitioner in relation to a company or an individual if the person becomes aware that the company or individual—

(a) is or was a member of a partnership, and

(b) has outstanding liabilities in relation to the partnership,

unless the person is granted permission to continue to act by the High Court.

(3) The High Court may grant the person permission to continue to act if it is satisfied that the person is competent to do so.

(4) A person who is partially authorised and becomes aware as mentioned in paragraph (2) may alternatively apply to the High Court for an order (a "replacement order") appointing in his or her place a person who is fully authorised to act as an insolvency practitioner in relation to the company or (as the case may be) the individual.

(5) A person may apply to the High Court for permission to continue to act or for a replacement order under—

(a) where acting in relation to a company, Article 143(5B) or this Article;

(b) where acting in relation to an individual, Article 276(2C) or this Article.

(6) A person who acts as an insolvency practitioner in contravention of paragraph (1) or (2) is guilty of an offence under Article 348 (acting without qualification).

(7) A person does not contravene paragraph (2) by continuing to act as an insolvency practitioner during the permitted period if, within the period of 7 business days beginning with the day after the day on which the person becomes aware as mentioned in paragraph (2), the person—

(a) applies to the High Court for permission to continue to act, or

(b) applies to the High Court for a replacement order.

(8) For the purposes of paragraph (7)—

"business day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971;

"permitted period" means the period beginning with the day on which the person became aware as mentioned in paragraph (2) and ending on the earlier of—

(a) the expiry of the period of 6 weeks beginning with the day on which the person applies to the High Court as mentioned in paragraph (7)(a) or (b), and

(b) the day on which the High Court disposes of the application (by granting or refusing it);

"replacement order" has the meaning given by paragraph (4).".

(4) For Article 350 (recognised professional bodies) substitute—

"Recognised professional bodies

350.—(1) The Department may by order declare a body which appears to it to meet the requirements of paragraph (4) to be a recognised professional body which is capable of providing its insolvency specialist members with full authorisation or partial authorisation.

(2) The Department may by order declare a body which appears to it to meet the requirements of paragraph (4) to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only.

(3) An order under paragraph (2) must state whether the partial authorisation relates to companies or to individuals.

(4) The requirements are that the body—

(a) regulates the practice of a profession, and

(b) maintains and enforces rules for securing that its insolvency specialist members—

(i) are fit and proper persons to act as insolvency practitioners, and

(ii) meet acceptable requirements as to education and practical training and experience.

(5) The Department must make an order revoking an order under paragraph (1) or (2) in relation to a professional body if it appears to the Department that the body no longer meets the requirements of paragraph (4).

(6) The Department must make an order revoking an order under paragraph (1) and replacing it with an order under paragraph (2) in relation to a professional body if it appears to the Department that the body is capable of providing its insolvency specialist members with partial authorisation only.

(7) An order of the Department under this Article—

(a) shall be subject to negative resolution; and

(b) shall have effect from such date as is specified in the order.

(8) An order revoking an order made under paragraph (1) or (2) may make provision whereby members of the body in question continue to be treated as fully or partially authorised to act as insolvency practitioners (as the case may be) for a specified period after the revocation takes effect.

(9) In this Article—

(a) references to members of a recognised professional body are to persons who, whether members of that body or not, are subject to its rules in the practice of the profession in question (and the

references in Article 349A to members of a recognised professional body are to be read accordingly);

(b) references to insolvency specialist members of a professional body are to members who are permitted by or under the rules of the body to act as insolvency practitioners.".

(5) Articles 351 to 354 (authorisation: supplementary provisions) are repealed.

(6) In Article 361A of the Insolvency Order (fees orders (supplementary))—

(a) in paragraph (1)(b) after "Article 350(1)" insert "or (2)";

(b) after paragraph (1) (fees for grant or maintenance of recognition of professional body) insert—

"(1A) Fees under paragraph (1) may vary according to whether the body is recognised under Article 350(1) (body providing full and partial authorisation) or under Article 350(2) (body providing partial authorisation).".

(7) An order under Article 350(1) of the Insolvency Order (recognised professional bodies) made before the coming into operation of this section is, following the coming into operation of this section, to be treated as if it were made under Article 350(1) as substituted by subsection (4) of this section.

Power to make regulations

16.—(1) Article 363 of the Insolvency Order (regulations for purposes of Part 12) is amended as follows.

(2) The existing provision becomes paragraph (2) of that Article.

(3) In that paragraph—

(a) after "generality of" insert "paragraph (1) or";

(b) for "regulations may contain" substitute "regulations under this Article may contain".

(4) Before that paragraph insert—

"(1) The Department may make regulations for the purpose of giving effect to Part 12 of this Order.".

Company arrangement or administration provision to apply to a credit union

17. In Article 10(2) of the Insolvency (Northern Ireland) Order 2005 (societies to whom a company arrangement or administration provision may apply) at the end add "or the Credit Unions (Northern Ireland) Order 1985.".

Disqualification from office: duty to consult the Lord Chief Justice

18. In Article 24(7) of the Insolvency (Northern Ireland) Order 2005, at the end add "; but any such order may only be made after consultation with the Lord Chief Justice where the appeal is to a specified court.".

Supplementary

Interpretation

19. In this Act—

"the Department" means the Department of Enterprise, Trade and Investment;

"the Insolvency Order" means the Insolvency (Northern Ireland) Order 1989;

"statutory provision" has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

Transitional provisions, minor and consequential amendments and repeals

20.—(1) Schedule 1 (which makes provision with respect to transition) has effect.

(2) Schedule 2 (which makes minor and consequential amendments) has effect.

(3) The statutory provisions specified in Schedule 3 are repealed to the extent specified.

Commencement

21.—(1) This section and sections 19 and 22 come into operation on the day after the day on which this Act receives Royal Assent.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

(3) An order under subsection (2) may contain such transitional or saving provisions as the Department considers appropriate.

Short title

22. This Act may be cited as the Insolvency (Amendment) Act (Northern Ireland) 2014.

SCHEDULES

Section 20(1).

SCHEDULE 1

TRANSITIONAL PROVISIONS

Requirements relating to meetings

1. The amendments made to Articles 79 and 91 of the Insolvency Order (progress reports in a winding up) by section 3 do not apply in respect of a company in voluntary winding up where the resolution for voluntary winding up was passed before the day on which section 3 comes into operation.

2. The amendments made to Articles 81 and 84 of the Insolvency Order by section 4 (notice of creditors' meeting) do not apply in respect of a company in voluntary winding up where the resolution for voluntary winding up was passed before the day on which section 4 comes into operation.

Reports in individual voluntary arrangements

3. The amendments made to the Insolvency Order by section 5 do not apply in respect of a proposal for a voluntary arrangement under Part 8 of the Insolvency Order where—

(a) Article 230A of that Order applies; and

(b) a person agrees to act as nominee in respect of the proposal before the day on which section 5 comes into operation.

Powers of liquidator

4. The amendments made to Schedule 2 to the Insolvency Order (powers of liquidator in a winding up) by section 7 do not apply in respect of any proceedings under the Insolvency Order where—

(a) in the case of a company in voluntary winding up, the resolution for voluntary winding up was passed before the day on which section 7 comes into operation;

(b) in the case of a company in voluntary winding up pursuant to paragraph 84 of Schedule B1 to the Insolvency Order (moving from administration to creditors' voluntary liquidation), the company entered the preceding administration before the day on which section 7 comes into operation;

(c) in the case of a company in winding up following an order for the conversion of administration or a voluntary arrangement into winding up by virtue of Article 37 of Council Regulation (EC) No 1346/2000 on insolvency proceedings, the order for conversion was made before the day on which section 7 comes into operation; and

(d) in the case of a company being wound up by the High Court, the winding-up order was made before the day on which section 7 comes into operation.

Powers of trustee

5. The amendments made to Schedule 3 to the Insolvency Order (powers of trustee in bankruptcy) by section 8 do not apply in respect of any proceedings under the Insolvency Order where—

(a) the debtor was adjudged bankrupt before the day on which section 8 comes into operation; and

(b) in the case of a bankruptcy following an order for the conversion of a voluntary arrangement into a bankruptcy by virtue of article 37 of Council Regulation (EC) No 1346/2000, the order for conversion was made before the day on which section 8 comes into operation.

Definition of debt

6. The amendments made to the Insolvency Order by section 9 apply where a company enters administration on or after the relevant day, except where—

(a) the company enters administration by virtue of an administration order under paragraph 11 of Schedule B1 to the Insolvency Order on an application made before the relevant day;

(b) the administration is immediately preceded by a voluntary liquidation in respect of which the resolution to wind up was passed before the relevant day;

(c) the administration is immediately preceded by a liquidation on the making of a winding-up order on a petition which was presented before the relevant day.

7. The amendments made to the Insolvency Order by section 9 apply where a company goes into liquidation upon the passing on or after the relevant day of a resolution to wind up.

8. The amendments made to the Insolvency Order by section 9 apply where a company goes into voluntary liquidation under paragraph 84 of Schedule B1 to the Insolvency Order, except where—

(a) the company entered the preceding administration before the relevant day; or

(b) the company entered the preceding administration by virtue of an administration order under paragraph 11 of Schedule B1 to the Insolvency Order on an application which was made before the relevant day.

9. The amendments made to the Insolvency Order by section 9 apply where a company goes into liquidation on the making of a winding-up order on a petition presented on or after the relevant day, except where the liquidation is immediately preceded by—

(a) an administration under paragraph 11 of Schedule B1 to the Insolvency Order where the administration order was made on an application made before the relevant day;

(b) an administration in respect of which the appointment of an administrator under paragraph 15 or 23 of Schedule B1 to the Insolvency Order took effect before the relevant day; or

(c) a voluntary liquidation in respect of which the resolution to wind up was passed before the relevant day.

SCH. 1

10. In paragraphs 6 to 9, "the relevant day" means the day on which section 9 comes into operation.

Authorisation of insolvency practitioners

11. For the purposes of this paragraph and paragraphs 12 to 16—

"the commencement date" is the date on which section 15(5) comes into operation;

"the transitional period" is the period of 1 year beginning with the commencement date.

12. Where, immediately before the commencement date, a person holds an authorisation granted under Article 352 of the Insolvency Order, Article 352(3A) to (6) of that Order together with, for the purposes of this paragraph, sub-paragraphs (a) and (b) of Article 352(2) of that Order (which are repealed by section 15(5)) continue to have effect in relation to the person and the authorisation during the transitional period.

13. During the transitional period, a person to whom paragraph 12 applies is to be treated for the purposes of Part 12 of the Insolvency Order as fully authorised under Article 349A of that Order (as inserted by section 15(3) of this Act) to act as an insolvency practitioner unless and until the person's authorisation is (by virtue of paragraph 12) withdrawn.

14. Where, immediately before the commencement date, a person has applied under Article 351 of the Insolvency Order for authorisation to act as an insolvency practitioner and the application has not been granted, refused or withdrawn, Article 351(4) to (7) and 352(1) and (2) of that Order (which are repealed by section 15(5)) continue to have effect in relation to the person and the application during the transitional period.

15. Where, during the transitional period, an authorisation is (by virtue of paragraph 14) granted under Article 352 of the Insolvency Order, paragraphs 12 and 13 apply as if—

(a) the authorisation had been granted immediately before the commencement date;

(b) in paragraph 12, the reference to Article 352(3A) to (6) were a reference to Article 352(4) to (6).

16. For the purposes of paragraphs 12 and 14, Articles 353 and 354 of the Insolvency Order (which are repealed by section 15(5)) continue to have effect during the transitional period.

Section 20(2).

SCHEDULE 2

MINOR AND CONSEQUENTIAL AMENDMENTS

The Solicitors (Northern Ireland) Order 1976 (NI 12)

1. In Article 13(1)(k), for the words from "has entered" to the end substitute "a composition or scheme proposed by the solicitor has been approved under Chapter 2 of Part 8 of the Insolvency (Northern Ireland) Order 1989.".

2. In Article 14A(2)(b), for paragraph (b) substitute—

"(b) a composition or scheme proposed by the solicitor has been approved under Chapter 2 of Part 8 of the Insolvency (Northern Ireland) Order 1989; or".

3. In Article 41(3)(a), for the words from "or enters" to "dies" substitute ", or a composition or scheme proposed by the solicitor has been approved under Chapter 2 of Part 8 of the Insolvency (Northern Ireland) Order 1989 or the solicitor dies".

The Insolvency (Northern Ireland) Order 1989 (NI 19)

4. In Article 103(1)(a), for "a demand" substitute "a written demand".

5. In Article 185, after paragraph (2) insert—

"(2A) For all purposes of winding up, the principal place of business in Northern Ireland of the unregistered company is deemed to be the registered office of the company.".

6. In Article 186(1)(a) after "written demand" insert "(known as "the statutory demand")".

7. In Article 242(1)(a) for "a demand" substitute "a written demand".

8. In Article 242(2)(a) for "a demand" substitute "a written demand".

9. In Article 343(1), after "the interim receiver" insert "or".

10. Omit Article 348(1A).

11. Omit Article 348A.

12. Omit Article 361A(2).

13. In Schedule B1, in paragraph 1A, for "outside Northern Ireland" substitute "outside the United Kingdom".

14. In Schedule 1, in paragraph 3, at the beginning insert "Without prejudice to Article 28 or 30 of the Property (Northern Ireland) Order 1997,".

The Pensions (Northern Ireland) Order 2005 (NI 1)

15. In Article 105(2)(b), for "or 230A(3)" substitute "of that Order or a report to the individual's creditors under Article 230A(3)".

The Insolvency (Northern Ireland) Order 2005 (NI 10)

16. Omit Article 26(3).

SCHEDULE 3

Section 20(3).

REPEALS

Short Title	Extent of repeal
The Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (NI 11)	In Article 15(8)— (a) in sub-paragraph (a), the words from "or becomes" to "creditors,"; (b) the words "trustee under the deed,".

Insolvency (Amendment)

SCH. 3

SCH. 3

Short Title	Extent of repeal
	In Article 40(4)— (a) in sub-paragraph (a), the words from "or becomes" to "creditors,"; (b) the words "trustee under the deed,".
	In Article 66(7)— (a) in sub-paragraph (a), the words from "or becomes" to "creditors,"; (b) the words "trustee under the deed,".
	In Article 86(7)— (a) in sub-paragraph (a), the words from "or becomes" to "creditors,"; (b) the words "trustee under the deed,".
	In Article 114(7)— (a) in sub-paragraph (a), the words from "or becomes" to "creditors,"; (b) the words "trustee under the deed,".
	In Article143(5)— (a) in sub-paragraph (a), the words from "or becomes" to "creditors,"; (b) the words "trustee under the deed".
	In Article 160(7)— (a) in sub-paragraph (a), the words from "or becomes" to "creditors,"; (b) the words "trustee under the deed,".
The Insolvency (Northern Ireland) Order 1989 (NI 19)	In Article 2(2), in the definition of "prescribed", the words ", 212(h) and 222".
	Article 3(2)(b).
	In Article 4(5)(a), the words "(other than Chapter 1 of Part 8)".
	In Article 5(1), the definition of "nominee".
	In Article 9(1), the definitions of "creditors generally", "deed of arrangement", "nominee" and "the registrar".
	Article 9(3).
	Article 31(10).
	Article 54(2D).
	In Article 81(2)(b)(i), the words "by post".
	In Article 84(1)(b)(i), the words "by post".

Insolvency (Amendment)

Short Title	Extent of repeal
	In Article 185(2), the words from ", and the principal" to the end. In Part 8, Chapter 1. Article 234(3). Article 237D(6). Article 253(2). In Article 280— (a) paragraph (4)(b) and the preceding "or"; (b) in paragraph (4) the words "or transaction"; (c) in paragraph (4), the words "or banker" in both places where they occur. In Article 343(1)— (a) sub-paragraph (c) and the preceding "or"; (b) the words "or the trustee under the deed of arrangement". In Article 344, the words "(other than Chapter 1 of Part 8)". Article 348(1A). Article 348A. Articles 351 to 354. Article 361A(2). In Article 362(1)(a), the entries relating to Articles 215(5) and 221(4). In Schedule B1— (a) paragraph 1(2); (b) paragraph 100(6)(d) but not the "and" following it. In Part 1 of Schedule 2, paragraph 3. In Part 1 of Schedule 3— (a) paragraph 6; (b) in paragraph 8, the words "or by the trustee on any person". In Schedule 4, paragraph 15(b) and the preceding "and".

Insolvency (Amendment)

Short Title	Extent of repeal
	In Schedule 6, in the cross-heading preceding paragraph 6, the words "Deeds of arrangement and".
	In Schedule 6, in paragraph 6— (a) the words from "for endorsement" to "Article 211 and"; (b) the word "other".
	In Schedule 6, in paragraph 25(a) and (c), the words ", the trustee of a deed of arrangement".
	In Schedule 6, in paragraph 28, the words "deeds of arrangement,".
	In Schedule 7, the entry relating to Article 218(1).
	In Schedule 8, paragraph 17 and the preceding cross-heading.
The Licensing (Northern Ireland) Order 1996 (NI 22)	In Article 28(1)— (a) in sub-paragraph (a), the words from "or a trustee" to "creditors,"; (b) the words "trustee under the deed,".
The Insolvency (Northern Ireland) Order 2002 (NI 6)	Article 6(2) and (3).
The Pensions (Northern Ireland) Order 2005 (NI 1)	Article 105(2)(c).
The Insolvency (Northern Ireland) Order 2005 (NI 10)	Article 26(3).

This Memorandum refers to the Insolvency (Amendment) Bill as introduced in the Northern Ireland Assembly on [Bill Office will insert date], (Bill [Bill Office will insert No.] 2013)

INSOLVENCY (AMENDMENT) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department of Enterprise, Trade and Investment ("the Department") in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. Insolvency legislation in Northern Ireland is kept as far as possible in parity with that applying in England and Wales.

4. The insolvency legislation applying in both jurisdictions needed to be updated to allow for the use of modern means of electronic communication and to do away with certain procedures and requirements which had outlived their usefulness.

5. The main piece of primary legislation applying to insolvency in GB is the Insolvency Act 1986 (c. 45). This Act was amended by the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010 No. 18) which came into force on 6 April 2010. This Order was made with the object of making the administration of insolvencies faster, more efficient and less expensive, by legitimising the use of up-to-date methods of communication and doing away with burdensome and unnecessary procedural requirements.

6. There is a need to make, where appropriate, similar changes to the main primary legislation applying to insolvency in Northern Ireland, the Insolvency (Northern Ireland) Order 1989 (NI 19) ("the Insolvency Order").

7. A second objective is to undo the provision in the Insolvency Order enabling discharge from bankruptcy to take place before the end of the first year if investigation is unnecessary or complete. The provision has been little used in Northern Ireland and the corresponding provision applying in England and Wales is in the process of being repealed because early discharge has proved costly to administer in comparison to the limited benefits it brings.

8. A third objective is to implement Treasury policy in Northern Ireland that, in the event of a bank or other deposit taking institution entering insolvency proceedings, deposits covered by the Financial Services Compensation Scheme should be treated as preferential debts.

9. A fourth objective is to tidy up the statute book by repealing the provisions in the Insolvency Order relating to Deeds of Arrangement which have fallen into disuse.

10. A fifth objective is to make sure that the Lord Chief Justice is consulted about the making of orders creating a right of appeal to the courts in respect of discretionary disqualification from office as a consequence of bankruptcy.

11. A sixth objective is to do away with authorisation of insolvency practitioners by competent authorities and to enable recognised professional bodies to authorise insolvency practitioners to take only personal or corporate insolvencies as an alternative to being authorised to deal with both.

12. A seventh objective is to undo the provision under which individuals other than insolvency practitioners could be authorised to act as nominees or supervisors in voluntary arrangements.

13. An eighth objective is to remove an obstacle to banks offering accounts to undischarged bankrupts by giving banks immunity from claims by trustees in respect of sums of money passing through a bankrupt's account unless the trustee has made a specific claim to them.

14. A ninth objective is to correct an error in Article 10 of the Insolvency (Northern Ireland) Order 2005 which would have frustrated Department's policy intention that it should have power to make orders providing for any credit union in Northern Ireland to be able to enter a company arrangement or administration.

15. A tenth objective is to make minor miscellaneous amendments to the Insolvency Order.

CONSULTATION

16. The Department carried out a public consultation on its proposals to bring in legislation to mirror the changes made by the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 and to repeal the Deeds of Arrangement provisions during the period 8 May to 31 July 2012. A letter was issued to over 450 individuals and organisations referring to a consultation document and list of questions on the Department's website. The consultation was also advertised in three Northern Ireland newspapers.

17. Seventeen responses were received, of which five made no comment. The other twelve supported the proposals, subject to adequate safeguards being put in place to prevent members of the public, especially the elderly and those living in rural areas, who do not have access to computers, being placed at a disadvantage.

18. There was a favourable response to the proposed abolition in England and Wales of the provision enabling discharge from bankruptcy to take place in less than a year and it is not considered that any factors exist in Northern Ireland to justify carrying out additional consultation on this issue.

19. The Department carried out an informal consultation with all Northern Ireland insolvency practitioners and the recognised professional bodies on its proposals to change the system of authorisation for insolvency practitioners during the period 16 September to 28 October 2013. Six responses were received.

20. All six respondents agreed with the proposal to end authorisation of insolvency practitioners by competent authorities. Three agreed that it should be possible for insolvency practitioners to be authorised to deal solely with personal or corporate cases as an alternative to being authorised to do both. The three bodies representing chartered accountants in the UK and Ireland did not. They considered that partial authorisation could lead to a lowering of professional standards and that being qualified in either personal or corporate insolvency only could lead to an inability to deal satisfactorily with cases involving an overlap between the two types of insolvency.

21. Under Article 10(4) of the EU Directive on Services (2006/123/EC) authorisation must permit the activity authorised to be carried out anywhere in the national territory. Authorisation can only be restricted to a specific part of a national territory if doing so can be objectively justified by an overriding reason relating to the public interest. Northern Ireland is not a nation in its own right but is part of the United Kingdom. Legislation to permit partial authorisation of insolvency practitioners has been brought in for the rest of the United Kingdom. For insolvency practitioners holding partial authorisation under GB legislation to be able to practise on the same basis in Northern Ireland, as they would be entitled to do under Article 10(4) of the EU Directive on Services, it is essential for a similar

system of partial recognition to be established in Northern Ireland. Nothing emerged from the consultation which would constitute an overriding reason for not doing so on the grounds of public interest.

22. The Department carried out an informal consultation with Northern Ireland insolvency practitioners and their recognised professional bodies, the Chancery Judge in the Northern Ireland High Court, the Master in Bankruptcy, banks and financial institutions and debt advice organisations on its proposal to amend the law to safeguard banks against retrospective claims by trustees in bankruptcy in respect of sums of money passing through a bankrupt's account. Seven responses were received. Apart from one respondent who confined themselves to stating that they had no comment all those who responded were strongly in favour of the proposed amendment.

23. The Department carried out an informal consultation with credit unions, the Irish League of Credit Unions, the Ulster Federation of Credit Unions and insolvency practitioners and their recognised professional bodies on its proposals to correct the error in Article 10 of the Insolvency (Northern Ireland) Order 2005 so that the Department would have power to make orders enabling any credit union to enter an arrangement or administration irrespective of which piece of legislation it was registered under. Only one response was received. It was from a credit union and was in favour of the proposed correction.

24. The Treasury consulted on a UK-wide basis on its policy of making deposits covered by the Financial Services Compensation Scheme preferential debts. In a summary of responses included with a document "Sound banking-delivering reform" which was published in October 2012 they state "there was relatively broad support for depositor preference".

25. It is not considered necessary to consult on the other proposals as no conceivable reason exists to alter them.

OPTIONS CONSIDERED

26. Legitimisation of the use of modern methods of communication in insolvency proceedings involves three separate proposals. They are,

- to put beyond doubt that documents transmitted and stored by electronic means are just as good and valid in law as paper ones
- to allow the use of websites to disseminate documents and information
- to make possible the use of suitable communications technology to save those wishing to take part in meetings having to travel to a single location.

27. Doing nothing would,

- mean that the validity of the use of modern paperless methods of communication by the insolvency profession would remain in doubt leading to insolvency practitioners erring on the side of caution by sending documents through the ordinary post at the cost of reduced payments to creditors
- deny to creditors in insolvency proceedings the cost-savings which would result from the use of websites to communicate large documents or documents required to be seen by a large number of people
- mean that creditors and members of companies wishing to take part in meetings would continue to have to spend time and money travelling to a physical location.

28. Current insolvency legislation does not sanction electronic communications for general use in insolvency proceedings; neither does it confirm that requirements to send, furnish or deliver documents can be met by displaying them on a website. Meetings are solely envisaged to be physical ones. Since the deficiency in all three instances is in legislation it can only be remedied by legislation.

29. The proposals to do away with unnecessary and burdensome requirements are,

(i) To remove the requirement for liquidators and trustees in bankruptcy to obtain sanction to compromise sums due to insolvent estates

Doing nothing would mean that, where it was obvious that it would be pointless or too expensive to pursue full recovery of debts due, liquidators and trustees would continue to have to go through the pointless formality of seeking sanction to settle for a lesser sum. The cost of their time spent doing so would continue to be met in the form of reduced payments to creditors.

As the requirements for sanction are in legislation, to wit, paragraph 3 of Schedule 2 and paragraphs 6 and 8 of Schedule 3 to the Insolvency Order, the policy objective of removing the requirements for sanction for the compromise of debts due can only be achieved by amending that Order.

(ii) To abolish the requirement for a meeting to receive a liquidator's annual account

Doing nothing would mean that in the case of voluntary liquidations time and money would continue to be wasted to the detriment of creditors/ company members holding meetings to receive the liquidator's account of

his acts and dealings and of the conduct of the winding up during the preceding year.

As the requirements to hold such meetings are in legislation, to wit, Articles 79 and 91 of the Insolvency Order, the policy objective of removing the requirements for sanction in relation to compromising the realisation of debts due can only be achieved by amending that Order.

(iii) To remove the requirement for a report to be filed in court in Individual Voluntary Arrangements where there is no interim order

Doing nothing would mean that, in cases where a debtor has not considered it necessary to involve the Court by seeking an Order giving them protection from action by their creditors while attempting to set up an individual voluntary arrangement, the insolvency practitioner acting for them as nominee would still be obliged to file a report in Court on the debtor's proposal. The creditors, to whom the report would be of interest, would be denied the benefit of a statutory right to see the report in full.

As the requirement for a report to be submitted to the Court in cases not involving the protection of the Courts is in legislation, to wit, Article 230A of the Insolvency Order, the only way to achieve the policy aim of removing that requirement is through legislation.

30. Doing nothing to alter the law enabling discharge from bankruptcy to take place before the first year is up if investigation is unnecessary or concluded would place the Department at continuing risk of coming under pressure to implement this measure in full with all the expense that doing so would entail.

31. Doing away with the possibility of early discharge would result in all bankrupts being discharged automatically after 12 months providing they were not subject to any restrictions and their discharge had not been suspended. This would avert any possibility of the Official Receiver, business, HMRC and the Northern Ireland Courts and Tribunals Service being burdened by additional administrative costs through the early discharge regime having to be fully implemented in Northern Ireland. As the power to discharge bankrupts early is contained in legislation, to wit, Article 253 of the Insolvency Order, it can only be removed by legislation.

32. Doing nothing to make deposits covered by the Financial Services Compensation Scheme preferential debts would impair the operation and financing of the scheme because it would not have the same right to be reimbursed out of the assets of a failed bank or other deposit taking institution in Northern Ireland in respect of money paid out to depositors as it would in the rest of the UK.

33. Categorising deposits covered by the Financial Services Compensation Scheme as preferential debts would give the scheme the same right to recover payments made to depositors out of the assets of a failed bank or other deposit taking institution in Northern Ireland as elsewhere in the UK. Other deposit-takers throughout the UK would not have to pay extra to cover proportionately greater losses in Northern Ireland. As debts are categorised as preferential by being listed in Schedule 4 to the Insolvency Order the policy objective of making deposits covered by the Financial Services Compensation Scheme preferential debts can only be achieved by legislation.

34. Doing nothing to end authorisation of insolvency practitioners by competent authorities would mean the continued existence of a small minority subject to a less effective disciplinary regime than the majority authorised by recognised professional bodies. Doing nothing to provide the option of being authorised as an insolvency practitioner to take only personal or corporate cases would leave those wanting to enter the profession having to qualify in both areas even if they only intended to practise in one of them. It would result in partially authorised practitioners in GB not being able to practise on the same basis in Northern Ireland. This would contravene Article 10(4) of the EU Directive on Services (2006/123/EC) which provides that authorisation should, as a general rule, permit the exercise of a service activity throughout the national territory.

35. Repeal of the provision for authorisation of insolvency practitioners by competent authorities would result in a single system of authorisation and a uniform disciplinary regime for insolvency practitioners. Legislating to bring in partial authorisation for insolvency practitioners would save those wishing to enter that profession having to undertake unnecessary study and is needed to ensure compliance with Article 10(4) of the EU Directive on Services.

36. Doing nothing to undo the provision allowing individuals other than insolvency practitioners to be authorised to act as nominees and supervisors in voluntary arrangements would result in a provision remaining on the statute book in Northern Ireland the GB equivalent of which has been repealed on the grounds that it is defective.

37. Repeal of the provision would avoid any risk to the public arising from the absence of any requirement under the provision for non-insolvency practitioners acting as nominees or supervisors to be suitably qualified.

38. Doing nothing to give banks immunity from claims by trustees in respect of transactions on bankrupts' accounts would leave banks at risk of incurring financial loss if they allow bankrupts to have accounts.

39. Legislating to give banks immunity from claims by trustees would remove a disincentive to banks allowing bankrupts to have accounts.

40. Doing nothing to correct the error in Article 10 of the Insolvency (Northern Ireland) Order 2005 (N.I. 10) would mean that the Department would have power under paragraph (2) of that Article to make orders enabling credit unions to enter a company arrangement or administration where a credit union had been registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 but not where it had been registered under the Credit Unions (Northern Ireland) Order 1985.

41. As the error is in legislation it can only be corrected by legislation.

42. Doing nothing about the presence of provision for Deeds of Arrangement in the Insolvency Order would result in something which is no use being retained for no good reason.

43. As the provision for Deeds of Arrangement is in legislation the only way to remove it is by legislation to repeal it.

44. Doing nothing would maintain the unsatisfactory position of the Lord Chief Justice not having a statutory right to be consulted about the making of orders creating a right of appeal in respect of the exercise of discretion to disqualify individuals from certain posts if they become bankrupt.

45. The alternative is to amend Article 24 of the Insolvency (Northern Ireland) Order 2005 with effect that orders providing for discretionary decisions to be subject to appeal to a court can only be made after consultation with the Lord Chief Justice.

46. The minor miscellaneous amendments to the Insolvency Order include,

(i) Abolition of the requirement for the notices of the creditors' meetings in creditors' voluntary liquidations and in members' voluntary liquidations where it has been discovered that the company is insolvent to be sent by post.

Doing nothing would leave in place specific statutory requirements for the notices of meetings which have to be issued to creditors to be sent through the post, which would be contrary to the general policy that it should be possible to use modern electronic methods of communication.

As the requirements for the notices to be sent by post are in legislation, to wit, Articles 81 and 84 of the Insolvency Order, legislation is required to remove them.

(ii) Putting in place in primary legislation a requirement for the Official Receiver to notify the Department whether or not a proposal for a fast-

track voluntary arrangement has been approved or rejected by the creditors.

Doing nothing would leave the Department without a statutory right to be informed of the creditors' decision whether or not to accept a bankrupt's proposal for a fast-track voluntary arrangement, which is a type of arrangement which can only be entered into by bankrupts and where the nominee must be the Official Receiver. Having this information would assist the Department to comply with its duty to maintain a register of all individual voluntary arrangements.

Rule 5.44(1) of the Insolvency Rules (Northern Ireland) 1991 requires the Official Receiver to give written notice to the Department if he is appointed as supervisor of a voluntary arrangement. To achieve the policy aim of supplementing this requirement with a clear requirement in primary legislation for the Official Receiver to notify the Department whether or not a proposal for a fast-track voluntary arrangement has been accepted requires an amendment to primary legislation.

OVERVIEW

47. The Bill consists of 22 clauses and 3 Schedules.

COMMENTARY ON CLAUSES

Clause 1: Attendance at meetings and use of websites

48. Clause 1 inserts new Articles 208ZA, 208ZB, 345A and 345B into the Insolvency Order.

Article 208ZA

49. Article 208ZA allows meetings to be held in company insolvency proceedings without the participants having to be present at a single physical location.

50. Paragraph (1) of Article 208ZA provides for that Article to apply to two kinds of meetings. It applies to meetings of the creditors of a company summoned under the Insolvency Order or rules made under Article 359 thereof. It applies to meetings of the members or contributories of a company summoned by the office-holder under the Insolvency Order or rules made under Article 359 thereof, with the exception that it does not apply to meetings of the members of a company in a members' voluntary winding up.

51. Paragraph (2) of Article 208ZA provides that, where the person summoning a meeting ("the convener") considers it appropriate, a meeting can be conducted and held in such a way that people can attend it without having to be present together at the same place.

52. Paragraph (3) of Article 208ZA defines attendance at a meeting for the purposes of paragraph (2) as being able to exercise whatever rights a person has to speak and vote at the meeting.

53. Paragraph (4) of Article 208ZA provides that for the purposes of that Article a person is able to exercise the right to speak at a meeting if, during the time that the meeting is in progress, it is possible for them to communicate any information or opinions they have on the business of the meeting to everyone else attending it. Paragraph (4) further provides that for the purposes of Article 208ZA a person is able to exercise the right to vote at a meeting if it is possible for them to vote during the time that the meeting is in progress on any resolutions which are put to the vote, and if their vote can be counted at the same time as the votes of everyone else attending the meeting.

54. Paragraph (5) of Article 208ZA places the person summoning a meeting which is to be held in such a way that it can be attended by persons who are not present together at the same place under a duty to make whatever arrangements he considers appropriate to check the identity of those attending, to ensure that they can exercise their right to speak and vote and to make sure that any electronic means used to enable attendance is secure.

55. Paragraph (6) of Article 208ZA provides that, where there is a requirement under the Insolvency Order or rules made under Article 359 thereof to specify a place for a meeting, in certain circumstances it will be sufficient to specify what arrangements are being made to enable those entitled to attend the meeting to exercise their right to speak and vote. The circumstances are that in the reasonable opinion of the person calling the meeting, it will be attended by persons who will not be present together at the same place and it is unnecessary or inexpedient to specify a place for the meeting.

56. Paragraph (7) of Article 208ZA provides that, when making the arrangements mentioned in paragraph (5) and forming an opinion that a meeting may be held without specifying that it is to be at a particular location, the convener is required to have regard to the legitimate interests of those who will be attending the meeting in the efficient despatch of the business of the meeting.

57. Paragraph (8) of Article 208ZA places the convener of a meeting under a duty to specify a place for meeting if, following the issue of a notice of the meeting which does not specify a place, a certain minimum percentage of those entitled to attend request that one should be specified. That percentage is, in the case of a meeting

of creditors or contributories, at least ten percent of them by value, and, in the case of a meeting of members, members representing at least ten percent of the total voting rights.

58. Paragraph (9) of Article 208ZA provides a definition of the term "the office-holder" as used in that Article.

Article 208ZB

59. Paragraph (1) of Article 208ZB applies in the case of company insolvency and enables an office-holder to comply with requirements in the Insolvency Order and rules made under Article 359 thereof to provide notices, documents or information by making them available on a website. This is subject to the proviso that this can only be done in prescribed circumstances and must be done in accordance with the rules.

60. Paragraph (2) of Article 208ZB provides a definition of the term "the office-holder" as used in that Article.

Article 345A

61. Article 345A allows meetings to be held in individual insolvency proceedings without the participants having to be present at a single physical location.

62. Paragraph (1) of Article 345A provides for that Article to apply to meetings of an individual's creditors summoned under the Insolvency Order or rules made under Article 359 thereof in certain circumstances. The circumstances are where a bankruptcy order has been made against the individual, where an interim receiver of their property has been appointed or where they are proposing or have had approved a voluntary arrangement under Chapter 2 of Part 8 of the Insolvency Order.

63. Paragraph (2) of Article 345A provides that, where the person summoning a meeting ("the convener") considers it appropriate, a meeting can be conducted and held in such a way that people can attend it even though they are not present together at the same place.

64. Paragraph (3) of Article 345A defines attendance at a meeting for the purposes of paragraph (2) as being able to exercise whatever rights a person has to speak and vote at the meeting.

65. Paragraph (4) of Article 345A provides that for the purposes of that Article a person is able to exercise the right to speak at a meeting if, during the time that the meeting is in progress, it is possible for them to communicate any information or opinions they have on the business of the meeting to everyone else attending it.

Paragraph (4) further provides that for the purposes of Article 345A a person is able to exercise the right to vote at a meeting if it is possible for them to vote during the time that the meeting is in progress on any resolutions which are put to the vote, and if their vote can be counted at the same time as the votes of everyone else attending the meeting.

66. Paragraph (5) of Article 345A places the person summoning a meeting which is to be held in such a way that it can be attended by persons who are not present together at the same place under a duty to make whatever arrangements he considers appropriate to check the identity of those attending, to ensure that they can exercise their right to speak and vote and to make sure that any electronic means used to enable attendance is secure.

67. Paragraph (6) of Article 345A provides that where there is a requirement under the Insolvency Order or rules made under Article 359 thereof to specify a place for a meeting, in certain circumstances it will be sufficient to specify what arrangements are being made to enable those entitled to attend the meeting to exercise their right to speak and vote. The circumstances are that in the reasonable opinion of the person calling the meeting, it will be attended by persons who will not be present together at the same place and it is unnecessary or inexpedient to specify a place for the meeting.

68. Paragraph (7) of Article 345A provides that, when making the arrangements mentioned in paragraph (5) and forming an opinion that a meeting may be held without specifying that it is to be at a particular location, the convener is required to have regard to the legitimate interests of those who will be attending the meeting in the efficient despatch of the business of the meeting.

69. Paragraph (8) of Article 345A places a person summoning a meeting under a duty to specify a place at which to hold it if, in response to the issue of a notice of the meeting which does not specify a place, at least ten percent of the creditors by value request that one should be specified.

Article 345B

70. Paragraph (1) of Article 345B provides for that Article to apply where a bankruptcy order has been made against the individual, where an interim receiver of their property has been appointed or where they are proposing or have had approved a voluntary arrangement under Chapter 2 of Part 8 of the Insolvency Order. Paragraph (1) also provides a definition of the term "the office-holder" as used in Article 345B.

71. Paragraph (2) of Article 345B enables an office-holder to comply with requirements in the Order and rules made under Article 359 thereof to provide notices, documents or information by making them available on a website. This is

subject to the proviso that this can only be done in prescribed circumstances and must be done in accordance with the rules.

Clause 2: References to things in writing

72. Clause 2 inserts new Article 2B into the Insolvency Order.

73. Paragraphs (1) and (2) of new Article 2B apply references in the Insolvency Order to things in writing to those same things if they are in electronic form, subject to certain listed exceptions.

74. Subsection (2) of Clause 2 provides for the repeal of paragraph 1(2) of Schedule B1 to the Insolvency Order. Paragraph 1(2) of Schedule B1 provided for references within that Schedule to things in writing to be treated as including reference to those things in electronic form.

Clause 3: Removal of requirement for annual meetings in a members' voluntary and a creditors' voluntary winding up

75. Subsection (1) substitutes Article 79 of the Insolvency Order with a new provision. The Article as substituted provides that if a members' voluntary liquidation lasts for longer than one year the liquidator has to produce a progress report on prescribed matters for each prescribed period and send a copy of it within such further period as may be prescribed to the members of the company and any other persons who are prescribed. Paragraph (2) of the Article as substituted makes it an offence punishable by a fine for a liquidator to fail to comply with the Article.

76. Subsection (2) substitutes Article 91 of the Insolvency Order with a new provision. The Article as substituted provides that if a creditors' voluntary liquidation lasts for longer than one year the liquidator has to produce a progress report on prescribed matters for each prescribed period and send a copy of it within such further period as may be prescribed to the members and creditors of the company and any other persons who are prescribed. Paragraph (2) of the Article as substituted makes it an offence punishable by a fine for a liquidator to fail to comply with the Article.

77. Subsection (3) amends Schedule 7 to the Insolvency Order to set the fines for failure to comply with the requirements to issue progress reports under Articles 79 and 91 as substituted.

Clause 4: Requirements in relation to meetings under Articles 81 and 84 of the Insolvency Order

78. Clause 4 removes the requirement for notice of creditors' meetings in both members' and creditors' voluntary liquidations to be sent by post.

Clause 5: Individual voluntary arrangements: removal of requirement to submit a nominee's report to the High Court

79. Subsection (1) makes two amendments to Article 230A of the Insolvency Order. Article 230A applies where the debtor has not sought protection from the High Court in the form of an interim order. The amendments have the effect that in cases where Article 230A applies a nominee no longer prepares a report to the High Court but prepares a report to the debtor's creditors.

80. Subsection (2) substitutes a new paragraph for paragraph (1) of Article 231 of the Insolvency Order. Paragraph (1) as substituted provides for either reporting to the High Court or to the creditors under Article 230A to be the event triggering the requirement for the nominee to summon a meeting of the debtor's creditors. The High Court is given power to direct otherwise, but only in cases to which Article 230 applies i.e. interim order cases.

81. Subsection (3) amends paragraph (2) of Article 233 of the Insolvency Order to reflect the fact that it is only in cases where a voluntary arrangement has been proposed under Article 230 that an interim order will exist to be discharged by the High Court.

Clause 6: Fast-track voluntary arrangements: notification of the Department

82. Clause 6 amends Article 237C of the Insolvency Order by adding a requirement for the Official Receiver to notify the Department as well as report to the High Court whether a proposal by a bankrupt for a voluntary arrangement with the Official Receiver acting as nominee (a so-called "fast-track" voluntary arrangement) has been approved or rejected by the bankrupt's creditors.

Clause 7: Powers of liquidator exercisable with or without sanction in a winding up

83. Clause 7 effects the removal of the powers exercisable by a liquidator under paragraph 3 of Part 1 of Schedule 2 to the Insolvency Order out of that Part and reinserts them in Part 3 of that Schedule. The powers transferred are to compromise calls, debts, and claims due to companies and all questions relating to the assets or winding up of the company. The effect of the transfer is to empower liquidators to reach compromises without having to seek sanction from the liquidation committee, the Court, a meeting of the company's creditors, or the members of the company by extraordinary resolution, as the case may be. A

proviso is added that the power in paragraph 7A(b) as transferred is subject to paragraph 2 in Part 1 of the Schedule, so that sanction will still be required to enter a compromise with creditors or others with a claim against the company.

Clause 8: Powers of trustee exercisable with or without sanction in a bankruptcy

84. Clause 8 effects full removal of the powers exercisable by a trustee under paragraph 6 of Part 1 of Schedule 3 to the Insolvency Order and partial removal of those exercisable under paragraph 8 and reinserts both sets of powers in Part 2 of Schedule 3. The powers transferred are to refer to arbitration or to compromise debts and claims due to bankrupts and to make a compromise or arrangement in respect of any claim on any person in connection with a bankrupt's estate. The effect of the transfer is to empower trustees to exercise these powers without having to seek sanction from the Court, the creditors' committee or the Department.

Clause 9: Definition of debt

85. Subsection (2) amends Article 2 of the Insolvency Order by providing a substitute for paragraph (3) and inserting a new paragraph (3A). The effect is to separate the criteria governing admissibility of a liability in tort in bankruptcy from those applying in the case of company administration or winding up.

86. Substitute paragraph (3) specifies the criterion governing whether any liability in tort is a bankruptcy debt. A bankrupt's liability in tort is treated as having arisen as a consequence of an obligation incurred at the time that the cause of action accrued.

87. New paragraph (3A) establishes new criteria for deciding whether a liability in tort is provable in a company administration or winding up. It will be provable if the cause of action had accrued or all the elements necessary to establish the cause of action except for actionable damage existed before the company went into liquidation or entered administration. In a case where a company has been in the two procedures consecutively it will be provable if the cause of action had accrued, or all the elements necessary to establish the cause of action except for actionable damage, existed before it entered the first procedure.

88. Subsections (3) and (4) amend Article 5 of the Insolvency Order. The qualification made in the definition of "debt" in paragraph (1) of that Article is amended to refer to Article 2(3A) in recognition of the fact that it is now that paragraph which deals with whether a liability in tort is provable in a company administration or winding up. Amendments made to the definition of "debt" in Article 5(1) by paragraphs (b) to (d) of subsection (3) together with the insertion

of new paragraph (1A) by subsection (4) serve to clarify that where liquidation is immediately preceded by administration or vice versa it is the date on which the company entered the earlier proceedings which determines whether debts, liabilities and interest on debt are to be treated as debt for the purposes of the Insolvency Order.

89. Subsection (5) makes clear that the explanation of the term "the relevant date" in Article 347 of the Insolvency Order does not apply to that term as used in new paragraph (1A) of Article 5.

Clause 10: Treatment of liabilities relating to contracts of employment

90. Clause 10 provides for repeal of provisions in the Insolvency Order relating to a type of holiday arrangement which is illegal under the Working Time Regulations (Northern Ireland) 1998 (SI 1998 No. 386).

91. Articles 31(10) and 54(2D) of the Insolvency Order and paragraph 100(6)(d) of Schedule B1 and paragraph 15(b) of Schedule 4 to that Order refer to sums which would have been treated as earnings in respect of a holiday period for the purposes of the statutory provisions relating to social security. This was to cover a feature of certain contracts of employment, termed "year-in-hand" schemes, whereby workers accrued rights to a paid holiday in respect of the succeeding year. Social security legislation provides for holiday entitlement under such schemes to be counted as having accrued in the year in which it is earned, despite the fact that the holiday cannot be taken until the following year.

92. The references to sums which would have been treated as earnings in respect of a holiday period for the purposes of the statutory provisions relating to social security are now redundant as "year in hand" schemes are not allowed under the Working Time Regulations (Northern Ireland) 1998. All employees now accumulate leave at the rate of one-twelfth of their annual entitlement at the beginning of each month.

93. Subsection (2) of clause 10 repeals paragraph (10) of Article 31 of the Insolvency Order, subsection (3) repeals paragraph (2D) of Article 54 of that Order, subsection (4) repeals paragraph 100(6)(d) of Schedule B1 to that Order and subsection (5) repeals paragraph 15(b) of Schedule 4 to that Order.

Clause 11: Deeds of arrangement

94. Subsection (1) repeals Chapter 1 of Part 8 of the Insolvency Order which dealt with deeds of arrangement.

95. Subsection (2) enables the Department to make orders amending statutory provisions, including repealing and revoking them, to take account of the repeal of Chapter 1 of Part 8 of the Insolvency Order.

96. Subsection (3) provides that orders under subsection (2) must be laid and approved by resolution of the Assembly before being made.

Clause 12: Bankruptcy: early discharge procedure

97. Clause 12 repeals Article 253(2) of the Insolvency Order which allows a bankruptcy to end within one year if the Official Receiver files a notice with the High Court stating that investigation is unnecessary or concluded.

Clause 13: After-acquired property of bankrupt

98. Clause 13 amends Article 280 of the Insolvency Order to facilitate banks offering accounts to undischarged bankrupts.

99. Article 280 allows a trustee in bankruptcy to claim by notice after-acquired property, that is anything which becomes the property of the bankrupt before they are discharged (usually 12 months after the bankruptcy order was made). Where that property is or becomes money that passes through a bank account, and the trustee is unable to recover it from the bankrupt or ultimate recipient, the trustee may claim against the bank for its loss to the bankrupt's estate. Currently the trustee can consider such a claim as the bank would have been aware of the bankruptcy order.

100. Article 280(4) of the Insolvency Order prevents the trustee from taking action against certain persons who have dealt with after-acquired property in good faith and without notice of the bankruptcy – namely persons acquiring property for value and bankers entering into transactions. The amendment takes bankers outside the scope of Article 280(4) and instead provides protection for them by means of a new paragraph (4A) inserted into Article 280. The new paragraph (4A) prevents a trustee making a claim against a bank in circumstances where the bank has not been served with notice by the trustee specifically regarding the after-acquired property he or she wishes to claim, regardless of whether the bank has notice of the bankruptcy.

Clause 14: Preferential debts

101. Clause 14 makes amendments to the Insolvency Order to ensure that the specified class of deposits are treated as preferential debts in insolvency.

102. Subsection (2) amends Article 346 of the Insolvency Order by adding deposits covered by the Financial Services Compensation Scheme to the list of preferential debts.

103. Subsection (3) inserts new paragraphs 18 and 19 into Schedule 4 to the Insolvency Order.

104. Paragraph 18 defines the new category of preferential debts. Where a deposit is within the scope of the financial services compensation scheme ("FSCS") it will be a preferential debt. Where a deposit is not eligible for protection under the FSCS, it will not be a preferential debt. If a single depositor has a very large deposit, part of which is not eligible for protection under the FSCS, only the part of that deposit which is covered by the FSCS will be a preferential debt. The remainder of the deposit will not be a preferential debt; it will rank equally to other non-preferred unsecured debts.

105. Paragraph 19 defines the terms "eligible deposit" and "deposit" for the purposes of the new category of preferential debts. Deposits which were held in dormant accounts and have been transferred to authorised reclaim funds under the Dormant Bank and Building Societies Accounts Act 2008 are included in the definition of "deposit".

Clause 15: Authorisation of insolvency practitioners

106. Clause 15 amends Part 12 of the Insolvency Order to introduce a new regime allowing for the partial authorisation of insolvency practitioners. Currently, individuals who are authorised to act as an insolvency practitioner are authorised in relation to all categories of appointment. Under the new regime a person may be authorised to act only in relation to companies or only in relation to individuals.

107. The main amendments are made by subsections (2) and (3). A new Article 349A will be inserted to provide that an insolvency practitioner who is partially authorised will be authorised to act only in relation to companies, or only in relation to individuals. It will also provide for a person to be fully authorised to act as an insolvency practitioner and practise in all categories of appointment. Individuals who are already authorised to act as an insolvency practitioner will be fully authorised.

108. A new Article 349B will be inserted to prevent insolvency practitioners who are partially authorised from accepting appointments to act in relation to a company or individual that is, or was, a member of a partnership that has outstanding liabilities. Such appointments require an individual to be fully authorised because

this type of insolvency requires knowledge of both company and individual insolvency law. If a partially authorised insolvency practitioner becomes aware that they have been appointed to act in relation to such a company or individual, they will commit an offence if they continue to act in that insolvency without the court's permission. There is provision for the insolvency practitioner to be able to continue to act for a limited period without committing an offence whilst the court's permission is obtained. There is also provision for the insolvency practitioner to be able to continue to act for a limited period (without committing an offence) whilst applying for a court order appointing a fully authorised person to act in his or her place.

109. Subsection (4) of clause 15 substitutes Article 350 of the Insolvency Order. The substituted Article 350 enables the Department to recognise a professional body for the purposes of granting either full or partial authorisations to its insolvency specialist members, or for the purposes of granting only partial authorisations, provided that the body regulates the practice of a profession and maintains and enforces certain rules. The Department must revoke a professional body's recognition where it appears that the body no longer meets the relevant requirements. The Department may also revoke recognition of a professional body in relation to full authorisation and replace it with recognition in relation to partial authorisations only. The Department will be able to make transitional provisions to treat the body's insolvency specialist members as fully or partially authorised, as the case may be, for a specified period after recognition is revoked, or revoked and replaced. Bodies already recognised under existing provisions will be recognised as if capable of providing their insolvency specialist members with full and partial authorisation (see paragraph (7) of clause 15).

110. Subsection (5) of clause 15 repeals Articles 351 to 354 of the Insolvency Order which provided for the grant, refusal and withdrawal of authorisation to act as an insolvency practitioner to be carried out by competent authorities. As the Department is the only competent authority in Northern Ireland the effect of the repeal is that authorisation of individuals to act as insolvency practitioners will no longer be undertaken by the Department and will instead be carried out solely by professional bodies recognised by the Department for the purpose.

111. Under Article 361A of the Insolvency Order the Department has the power to charge professional bodies a fee in connection with granting or maintaining recognition of the body under Article 350. Subsection (6) makes two amendments to Article 361A in consequence of the new substituted Article 350. The first amendment extends the Department's power to refuse recognition, or to make an order revoking an order of recognition, in the case of non-payment of fees, to cover bodies which have applied for or been granted recognition under Article 350(2) to provide their insolvency specialist members with partial authorisation only. The second is to enable the Department to vary the fee depending on

whether the body is recognised to provide full and partial authorisations or partial authorisations only.

Clause 16: Power to make regulations

112. Clause 16 amends Article 363 of the Insolvency Order to give the Department power to make regulations to give effect to Part 12 of that Order.

Clause 17: Company arrangement or administration provision to apply to a credit union

113. Clause 17 amends Article 10(2) of the Insolvency (Northern Ireland) Order 2005 (S.I. 2005 No. 1455 (N.I.10)) to make it possible for the Department to make orders enabling societies registered under the Credit Unions (Northern Ireland) Order 1985 as well as societies registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 to enter a company arrangement or administration.

Clause 18: Disqualification from office: duty to consult the Lord Chief Justice

114. Clause 18 amends paragraph (7) of Article 24 of the Insolvency (Northern Ireland) Order 2005 to create a requirement for the Lord Chief Justice to be consulted about the making of orders creating a right of appeal to a court in respect of discretionary decisions to disqualify bankrupts from offices or positions.

Clause 19: Interpretation

115. This clause defines a number of terms used in the Act.

Clause 20: Transitional provisions, minor and consequential amendments and repeals

116. Subsection (1) of clause 20 introduces Schedule 1 which makes transitional provisions in respect of sections 3, 4, 5, 7, 8 and 9 and with regard to the repeal of the provisions in the Insolvency Order for the authorisation of insolvency practitioners by competent authorities.

117. Subsection (2) of clause 20 gives effect to the amendments set out in Schedule 2 and subsection (3) gives effect to the repeals set out in Schedule 3.

Clause 21: Commencement

118. Subsection (1) provides for sections 19, 21 and 22 to come into operation on the next day after the Act receives Royal Assent.

119. Subsection (2) provides for commencement of the other provisions of the Act by order made by the Department.

120. Subsection (3) provides that an order under subsection (2) can contain such transitional or saving provisions as the Department considers appropriate.

Clause 22: Short title

121. This Act may be cited as the Insolvency (Amendment) Act (Northern Ireland) 2014.

Schedule 1: Transitional Provisions

122. This Schedule lists the transitional and saving provisions necessary to the Act. Paragraphs 11 to 16 make transitional and saving provisions for two categories of individual, those authorised by the Department to act as an insolvency practitioner at the date the repeals made by subsection (5) of clause 15 take effect and those who have applied to the Department for authorisation by that date but whose application has not been dealt with. Those who are already authorised will continue to be authorised for a period of one year after the repeals take effect. Those who apply to the Department for authorisation before the repeals made by subsection (5) of clause 15 take effect will have their applications determined in accordance with the existing provisions.

Schedule 2: Minor and Consequential Amendments

123. This Schedule makes amendments to the Solicitors (Northern Ireland) Order 1976, the Insolvency (Northern Ireland) Order 1989, the Pensions (Northern Ireland) Order 2005 and the Insolvency (Northern Ireland) Order 2005.

124. Articles 103(1), 186(1)(a), 242(1)(a) and 242(2)(a) of the Insolvency Order are amended to achieve greater standardisation of the wording used in these provisions which deal with the service of statutory demands on companies and individuals.

125. An amendment to Article 185 of the Insolvency Order in conjunction with the repeal of words in paragraph (2) of that Article by Schedule 3 results in an unregistered company's principal place of business in Northern Ireland being deemed to be its registered office for the purposes of winding up.

126. Paragraphs 9 and 10 repeal Articles 348(1A) and 348A of the Insolvency Order which allowed individuals to be authorised to act solely as nominees or supervisors in voluntary arrangements.

127. Paragraph 11 repeals Article 361A(2) which provided for the charging of a fee by the Department for authorisation to act as an insolvency practitioner.

128. Paragraph 12 puts right an error in paragraph 1A of Schedule B1 to the Insolvency Order by providing that the bar on companies with a principal place of business in GB entering administration unless that they also have a principal place of business in Northern Ireland applies to companies which are incorporated outside the United Kingdom, not companies incorporated outside Northern Ireland.

129. Paragraph 13 repairs the omission of words which should have been included at the beginning of paragraph (3) of Schedule 1 to the Insolvency Order.

Schedule 3: Repeals

130. This Schedule lists the repeals brought in by the Act.

FINANCIAL EFFECTS OF THE BILL

131. There is no financial cost to government. It has been calculated that the Bill proposals could result in net savings of £2,275,000 for insolvency practitioners over the period it takes to deal with all insolvency procedures entered into in one year. Some at least of this saving could be expected to be passed on to creditors in the form of increased dividends. It has been calculated that over the same period there would be savings of £19,000 for the Official Receiver, £2,800 for business and £23,740 for HMRC and the Northern Ireland Courts and Tribunals Service.

HUMAN RIGHTS ISSUES

132. The provisions of the Bill are considered to be compatible with the Convention on Human Rights.

133. The effect of subsection (5) of clause 15 is that insolvency practitioners authorised by the Department will not be able to continue to act as insolvency practitioners after a transitional period of one year after the repeals in subsection (5) of clause 15 take effect, unless they have secured alternative authorisation from one of the professional bodies recognised for that purpose by the Department. Article 1 of Protocol 1 of the ECHR (protection of property) is engaged because the loss of a person's authorisation as an insolvency practitioner will lead to loss of a possession, which is the economic value of marketable goodwill in that person's business.

134. However, in the Government's view the interference with Article 1 of Protocol 1 is in the public interest. It will improve the overall regulation of insolvency practitioners and public confidence in the arrangements for their authorisation in that it will remove the preconceived conflict of interest between the Department's role as the oversight regulator of the insolvency practitioner profession and its role as a direct authoriser of insolvency practitioners. The government also considers that the interference is proportionate and strikes a fair balance. In particular, insolvency practitioners who are authorised by the Department will not have their authorisation removed immediately once the repeals take effect. Their authorisation will continue for one year after the commencement of the repeals and they may use that period to seek alternative authorisation from one of the recognised professional bodies. The five professional bodies which they would be eligible to apply to have all indicated that they would be happy to authorise the insolvency practitioners authorised by the Department. The authorisation requirements of the recognised professional bodies are broadly the same as each other and the same as those of the Department.

135. For these reasons the government considers that the proposed amendments are compatible with the ECHR.

EQUALITY IMPACT ASSESSMENT

136. As a result of equality impact screening which has been carried out it is not considered that the Bill will have any adverse or negative impact on any of the sections of the community specified in section 75 of the Northern Ireland Act 1998.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

137. A Regulatory Impact Assessment has shown that the Bill objectives can only be achieved by legislative change and has shown the existence of cost savings or other tangible benefits sufficient to justify legislative change. The Regulatory Impact Assessment can be viewed at

    www.detini.gov.uk/insolvency

LEGISLATIVE COMPETENCE

The Minister of Enterprise, Trade and Investment has made the following statement under section 9 of the Northern Ireland Act 1998:

> *"In my view the Insolvency (Amendment) Bill would be within the legislative competence of the Northern Ireland Assembly."*

Correspondence from the Minister regarding the Insolvency (Amendment) Bill - June 2014

From the Office of the Minister

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Patsy McGlone MLA
Chair, Committee for Enterprise, Trade and Investment
Room 375
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BELFAST
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6 June 2014

Dear Patsy

THE INSOLVENCY (AMENDMENT) BILL

I wish to advise the ETI Committee that I have decided to accept an offer of assistance from the Treasury to amend Northern Ireland legislation applying to insolvency.

The Economic Secretary to the Treasury, Andrea Leadsom MP, has written to me advising that the imminent introduction by the EU of the Bank Recovery and Resolution Directive (BRRD) makes it essential to have provision in place throughout the UK by 31 December 2014 to give preferential treatment to deposits covered by the Financial Services Compensation Scheme (FSCS). In addition, changes to legislation must be made to create an additional sub-preferred category of debt for amounts over this limit and deposits held with branches of European Economic Area banks situated outside that area.

The FSCS, which operates throughout the UK, undertakes to reimburse customers of banks and other financial institutions with deposits covered by the scheme by up to £85,000 in the event of the bank or institution becoming insolvent.

The Insolvency Act 1986, applying in England and Wales, and the Bankruptcy (Scotland) Act 1985 have already been amended by section 13 of the Financial Services (Banking Reform) Act 2013 to give preferential treatment to deposits covered by the Financial Services Compensation Scheme (FSCS). Provision to implement this change in Northern Ireland was also included, at clause 14, of our proposed Insolvency (Amendment) Bill.

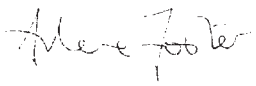
However, the Insolvency (Amendment) Bill will not be introduced in the Assembly until June 2014 at the earliest and there is no possibility of it becoming law in time to meet the 31 December 2014 deadline for transposition of the BRRD. Also, it does not deal with further amendments which will be required to the Insolvency (Northern Ireland) Order 1989 and to the Insolvent Partnerships Order (Northern Ireland) 1995 to create the new category of sub-preference which it has emerged will be needed to fully comply with the BRRD Directive.

Andrea Leadsom MP has offered to deal with these difficulties by making all the necessary amendments required to Northern Ireland legislation through a UK wide Statutory Instrument which the Treasury are planning to make under the European Communities Act 1972.

In view of the overriding need to meet the 31 December 2014 deadline for having legislation in place in all parts of the UK to meet the requirements of the BRRD, I have agreed to the necessary amendment to the two pieces of Northern Ireland legislation being made by this Statutory Instrument.

My officials will therefore be asking Legislative Counsel to remove clause 14 from the Insolvency (Amendment) Bill.

Yours sincerely



ARLENE FOSTER MLA
Minister of Enterprise, Trade and Investment

Departmental response to Committee query on Insolvency (Amendment) Bill

Request to DETI from the ETI Committee

At its meeting on 13 January 2015 officials briefed the ETI Committee on the Insolvency (Amendment) Bill.

Members asked the Department to

a. provide clarification that PricewaterhouseCoopers and Cavanagh Kelly fully understand the position regarding full and partial authorisation and to inform the Committee that this has been done

b. comment on the following advice received from the Examiner of Statutory Rules:

"Clause 11 contains a power to allow the Department to make orders subject to draft affirmative procedure amendments (including repeals) consequential upon the repeal of the provisions in respect of deeds of arrangement in Chapter 1 of Part 8 of the Insolvency Order. That seems to be appropriate, except that the Department might perhaps wish to amend clause 11 so that orders making consequential amendments and repeals in respect of primary legislation (provisions contained in an Act of Parliament or in Northern Ireland legislation as defined in the Interpretation Act (Northern Ireland) 1954) were subject to draft affirmative, while consequential amendments (and revocations) in respect of subordinate legislation were subject to negative resolution."

Departmental Response

a. The Department has contacted Sean Cavanagh of Cavanagh Kelly and Stephen Cave of PricewaterhouseCoopers who have replied confirming that they both understand that full authorisation will continue to be available to insolvency practitioners as well as the option of being partially authorised to take only company or individual cases. (Copy of emailed responses attached separately)

b. Legislative Counsel has agreed to alter the type of Assembly control required for orders made clause 11 of the Bill in the way suggested by the Examiner of Statutory Rules. This will mean that draft affirmative procedure will only be required in the case of orders amending or repealing provisions in primary legislation and negative resolution procedure will suffice in the case of orders amending or revoking provisions in subordinate legislation.

The Committee also asked to see the amendment drafted in response to the suggestion that a code of conduct should be included in the Bill. A copy of the amendment drafted by Legislative Counsel is attached as Annex A. A copy of the full set of amendments to be made to the Bill at Consideration Stage will be supplied to the Committee as soon as it has been finalised by Legislative Counsel.

Reply prepared by: Business Regulation Division.

27 January 2015

ANNEX A

AMENDMENT

New Clause

After clause 14 insert -

'Regulatory objectives

14A.—(1) After Article 350A of the Insolvency Order (inserted by section 14) insert—

"Regulatory objectives

Application of regulatory objectives

350B.—(1) In discharging regulatory functions, a recognised professional body must, so far as is reasonably practicable, act in a way—

(a) which is compatible with the regulatory objectives; and

(b) which the body considers most appropriate for the purpose of meeting those objectives.

(2) In discharging functions under this Part, the Department must have regard to the regulatory objectives.

Meaning of "regulatory functions" and "regulatory objectives"

350C.—(1) This Article has effect for the purposes of this Part.

(2) "Regulatory functions", in relation to a recognised professional body, means any functions the body has—

(a) under or in relation to its arrangements for or in connection with—

(i) authorising persons to act as insolvency practitioners; or

(ii) regulating persons acting as insolvency practitioners; or

(b) in connection with the making or alteration of those arrangements.

(3) "Regulatory objectives" means the objectives of—

(a) having a system of regulating persons acting as insolvency practitioners that—

(i) secures fair treatment for persons affected by their acts and omissions;

(ii) reflects the regulatory principles; and

(iii) ensures consistent outcomes;

(b) encouraging an independent and competitive insolvency-practitioner profession whose members—

(i) provide high quality services at a cost to the recipient which is fair and reasonable;

(ii) act transparently and with integrity; and

(iii) consider the interests of all creditors in any particular case;

(c) promoting the maximisation of the value of returns to creditors and promptness in making those returns; and

(d) protecting and promoting the public interest.

(4) In paragraph (3)(a), "regulatory principles" means—

(a) the principles that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and

(b) any other principle appearing to the body concerned (in the case of the duty under Article 350B(1)), or to the Department (in the case of the duty under Article 350B(2)), to lead to best regulatory practice.".'

Minister of Enterprise, Trade and Investment

New Clause

After clause 14 insert -

'Oversight of recognised professional bodies

14B.—(1) After Article 350C of the Insolvency Order (inserted by section 14A) insert—

"Oversight of recognised professional bodies

Directions

350D.—(1) This Article applies if the Department is satisfied that an act or omission of a recognised professional body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives.

(2) The Department may, if in all the circumstances of the case satisfied that it is appropriate to do so, direct the body to take such steps as the Department considers will counter the adverse impact, mitigate its effect or prevent its occurrence or recurrence.

(3) A direction under this Article may require a recognised professional body —

(a) to take only such steps as it has power to take under its regulatory arrangements;

(b) to take steps with a view to the modification of any part of its regulatory arrangements.

(4) A direction under this Article may require a recognised professional body —

(a) to take steps with a view to the institution of, or otherwise in respect of, specific regulatory proceedings;

(b) to take steps in respect of all, or a specified class of, such proceedings.

(5) For the purposes of this Article, a direction to take steps includes a direction which requires a recognised professional body to refrain from taking a particular course of action.

(6) In this Article "regulatory arrangements", in relation to a recognised professional body, means the arrangements that the body has for or in connection with —

(a) authorising persons to act as insolvency practitioners; or

(b) regulating persons acting as insolvency practitioners.

Directions: procedure

350E.—(1) Before giving a recognised professional body a direction under Article 350D, the Department must give the body a notice accompanied by a draft of the proposed direction.

(2) The notice under paragraph (1) must

(a) state that the Department proposes to give the body a direction in the form of the accompanying draft;

(b) specify why the Department has reached the conclusions mentioned in Article 350D(1) and (2); and

(c) specify a period within which the body may make written representations with respect to the proposal.

(3) The period specified under paragraph (2)(c) —

(a) must begin with the date on which the notice is given to the body; and

(b) must not be less than 28 days.

(4) On the expiry of that period, the Department must decide whether to give the body the proposed direction.

(5) The Department must give notice of that decision to the body.

(6) Where the Department decides to give the proposed direction, the notice under paragraph (5) must

(a) contain the direction;

(b) state the time at which the direction is to take effect; and

(c) specify the Department's reasons for the decision to give the direction.

(7) Where the Department decides to give the proposed direction, the Department must publish the notice under paragraph (5); but this paragraph does not apply to a direction to take any step with a view to the institution of, or otherwise in respect of, regulatory proceedings against an individual.

(8) The Department may revoke a direction under Article 350D; and, where doing so, the Department —

(a) must give the body to which the direction was given notice of the revocation; and

(b) must publish the notice and, if the notice under paragraph (5) was published under paragraph (7), must do so (if possible) in the same manner as that in which that notice was published.

Financial penalty

350F.—(1) This Article applies if the Department is satisfied —

(a) that a recognised professional body has failed to comply with a requirement to which this Article applies; and

(b) that, in all the circumstances of the case, it is appropriate to impose a financial penalty on the body.

(2) This Article applies to a requirement imposed on the recognised professional body —

(a) by a direction given under Article 350D; or
(b) by a provision of this Order or of subordinate legislation under this Order.

(3) The Department may impose a financial penalty, in respect of the failure, of such amount as the Department considers appropriate.

(4) In deciding what amount is appropriate, the Department —
(a) must have regard to the nature of the requirement which has not been complied with; and
(b) must not take into account the Department's costs in discharging functions under this Part.

(5) A financial penalty under this Article is payable to the Department; and sums received by the Department in respect of a financial penalty under this Article (including by way of interest) are to be paid into the Consolidated Fund.

(6) In Articles 350G to 350I, "penalty" means a financial penalty under this Article.

Financial penalty: procedure

350G.—(1) Before imposing a penalty on a recognised professional body, the Department must give notice to the body —
(a) stating that the Department proposes to impose a penalty and the amount of the proposed penalty;
(b) specifying the requirement in question;
(c) stating why the Department is satisfied as mentioned in Article 350F(1); and
(d) specifying a period within which the body may make written representations with respect to the proposal.

(2) The period specified under paragraph (1)(d) —
(a) must begin with the date on which the notice is given to the body; and
(b) must not be less than 28 days.

(3) On the expiry of that period, the Department must decide —
(a) whether to impose a penalty; and
(b) whether the penalty should be the amount stated in the notice or a reduced amount.

(4) The Department must give notice of the decision to the body.

(5) Where the Department decides to impose a penalty, the notice under paragraph (4) must —
(a) state that the Department has imposed a penalty on the body and its amount;
(b) specify the requirement in question and state —
(i) why it appears to the Department that the requirement has not been complied with; or
(ii) where, by that time, the requirement has been complied with, why it appeared to the Department when giving the notice under paragraph (1) that the requirement had not been complied with; and
(c) specify a time by which the penalty is required to be paid.

(6) The time specified under paragraph (5)(c) must be at least three months after the date on which the notice under paragraph (4) is given to the body.

(7) Where the Department decides to impose a penalty, the Department must publish the notice under paragraph (4).

(8) The Department may rescind or reduce a penalty imposed on a recognised professional body; and, where doing so, the Department —
(a) must give the body notice that the penalty has been rescinded or reduced to the amount stated in the notice; and
(b) must publish the notice; and it must (if possible) be published in the same manner as that in which the notice under paragraph (4) was published.

Appeal against financial penalty

350H.—(1) A recognised professional body on which a penalty is imposed may appeal to the High Court on one or more of the appeal grounds.

(2) The appeal grounds are —
(a) that the imposition of the penalty was not within the Department's power under Article 350F;

(b) that the requirement in respect of which the penalty was imposed had been complied with before the notice under Article 350G(1) was given;
(c) that the requirements of Article 350G have not been complied with in relation to the imposition of the penalty and the interests of the body have been substantially prejudiced as a result;
(d) that the amount of the penalty is unreasonable;
(e) that it was unreasonable of the Department to require the penalty imposed to be paid by the time specified in the notice under Article 350G(5)(c).

(3) An appeal under this Article must be made within the period of three months beginning with the day on which the notice under Article 350G(4) in respect of the penalty is given to the body.

(4) On an appeal under this Article the Court may —
(a) quash the penalty;
(b) substitute a penalty of such lesser amount as the Court considers appropriate; or
(c) in the case of the appeal ground in paragraph (2)(e), substitute for the time imposed by the Department a different time.

(5) Where the Court substitutes a penalty of a lesser amount, it may require the payment of interest on the substituted penalty from such time, and at such rate, as it considers just and equitable.

(6) Where the Court substitutes a later time for the time specified in the notice under Article 350G(5)(c), it may require the payment of interest on the penalty from the substituted time at such rate as it considers just and equitable.

(7) Where the Court dismisses the appeal, it may require the payment of interest on the penalty from the time specified in the notice under Article 350G(5)(c) at such rate as it considers just and equitable.

Recovery of financial penalties

350I.—(1) If the whole or part of a penalty is not paid by the time by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being applicable to a money judgment of the High Court (but this is subject to any requirement imposed by the Court under Article 350H(5), (6) or (7)).

(2) If an appeal is made under Article 350H in relation to a penalty, the penalty is not required to be paid until the appeal has been determined or withdrawn.

(3) Paragraph (4) applies where the whole or part of a penalty has not been paid by the time it is required to be paid and —
(a) no appeal relating to the penalty has been made under Article 350H during the period within which an appeal may be made under that Article; or
(b) an appeal has been made under that Article and determined or withdrawn.

(4) The Department may recover from the recognised professional body in question, as a debt due to the Department, any of the penalty and any interest which has not been paid.

Reprimand

350J.—(1) This Article applies if the Department is satisfied that an act or omission of a recognised professional body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives.

(2) The Department may, if in all the circumstances of the case satisfied that it is appropriate to do so, publish a statement reprimanding the body for the act or omission (or series of acts or omissions).

Reprimand: procedure

350K.—(1) If the Department proposes to publish a statement under Article 350J in respect of a recognised professional body, it must give the body a notice —
(a) stating that the Department proposes to publish such a statement and setting out the terms of the proposed statement;
(b) specifying the acts or omissions to which the proposed statement relates; and

(c) specifying a period within which the body may make written representations with respect to the proposal.

(2) The period specified under paragraph (1)(c) —

(a) must begin with the date on which the notice is given to the body; and

(b) must not be less than 28 days.

(3) On the expiry of that period, the Department must decide whether to publish the statement.

(4) The Department may vary the proposed statement; but before doing so, the Department must give the body notice —

(a) setting out the proposed variation and the reasons for it; and

(b) specifying a period within which the body may make written representations with respect to the proposed variation.

(5) The period specified under paragraph (4)(b) —

(a) must begin with the date on which the notice is given to the body; and

(b) must not be less than 28 days.

(6) On the expiry of that period, the Department must decide whether to publish the statement as varied.".

(2) In Article 316A of the Insolvency Order (fees orders (supplementary)), after paragraph (1A) (inserted by section 14(6)(b)) insert —

"(1B) In setting under paragraph (1) the amount of a fee in connection with maintenance of recognition, the matters to which the Department may have regard include, in particular, the costs of the Department in connection with any functions under Articles 350D, 350E, 350J, 350K and 350N.".'

Minister of Enterprise, Trade and Investment

New Clause

After clause 14 insert -

'Recognised professional bodies: revocation of recognition

14C.—(1) After Article 350K of the Insolvency Order (inserted by section 14B) insert —

"Revocation etc of recognition

Revocation of recognition at instigation of Department

350L.—(1) An order under Article 350(1) or (2) in relation to a recognised professional body may be revoked by the Department by order if the Department is satisfied that —

(a) an act or omission of the body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives; and

(b) it is appropriate in all the circumstances of the case to revoke the body's recognition under Article 350.

(2) If the condition set out in paragraph (3) is met, an order under Article 350(1) in relation to a recognised professional body may be revoked by the Department by an order which also declares the body concerned to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (see Article 349A(1)).

(3) The condition is that the Department is satisfied —

(a) as mentioned in paragraph (1)(a); and

(b) that it is appropriate in all the circumstances of the case for the body to be declared to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order.

(4) In this Part —

(a) an order under paragraph (1) is referred to as a "revocation order";

(b) an order under paragraph (2) is referred to as a "partial revocation order".

(5) A revocation order or partial revocation order —

(a) has effect from such date as is specified in the order; and

(b) may make provision for members of the body in question to continue to be treated as fully or partially authorised (as the case may be) to act as insolvency practitioners for a specified period after the order takes effect.

(6) A partial revocation order has effect as if it were an order made under Article 350(2).

Orders under Article 350L: procedure

350M.—(1) Before making a revocation order or partial revocation order in relation to a recognised professional body, the Department must give notice to the body —

(a) stating that the Department proposes to make the order and the terms of the proposed order;

(b) specifying the Department's reasons for proposing to make the order; and

(c) specifying a period within which the body, members of the body or other persons likely to be affected by the proposal may make written representations with respect to it.

(2) Where the Department gives a notice under paragraph (1), the Department must publish the notice on the same day.

(3) The period specified under paragraph (1)(c) —

(a) must begin with the date on which the notice is given to the body; and

(b) must not be less than 28 days.

(4) On the expiry of that period, the Department must decide whether to make the revocation order or (as the case may be) partial revocation order in relation to the body.

(5) The Department must give notice of the decision to the body.

(6) Where the Department decides to make the order, the notice under paragraph (5) must specify —

(a) when the order is to take effect; and

(b) the Department's reasons for making the order.

(7) A notice under paragraph (5) must be published; and it must (if possible) be published in the same manner as that in which the notice under paragraph (1) was published.

Revocation of recognition at request of body

350N.—(1) An order under Article 350(1) or (2) in relation to a recognised professional body may be revoked by the Department by order if —

(a) the body has requested that an order be made under this paragraph; and

(b) the Department is satisfied that it is appropriate in all the circumstances of the case to revoke the body's recognition under Article 350.

(2) An order under Article 350(1) in relation to a recognised professional body may be revoked by the Department by an order which also declares the body concerned to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (see Article 349A(1)) if —

(a) the body has requested that an order be made under this paragraph; and

(b) the Department is satisfied that it is appropriate in all the circumstances of the case for the body to be declared to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order.

(3) Where the Department decides to make an order under this Article the Department must publish a notice specifying —

(a) when the order is to take effect; and

(b) the Department's reasons for making the order.

(4) An order under this Article —

(a) has effect from such date as is specified in the order; and

(b) may make provision for members of the body in question to continue to be treated as fully or partially authorised (as the case may be) to act as insolvency practitioners for a specified period after the order takes effect.

(5) An order under paragraph (2) has effect as if it were an order made under Article 350(2).".

(2) In Article 361A of the Insolvency Order (fees orders (supplementary)), after paragraph (5) insert —

"(5A) Article 350M applies for the purposes of an order under paragraph (1)(b) as it applies for the purposes of a revocation order made under Article 350L.".'

Minister of Enterprise, Trade and Investment

New Clause

After clause 14 insert -

'Court sanction of insolvency practitioners in public interest cases

14D. After Article 350N of the Insolvency Order (inserted by section 14C) insert —

"Court sanction of insolvency practitioners in public interest cases

Direct sanction orders

350O.—(1) For the purposes of this Part a "direct sanctions order" is an order made by the High Court against a person who is acting as an insolvency practitioner which —

(a) declares that the person is no longer authorised (whether fully or partially) to act as an insolvency practitioner;

(b) declares that the person is no longer fully authorised to act as an insolvency practitioner but remains partially authorised to act as such either in relation to companies or individuals, as specified in the order;

(c) declares that the person's authorisation to act as an insolvency practitioner is suspended for the period specified in the order or until such time as the requirements so specified are complied with;

(d) requires the person to comply with such other requirements as may be specified in the order while acting as an insolvency practitioner;

(e) requires the person to make such contribution as may be specified in the order to one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.

(2) Where the Court makes a direct sanctions order, the relevant recognised professional body must take all necessary steps to give effect to the order.

(3) A direct sanctions order must not specify a contribution as mentioned in paragraph (1)(e) which is more than the remuneration that the person has received or will receive in respect of acting as an insolvency practitioner in the case.

(4) In this Article and Article 350P, "relevant recognised professional body", in relation to a person who is acting as an insolvency practitioner, means the recognised professional body by virtue of which the person is authorised so to act.

Application for, and power to make, direct sanctions order

350P.—(1) The Department may apply to the High Court for a direct sanctions order to be made against a person if it appears to the Department that it would be in the public interest for the order to be made.

(2) The Department must send a copy of the application to the relevant recognised professional body.

(3) The Court may make a direct sanctions order against a person where, on an application under this Article, the Court is satisfied that condition 1 and at least one of conditions 2, 3, 4 and 5 are met in relation to the person.

(4) The conditions are set out in Article 350Q.

(5) In deciding whether to make a direct sanctions order against a person the Court must have regard to the extent to which —

(a) the relevant recognised professional body has taken action against the person in respect of the failure mentioned in condition 1; and

(b) that action is sufficient to address the failure.

Direct sanctions order: conditions

350Q.—(1) Condition 1 is that the person, in acting as an insolvency practitioner or in connection with any appointment as such, has failed to comply with —

(a) a requirement imposed by the rules of the relevant recognised professional body;

(b) any standards, or code of ethics, for the insolvency-practitioner profession adopted from time to time by the relevant recognised professional body.

(2) Condition 2 is that the person —

(a) is not a fit and proper person to act as an insolvency practitioner;
(b) is a fit and proper person to act as an insolvency practitioner only in relation to companies, but the person's authorisation is not so limited; or
(c) is a fit and proper person to act as an insolvency practitioner only in relation to individuals, but the person's authorisation is not so limited.

(3) Condition 3 is that it is appropriate for the person's authorisation to act as an insolvency practitioner to be suspended for a period or until one or more requirements are complied with.

(4) Condition 4 is that it is appropriate to impose other restrictions on the person acting as an insolvency practitioner.

(5) Condition 5 is that loss has been suffered as a result of the failure mentioned in condition 1 by one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.

(6) In this Article "relevant recognised professional body" has the same meaning as in Article 350O.

Direct sanctions direction instead of order

350R.—(1) The Department may give a direction (a "direct sanctions direction") in relation to a person acting as an insolvency practitioner to the relevant recognised professional body (instead of applying, or continuing with an application, for a direct sanctions order against the person) if the Department is satisfied that —

(a) condition 1 and at least one of conditions 2, 3, 4 and 5 are met in relation to the person (see Article 350Q); and
(b) it is in the public interest for the direction to be given.

(2) But the Department may not give a direct sanctions direction in relation to a person without that person's consent.

(3) A direct sanctions direction may require the relevant recognised professional body to take all necessary steps to secure that —

(a) the person is no longer authorised (whether fully or partially) to act as an insolvency practitioner;
(b) the person is no longer fully authorised to act as an insolvency practitioner but remains partially authorised to act as such either in relation to companies or individuals, as specified in the direction;
(c) the person's authorisation to act as an insolvency practitioner is suspended for the period specified in the direction or until such time as the requirements so specified are complied with;
(d) the person must comply with such other requirements as may be specified in the direction while acting as an insolvency practitioner;
(e) the person makes such contribution as may be specified in the direction to one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.

(4) A direct sanctions direction must not specify a contribution as mentioned in paragraph (3)(e) which is more than the remuneration that the person has received or will receive in respect of acting as an insolvency practitioner in the case.

(5) In this Article "relevant recognised professional body" has the same meaning as in Article 350O.".'

Minister of Enterprise, Trade and Investment

New Clause

After clause 14 insert -

'Power for Department to obtain information

14E. After Article 350R of the Insolvency Order (inserted by section 14C) insert —

"General

Power for Department to obtain information

350S.—(1) A person mentioned in paragraph (2) must give the Department such information as the Department may by notice in writing require for the exercise of the Department's functions under this Part.

(2) Those persons are —
(a) a recognised professional body;
(b) any individual who is or has been authorised under Article 349A to act as an insolvency practitioner;
(c) any person who is connected to such an individual.
(3) A person is connected to an individual who is or has been authorised to act as an insolvency practitioner if, at any time during the authorisation —
(a) the person was an employee of the individual;
(b) the person acted on behalf of the individual in any other way;
(c) the person employed the individual;
(d) the person was a fellow employee of the individual's employer;
(e) in a case where the individual was employed by a firm, partnership or company, the person was a member of the firm or partnership or (as the case may be) a director of the company.
(4) In imposing a requirement under paragraph (1) the Department may specify —
(a) the time period within which the information in question is to be given; and
(b) the manner in which it is to be verified.".'

Minister of Enterprise, Trade and Investment

New Clause

After clause 14 insert -

'Compliance orders

14F. After Article 350S of the Insolvency Order (inserted by section 14E) insert —

"Compliance orders

350T.—(1) If at any time it appears to the Department that —
(a) a recognised professional body has failed to comply with a requirement imposed on it by or by virtue of this Part; or
(b) any other person has failed to comply with a requirement imposed on the person by virtue of Article 350S,

the Department may make an application to the High Court.
(2) If, on an application under this Article, the Court decides that the body or other person has failed to comply with the requirement in question, it may order the body or person to take such steps as the Court considers will secure that the requirement is complied with.".'

Minister of Enterprise, Trade and Investment

New Clause

After clause 14 insert -

'*Power to establish single regulator of insolvency practitioners*

Power to establish single regulator of insolvency practitioners

14G.—(1) The Department may by regulations designate a body for the purposes of —
(a) authorising persons to act as insolvency practitioners; and
(b) regulating persons acting as such.
(2) The designated body may be either —
(a) a body corporate established by the regulations; or
(b) a body (whether a body corporate or an unincorporated association) already in existence when the regulations are made (an "existing body").
(3) The regulations may, in particular, confer the following functions on the designated body —
(a) establishing criteria for determining whether a person is a fit and proper person to act as an insolvency practitioner;
(b) establishing the requirements as to education, practical training and experience which a person must meet in order to act as an insolvency practitioner;
(c) establishing and maintaining a system for providing full authorisation or partial authorisation to persons who meet those criteria and requirements;
(d) imposing technical standards for persons so authorised and enforcing compliance with those standards;

(e) imposing professional and ethical standards for persons so authorised and enforcing compliance with those standards;
(f) monitoring the performance and conduct of persons so authorised;
(g) investigating complaints made against, and other matters concerning the performance or conduct of, persons so authorised.

(4) The regulations may require the designated body, in discharging regulatory functions, so far as is reasonably practicable, to act in a way —
(a) which is compatible with the regulatory objectives; and
(b) which the body considers most appropriate for the purpose of meeting those objectives.

(5) Provision made under subsection (3)(d) or (3)(e) for the enforcement of the standards concerned may include provision enabling the designated body to impose a financial penalty on a person who is or has been authorised to act as an insolvency practitioner.

(6) The regulations may, in particular, include provision for the purpose of treating a person authorised to act as an insolvency practitioner by virtue of being a member of a professional body recognised under Article 350 of the Insolvency Order immediately before the regulations come into operation as authorised to act as an insolvency practitioner by the body designated by the regulations after that time.

(7) Expressions used in this section which are defined for the purposes of Part 12 of the Insolvency Order have the same meaning in this section as in that Part.

(8) Regulations under this section shall not be made unless a draft of the regulations has been laid before and approved by resolution of the Assembly.

(9) Section 14H makes further provision about regulations under this section which designate an existing body.

(10) Schedule A1 makes supplementary provision in relation to the designation of a body by regulations under this section.'

Minister of Enterprise, Trade and Investment

New Clause

After clause 14 insert -

'Regulations under section 14G: designation of existing body

14H.—(1) The Department may make regulations under section 14G designating an existing body only if it appears to the Department that —
(a) the body is able and willing to exercise the functions that would be conferred by the regulations; and
(b) the body has arrangements in place relating to the exercise of those functions which are such as to be likely to ensure that the conditions in subsection (2) are met.

(2) The conditions are —
(a) that the functions in question will be exercised effectively; and
(b) where the regulations are to contain any requirements or other provisions prescribed under subsection (3), that those functions will be exercised in accordance with any such requirements or provisions.

(3) Regulations which designate an existing body may contain such requirements or other provisions relating to the exercise of the functions by the designated body as appear to the Department to be appropriate.'

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Clause 15, Page 14, Line 2

At end insert -

'(5) After that paragraph insert —
"(3) In making regulations under this Article, the Department must have regard to the regulatory objectives (as defined by Article 350C(3)).".'

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Clause 20, Page 14, Line 25

After 'sections' insert '14(2),'

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New Schedule
Before Schedule 1 insert -
'SCHEDULE A1
Section 21(9).
SINGLE REGULATOR OF INSOLVENCY PRACTITIONERS: SUPPLEMENTARY PROVISION
Operation of this Schedule
1.—(1) This Schedule has effect in relation to regulations under section 14G designating a body (referred to in this Schedule as "the Regulations") as follows —
(a) paragraphs 2 to 13 have effect where the Regulations establish the body;
(b) paragraphs 6, 7 and 9 to 13 have effect where the Regulations designate an existing body (see section 14G(2)(b));
(c) paragraph 14 also has effect where the Regulations designate an existing body that is an unincorporated association.
(2) Provision made in the Regulations by virtue of paragraph 6 or 12, where that paragraph has effect as mentioned in sub-paragraph (1)(b), may only apply in relation to —
(a) things done by or in relation to the body in or in connection with the exercise of functions conferred on it by the Regulations; and
(b) functions of the body which are functions so conferred.
Name, members and chair
2.—(1) The Regulations must prescribe the name by which the body is to be known.
(2) The Regulations must provide that the members of the body must be appointed by the Department after such consultation as the Department thinks appropriate.
(3) The Regulations must provide that the Department must appoint one of the members as the chair of the body.
(4) The Regulations may include provision about —
(a) the terms on which the members of the body hold and vacate office;
(b) the terms on which the person appointed as the chair holds and vacates that office.
Remuneration etc.
3.—(1) The Regulations must provide that the body must pay to its chair and members such remuneration and allowances in respect of expenses properly incurred by them in the exercise of their functions as the Department may determine.
(2) The Regulations must provide that, as regards any member (including the chair) in whose case the Department so determines, the body must pay or make provision for the payment of —
(a) such pension, allowance or gratuity to or in respect of that person on retirement or death as the Department may determine; or
(b) such contributions or other payment towards the provision of such a pension, allowance or gratuity as the Department may determine.
(3) The Regulations must provide that where —
(a) a person ceases to be a member of the body otherwise than on the expiry of the term of office; and
(b) it appears to the Department that there are special circumstances which make it right for that person to be compensated,
the body must make a payment to the person by way of compensation of such amount as the Department may determine.
Staff
4. The Regulations must provide that —
(a) the body may appoint such persons to be its employees as the body considers appropriate; and
(b) the employees are to be appointed on such terms and conditions as the body may determine.
Proceedings
5.—(1) The Regulations may make provision about the proceedings of the body.
(2) The Regulations may, in particular —
(a) authorise the body to exercise any function by means of committees consisting wholly or partly of members of the body;

(b) provide that the validity of proceedings of the body, or of any such committee, is not affected by any vacancy among the members or any defect in the appointment of a member.

Fees

6.—(1) The Regulations may make provision —

(a) about the setting and charging of fees by the body in connection with the exercise of its functions;

(b) for the retention by the body of any such fees payable to it;

(c) about the application by the body of such fees.

(2) The Regulations may, in particular, make provision —

(a) for the body to be able to set such fees as appear to it to be sufficient to defray the expenses of the body exercising its functions, taking one year with another;

(b) for the setting of fees by the body to be subject to the approval of the Department.

(3) The expenses referred to in sub-paragraph (2)(a) include any expenses incurred by the body on such staff, accommodation, services and other facilities as appear to it to be necessary or expedient for the proper exercise of its functions.

Consultation

7. The Regulations may make provision as to the circumstances and manner in which the body must consult others before exercising any function conferred on it by the Regulations.

Training and other services

8.—(1) The Regulations may make provision authorising the body to provide training or other services to any person.

(2) The Regulations may make provision authorising the body —

(a) to charge for the provision of any such training or other services; and

(b) to calculate any such charge on the basis that it considers to be the appropriate commercial basis.

Report and accounts

9.—(1) The Regulations must require the body, at least once in each 12 month period, to report to the Department on —

(a) the exercise of the functions conferred on it by the Regulations; and

(b) such other matters as may be prescribed in the Regulations.

(2) The Regulations must require the Department to lay before the Assembly a copy of each report received under this paragraph.

(3) Unless section 394 of the Companies Act 2006 applies to the body (duty on every company to prepare individual accounts), the Regulations must provide that the Department may give directions to the body with respect to the preparation of its accounts.

(4) Unless the body falls within sub-paragraph (5), the Regulations must provide that the Department may give directions to the body with respect to the audit of its accounts.

(5) The body falls within this sub-paragraph if it is a company whose accounts —

(a) are required to be audited in accordance with Part 16 of the Companies Act 2006 (see section 475 of that Act); or

(b) are exempt from the requirements of that Part under section 482 of that Act (non-profit making companies subject to public sector audit).

(6) The Regulations may provide that, whether or not section 394 of the Companies Act 2006 applies to the body, the Department may direct that any provisions of that Act specified in the directions are to apply to the body with or without modifications.

Funding

10. The Regulations may provide that the Department may make grants to the body.

Financial penalties

11.—(1) This paragraph applies where the Regulations include provision enabling the body to impose a financial penalty on a person who is, or has been, authorised to act as an insolvency practitioner (see section 14G(5)).

(2) The Regulations —

(a) must include provision about how the body is to determine the amount of a penalty; and

(b) may, in particular, prescribe a minimum or maximum amount.

(3) The Regulations must provide that, unless the Department (with the consent of the Department of Finance and Personnel) otherwise directs, income from penalties imposed by the body is to be paid into the Consolidated Fund.

(4) The Regulations may also, in particular—

(a) include provision for a penalty imposed by the body to be enforced as a debt;

(b) prescribe conditions that must be met before any action to enforce a penalty may be taken.

Status etc.

12. The Regulations must provide that—

(a) the body is not to be regarded as acting on behalf of the Crown; and

(b) its members, officers and employees are not to be regarded as Crown servants.

Transfer schemes

13.—(1) This paragraph applies if the Regulations make provision designating a body (whether one established by the Regulations or one already in existence) in place of a body designated by earlier regulations under section 14G; and those bodies are referred to as the "new body" and the "former body" respectively.

(2) The Regulations may make provision authorising the Department to make a scheme (a "transfer scheme") for the transfer of property, rights and liabilities from the former body to the new body.

(3) The Regulations may provide that a transfer scheme may include provision—

(a) about the transfer of property, rights and liabilities that could not otherwise be transferred;

(b) about the transfer of property acquired, and rights and liabilities arising, after the making of the scheme.

(4) The Regulations may provide that a transfer scheme may make consequential, supplementary, incidental or transitional provision and may in particular—

(a) create rights, or impose liabilities, in relation to property or rights transferred;

(b) make provision about the continuing effect of things done by the former body in respect of anything transferred;

(c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the former body in respect of anything transferred;

(d) make provision for references to the former body in an instrument or other document in respect of anything transferred to be treated as references to the new body;

(e) make provision for the shared ownership or use of property;

(f) if the TUPE regulations do not apply to in relation to the transfer, make provision which is the same or similar.

(5) The Regulations must provide that, where the former body is an existing body, a transfer scheme may only make provision in relation to—

(a) things done by or in relation to the former body in or in connection with the exercise of functions conferred on it by previous regulations under section 14G; and

(b) functions of the body which are functions so conferred.

(6) In sub-paragraph (4)(f), "TUPE regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

(7) In this paragraph—

(a) references to rights and liabilities include rights and liabilities relating to a contract of employment;

(b) references to the transfer of property include the grant of a lease.

Additional provision where body is unincorporated association

14.—(1) This paragraph applies where the body is an unincorporated association.

(2) The Regulations must provide that any relevant proceedings may be brought by or against the body in the name of any body corporate whose constitution provides for the establishment of the body.

(3) In sub-paragraph (2) "relevant proceedings" means proceedings brought in or in connection with the exercise of any function conferred on the body by the Regulations.'

Minister of Enterprise, Trade and Investment

From: stephen.a.cave@uk.pwc.com [mailto:stephen.a.cave@uk.pwc.com]
Sent: 19 January 2015 11:08
To: Monds, Richard
Cc: Sean Cavanagh (Cavanagh Kelly)
Subject: Re: Partial Authorisation - ETI Committee

Richard

I absolutely echo Sean's comments on the matter.

Regards

Stephen

Sent from my iPhone

From: Sean Cavanagh (Cavanagh Kelly) [mailto:Sean.Cavanagh@cavanaghkelly.com]
Sent: 19 January 2015 10:31
To: Monds, Richard
Cc: HYPERLINK "mailto:stephen.a.cave@uk.pwc.com"stephen.a.cave@uk.pwc.com
Subject: RE: Partial Authorisation - ETI Committee

Dear Richard

Thank you for your e-mail.

I do not understand how Mr Flanagan got the impression that my evidence suggested that the current system would not continue and that ,in future, IPs could only be authorised for personal or corporate cases, not both.

I confirm that I am fully aware that the Bill provides for the option for IPs to take company,individual and partnership cases ,i.e FULL AUTHORISATION, OR to take only individual or company cases.

There was reference to the advantage of having full authorisation but that did not ,in any way, indicate that this full authorisation would not be provided for.

I hope this clarifies the issue but do not hesitate to phone if necessary

Kind Regards

Sean

From: Monds, Richard [mailto:Richard.Monds@detini.gov.uk]
Sent: 15 January 2015 13:31
To: HYPERLINK “mailto:stephen.a.cave@uk.pwc.com” stephen.a.cave@uk.pwc.com;Sean Cavanagh (Cavanagh Kelly)
Cc: Reid, Jack; Glenn, Eileen
Subject: Partial Authorisation - ETI Committee
Importance: High

Dear Sean and Stephen,

Please see attached for your consideration and response.

Regards

Richard

Richard Monds CPFA | Director of Insolvency | Northern Ireland Insolvency Service | Department of Enterprise, Trade & Investment | Fermanagh House, Ormeau Avenue, Belfast BT2 8NJ | Tel: (028) 9054 8614 | TextRelay: 18001 028 9054 8614 | Web: HYPERLINK “http://www.detini.gov.uk”www.detini.gov.uk

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Correspondence from the Minister regarding the Insolvency (Amendment) Bill – December 2014

From the Office of the Minister

Department of
Enterprise, Trade and Investment
www.detini.gov.uk

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BELFAST
BT4 2JP
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Text Relay:18001 028-9052-9452
E Mail:private.office@detini.gov.uk
Our Ref: DETI SUB 633/2014

Patsy McGlone MLA
Chair, ETI Committee
Room 375
Parliament Buildings
BELFAST
BT4 3XX

12 December 2014

Dear Patsy

INSOLVENCY (AMENDMENT) BILL

In the course of the Second Stage debate of the above Bill, on Monday 10 November 2014, Mr Allister MLA, raised concerns about the standard of regulation of insolvency practitioners. I promised to write formally to him, and to the ETI Committee, with information about the continuous professional development (CPD) schemes operated by the recognised professional bodies that licence insolvency practitioners.

I have now replied to Mr Allister.

For the information of the Committee, I have provided the attached table which sets out the CPD requirements for the seven bodies recognised in Northern Ireland.

The abbreviations used in the table are,

Chartered Accountants in Ireland	CAI
Association of Chartered Certified Accountants	ACCA
Insolvency Practitioners Association	IPA
Institute of Chartered Accountants of Scotland	ICAS
Institute of Chartered Accountants in England and Wales	ICAEW
The Law Society of Northern Ireland	Law Society NI
The Law Society (of England and Wales)	SRA

Six of the seven bodies are recognised both in GB and in Northern Ireland. Their CPD requirements are the same for practitioners authorised by them in both jurisdictions. The exception is the Law Society of Northern Ireland, which is recognised to authorise and regulate insolvency practitioners in Northern Ireland only.

Mr Allister also suggested that a code of conduct for insolvency practitioners should be included in the current Bill. In the course of the oral briefing to the Committee on 11 November 2014, my Officials highlighted that provision has been included in the current Westminster Small Business, Enterprise and Employment Bill setting objectives to which recognised professional bodies will be required to adhere in their regulatory work.

These will include having in place a system of regulation designed to ensure that insolvency practitioners authorised by them are acting in accordance with precepts which will include providing high quality services at a fair and reasonable cost and acting transparently and with integrity. I consider, therefore, that Mr Allister's concerns could be addressed by enactment of corresponding provisions for Northern Ireland.

Following the Committee meeting, my officials have been exploring the feasibility of including similar measures in the current Bill and have advised me that inclusion of this particular set of provisions, through an amendment at Consideration Stage, would not put the Bill's progress at significant risk. I have, therefore, decided to include corresponding provisions in the current Bill by way of an amendment at Consideration Stage.

I should be grateful, therefore, if your Committee would formally confirm if it is in agreement with my taking this action as this would greatly assist me in seeking Executive agreement to the change in policy required.

In the meantime, my officials are arranging for a draft of the corresponding provisions to be prepared for Northern Ireland and would hope to be in a position to make a copy of this draft available to you, prior to the end of Committee stage.

I am aware that members of the ETI Committee have asked why a further measure has not been included in the current Bill. It is the abolition of fast track voluntary arrangements.
Fast track arrangements are a form of individual voluntary arrangement with creditors which can be entered into by bankrupts under the supervision of the Official Receiver

I acknowledge that provision to abolish fast track voluntary arrangements has been included in the Westminster Small Business, Enterprise and Employment Bill. However, this has to be seen against the background of a recent steep increase in the volume of primary legislation amending insolvency law being made at Westminster. The Enterprise and Regulatory Reform Act 2013 made extensive amendments to insolvency law which have yet to be replicated for Northern Ireland. The Deregulation and Small Business, Enterprise and Employment Bills will do the same.

There are compelling reasons for not attempting to replicate these amendments in the current Assembly Bill. In the first place, Legislative Counsel has advised against attempting to make parity legislation until Westminster Bills have actually been passed, so that we have the final settled text to work from.

A second, and more significant factor, is the delay which any attempt to replicate the provisions would cause. As the amendments entail major policy changes it would be necessary to draft consultation documents for Northern Ireland and carry out a full three month public consultation. Regulatory impact assessments would have to be prepared which would take several months. Some of the proposals would require a business case.

As an indication of the delay which could result, two measures from the Deregulation Bill were selected for inclusion in the current Bill. They were the measures to allow for partial authorisation of insolvency practitioners and to facilitate banks letting bankrupts have accounts by reducing the risk of doing so resulting in the banks facing claims from trustees in respect of payments made out of those accounts.

It was possible in the case of these particular measures to carry out a targeted consultation with interested parties rather than full consultation. Even so, the extent of the procedure involved resulted in the Bill being delayed for a full year.

Any attempt to replicate the full set of measures relating to insolvency in the Enterprise and Regulatory Reform Act 2013 and the Deregulation and Small Business, Enterprise and Employment Bills would inevitably result in the current Bill not being made within the lifetime of the current Assembly and the Bill would, therefore, fall. That is why we have decided that the measures should be included in a Bill to be made during the lifetime of the next Assembly.

Accordingly, I am content that there is no specific reason why the provision to end fast track voluntary arrangements should be singled out for inclusion in the current Bill.

Yours Sincerely

ARLENE FOSTER MLA
Minister of Enterprise, Trade and Investment

Recognised Professional Bodies: CPD Requirements for Insolvency Practitioners

	CAI	ACCA	IPA	ICAS	ICAEW	Law Society NI	SRA
1. What is the CPD requirement for an IP? (Hours, nature)	Members can choose Input or Output method. Input Method -requires 70 hours CPD total (50 hours unstructured & 20 hours structured). In the case of members who are authorised to act as insolvency practitioners the structured element must include a minimum of 10 hours structured insolvency (eg attendance at courses etc). Output Method - members, including those authorised to act as insolvency practitioners, must do a SWOT (Strengths, Weaknesses, Opportunities and Threats) analysis and undertake courses to address any weaknesses.	40 hours total CPD on an annual basis (21 verifiable hours eg course/training beneficial to career & 19 non verifiable hours (general reading)).	Min 25 hours structured Continual Professional Education per year eg courses etc	Under the CPD scheme there is no requirement to achieve a certain number of hours or points. The important feature is that consideration is given to the requirements of the position and that learning addresses this.	No requirement to complete a structured amount of CPD. Instead insolvency licence holders are expected to plan their own programme of development activities to enable them to ensure that they have the knowledge and expertise to fulfil their role and responsibilities as an IP.	IPs must comply with CPD as a Solicitor. They are not required to take any specific insolvency-related CPD.	16 hours' accredited CPD per year. This does not have to be on Insolvency-related topics.

	CAI	ACCA	IPA	ICAS	ICAEW	Law Society NI	SRA
2. If there is a requirement, do IPs provide an annual declaration, as part of licence renewal etc	Yes, IPs provide an annual CPD declaration.	Yes, Annual CPD declaration is submitted by the IP. An Insolvency licence must also be renewed each year and the IP needs to have 600 hrs insolvency experience in the last 3-5 years.	Yes, Annual declaration forms part of the licence renewal process. IPs are asked if they have completed 25 hrs CPE and if not to explain in detail why not and when they expect to make up the shortfall and the date this will be remedied by. If not sufficient would go to M&A* committee. *Membership & Authorisation	Yes, IPs must submit an annual declaration.	An annual CPD declaration is completed by members at the time of their membership renewal. The declaration asks members to confirm that they have reflected on their responsibilities, undertaken appropriate learning and development activities as necessary and considered the impact of those activities, on an ongoing basis.	Yes, IPs are required to submit an annual declaration. They must send in their CPD records with their annual declaration	No, the SRA ask IPs to submit the levy fee and ask no further questions. However, at the re-authorisation point they ask a range of questions on 'Education, practical training and experience', one of which is "Please provide information on any relevant education and practical training you have obtained since your last re authorisation. For example, how do you ensure that you keep up to date on matters relating to insolvency? What insolvency related continuing professional development have you undertaken/do you undertake? Please also list courses or conferences attended or in which you participated as a speaker."

	CAI	ACCA	IPA	ICAS	ICAEW	Law Society NI	SRA
3. Does the RPB actively check or challenge the IP on the information provided? Do you seek documents on courses attended, training received etc?	Yes, Professional Authorisation sample app 250 people per year including accountants and IP's and ask for submission of records. The ILC* can also ask for CPD records. *Insolvency Licensing Committee	Yes, ACCA do checks. The professional development team monitor members and carry out sample checks. They select a random sample of IP's on an annual basis and a statistician decides how many to be reviewed on an annual basis or if the IP has a poor monitoring visit they may be selected. They also ask for evidence on IPs selected. The member provides evidence and why it is relevant for their career.	No sample checks carried out. However CPE is checked as part of the monitoring visits of IPs every 3 years. They look at records but would only go into detail if there is a reason to eg IP has done 25 hrs courses all on tax but no insolvency etc	As part of the pre visit information requested in advance of a monitoring visit, each IP is requested to provide details of courses he/she has attended in the previous 12 months and a note of structured and unstructured CPD achieved in the same period. During the visit process the monitor reviews the record and comments as to compliance with the requirements	When the Quality Assurance Department (QAD) go out on monitoring visits they will ask to see specific details of the IP's CPD. Most IPs do this by way of details on an annual spreadsheet or similar of the courses undertaken or reading undertaken. QAD do not ask for documentation from the courses to prove attendance unless there is thought to be an issue and then it would be likely in the form of a request from the Insolvency Licensing Committee that they attend the course in the coming year.	LSNI carry out dip samples. On monitoring visits, it is checked that the IP has completed the CPD requirements	No, unless the SRA receive concerns of this nature. On monitoring visits, the Inspection Officer confirms that the IP has completed his or her CPD requirements. If it is reported that he or she has not met the CPD requirements, the SRA would question the IP on this prior to authorising his or her renewal.

	CAI	ACCA	IPA	ICAS	ICAEW	Law Society NI	SRA
4. What is the requirement for Insolvency experience for a licence renewal?	600 hours in the last 3 rolling years (min of 150 in any year)	600 hours in the last 3-5 years.	No requirement for renewal of licences. Licences are split by appointment takers and non-appointment takers and hours vary. Only first authorisation is 600 hrs in last 3 years.	450 hours over 3 years, subject to a minimum of 150 hours per year.	600 hours over 3 years, subject to a minimum of 150 hours per year	No requirement for renewal of licences. On the renewal forms the IP must state the cases they have worked on in the year.	The SRA require the following - "Education and practical training and experience - The SRA recognises that some applicants for authorisation will not have held office themselves but will have advised office holders. In deciding whether or not to grant authorisation the SRA will seek to ensure that the applicant's past experience has prepared him/her sufficiently for the responsibilities of holding office. Where an applicant for authorisation has not acted as an office holder, the application will be considered on evidence of experience of assisting or advising an office holder. The SRA requires details on each applicant's education and practical training, with particular reference to insolvency, during the three years preceding an initial application or application for reauthorisation."

5. Does the Department, in its oversight and monitoring role of RPBs, check that the RPBs are checking that the CPD requirements are adequately fulfilled by the IPs?

RPBs have the power both to grant new licences to IP and renew licences to IPs as part of the authorisation process. When the Department conducts monitoring visits with the RPBs a sample of both new authorisations and renewals are checked to ensure that the RPB is granting licences in accordance with their rules and regulations. IPs must declare their CPD on both the new authorisations form and the renewal form. The Department carries out sample checks to confirm IP's have completed their CPD declaration.

RPBs conduct their own monitoring visits with licensed IPs on a rolling 3 year cycle. The Department select a sample of these monitoring visits to review from each RPB and it is checked to see that CPD requirements are mentioned in the pre visit questionnaire that IPs must complete and documented on file as being reviewed with the IP during the monitoring visit.

Response from the Department of Enterprise, Trade and Investment regarding the extent of any backlog in relation to insolvency cases

Request to DETI From the ETI Committee

At its meeting on 27 January 2015, the ETI Committee carried out a clause-by-clause scrutiny of the Insolvency (Amendment) Bill.

Members asked for clarification on the extent of any backlog there is in relation to insolvency cases. Does this only apply to cases being administered by the Department where no assets or fees are to be realised.

Departmental Response

a. The Insolvency Service is responsible for investigating bankruptcies and companies that have been wound up by the Court and for ensuring that any assets are realised and the proceeds dealt with according to rules laid down in legislation.

b. Realisation of assets, and distribution of the proceeds, is termed case administration. If there are sufficient assets in a case, however, it may be economically viable for a private sector insolvency practitioner to take on the administration of that case. The insolvency practitioner can be appointed either by a meeting of creditors or, more commonly, from a rota operated by the Insolvency Service.

c. The current threshold of assets at which an insolvency practitioner may be appointed in both bankruptcy and company cases is £12,000, although there are instances of one being appointed where the assets are estimated to be worth less than this. If there are no, or limited, assets within a case, administration will remain with the Official Receiver as Trustee of last resort.

d. At 31 December 2014, the Insolvency Service was dealing with 3,528 live cases, of which 2,377 were over one year old. The main reasons for the backlog are as a result of the economic downturn which has been a factor in the considerable increase in the number of insolvencies over recent years. As a result, average caseloads for staff have risen significantly as well. Table 1 below shows the annual number of insolvencies since 2003/04.

Table 1: Total Number of Insolvencies 2003/04 – 2014/15

Year	No. of Insolvencies (Bankruptcies and Companies Wound up)
2003/04	666
2004/05	757
2005/06	981
2006/07	1,096
2007/08	906
2008/09	1,155
2009/10	1,250
2010/11	1,456

Year	No. of Insolvencies (Bankruptcies and Companies Wound up)
2011/12	1,571
2012/13	1,585
2013/14	1,561
2014/15 (projected)	1,670

e. The cases that are over one year old, are mainly bankruptcies, including creditor and debtor petition cases. These account for 1,634 of the cases and, in the vast majority, there will be no assets for realisation and as a result there will be no dividend to pay to creditors, nor will it be possible to take any fees from the case.

f. The delay in dealing with these cases is due to a variety of factors, including the need to deal with bankrupts' dwelling houses which are in negative equity. This requires going through a procedure to restore title to the owner or disclaiming any interest by the Official Receiver. In other cases, investigation is continuing where it is suspected that there are assets which have not been disclosed to the Official Receiver or cases where there is on-going litigation.

g. Of the remaining cases that were over one year old at 31 December 2014, 541 relate to companies that have been wound up. There are known assets waiting to be realised in very few of these cases as companies are normally closed down immediately by agents on being wound up by the Court and the agent will seize, and promptly realise, any assets belonging to the company. As with the bankruptcies, however, investigations will be ongoing in these cases to identify further assets that may be realised for the benefit of creditors or where it is considered that there is potential for disqualification proceedings to be taken against company directors.

h. In the remaining 202 cases, all assets have been realised and the Insolvency Service is awaiting creditors finalising their claims, and producing evidence to support them, so that a final account can be prepared and a dividend paid.

With respect to the Freedom of Information Act 2000 this response is fully disclosable.

Reply prepared by: Richard Monds, DETI Insolvency Service, Ext 48614

Response from Department of Enterprise, Trade and Investment to comments made by Mr Justice Deeny

Mr Jim McManus
Clerk to the Enterprise, Trade and Investment Committee
Room 424
Parliament Buildings
BELFAST BT4 3XX

Dear Jim,

Insolvency (Amendment) Bill

I refer to your request for comments on the points made by the Honourable Mr Justice Deeny in his letter to you dated 23 January 2015.

I will first of all explain that the amendments made to Article 280 of the Insolvency (Northern Ireland) Order 1989, by clause 13 of the Insolvency (Amendment) Bill, replicate, for Northern Ireland, amendments which are being made to section 307 of the Insolvency Act 1986 by section 52 of, and paragraph 16 of Schedule 6 to, the Westminster Deregulation Bill.

There were slight differences between the text of the amendments to section 307 in the Deregulation Bill as introduced and that in earlier drafts. As a result, it has been necessary to instruct Legislative Counsel to draft amendments to clause 13 of the Insolvency (Amendment) Bill. It is intended to include these amendments in a list of amendments which we will be asking our Minister to table at Consideration Stage.

Details of these amendments and a copy of clause 13, as it will look after they have been made, are provided in an addendum to this letter.

Judge Deeny has suggested consolidating what will remain of paragraph (4) of Article 280 after it is amended.

Officials put this suggestion to Legislative Counsel and received the following response,

> *"No, this is not a matter for Ministerial amendments. This may (or may not) be addressed by the person who ultimately amends the text of the legislation amended."*

The reference to proposed Clause (4A) should be to paragraph (4A) to be inserted into Article 280 by clause 13(4).

The presence of the word "or" instead of "of" in paragraph 4A was a result of a misprint in a copy of clause 13 incorporating the additional amendments which was specially prepared by officials for the convenience of the Committee chaired by Judge Deeny. The word is correctly stated as "of" in the draft list of amendments prepared by Legislative Counsel.

The same explanation applies with reference to the omission of the opening bracket before new text to be inserted by an amendment into new paragraph (4A).

Finally, we would wish to bring to the Committee's attention that other amendments will be needed to the text of the Insolvency (Amendment) Bill, mainly as a consequence of changes to legislation underway at Westminster.

It is intended to send you a full list of all amendments required to the Bill once this has been finally agreed with Legislative Counsel and cleared by our Minister.

David McCune

DETI Assembly Liaison Officer

Addendum

Amendments required to clause 13

1. In subsection (3) after the first sentence, and before paragraph (a) there needs to be inserted a new paragraph as follows,

"(za) in the words before sub-paragraph (a), after "service" insert "on the bankrupt"

2. In new paragraph 4A inserted by subsection (4),

   (i) The word "the" before "service" needs to be omitted,

   (ii) There needs to be inserted after the word "Article" where it occurs the second time, and whether before or after service on the bankrupt of a notice under this Article)".

These further amendments, together with the existing amendments to be made to Article 280 of the Insolvency (Northern Ireland) Order 1989 by clause 13 of the Insolvency (Amendment) Bill will cause that Article to read as follows,

After acquired property

280.—(1) Subject to this Article and Article 282, the trustee may by notice in writing claim for the bankrupt's estate any property which has been acquired by, or has devolved upon, the bankrupt since the commencement of the bankruptcy.

(2) A notice under this Article shall not be served in respect of—

(a) any property falling within paragraph (2) or (3) of Article 11,

(aa) any property vesting in the bankrupt by virtue of Article 256A in Chapter II,

(b) any property which by virtue of any other statutory provision is excluded from the bankrupt's estate, or

(c) without prejudice to Article 254(2)(c) (order of High Court on application for discharge), any property which is acquired by, or devolves upon, the bankrupt after his discharge.

(3) Subject to *paragraphs (4) and (4A)* upon the service on the bankrupt of a notice under this Article the property to which the notice relates shall vest in the trustee as part of the bankrupt's estate; and the trustee's title to that property has relation back to the time at which the property was acquired by, or devolved upon, the bankrupt.

(4) Where, whether before or after service *on the bankrupt* of a notice under this Article—

(a) a person acquires property in good faith, for value and without notice of the bankruptcy, ~~or~~

~~(b) a banker enters into a transaction in good faith and without such notice,~~

the trustee is not in respect of that property ~~or transaction~~ entitled by virtue of this Article to any remedy against that person ~~or banker~~, or any person whose title to any property derives from that person ~~or banker~~.

(4A) Where a banker enters into a transaction before ~~the~~ service on the banker of a notice under this Article (and whether before or after service on the bankrupt of a notice under this Article) the trustee is not in respect of that transaction entitled by virtue of this Article to any remedy against the banker.

This paragraph applies whether or not the bankrupt has notice of the bankruptcy.

(5) References in this Article to property do not include any property which, as part of the bankrupt's income, may be the subject of an income payments order under Article 283.

Appendix 5

Research Papers

Research and Information Service
Briefing Note

Paper 000/00 12 September 2014 NIAR 386-14

Aidan Stennett & Eoin Murphy

Insolvency (Amendment) Bill 2014

Key Points

This paper provides an overview of changes to Northern Ireland Insolvency Law proposed in the Insolvency (Amendment) Bill. The bill has not yet been introduced and remains in draft form.

The bill introduces into Northern Ireland a range of changes already introduced in England and Wales by the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 and the Insolvency (Amendment) Rules 2010.

It will also introduce a range of changes which are due to be brought into law in England and Wales by the Deregulation Bill.

As such it has been possible to identify law or proposals corresponding to those in the Northern Ireland Insolvency (Amendment) Bill in existing or proposed law in England and Wales.

The exceptions to this are three provisions which make corrections to existing law in Northern Ireland for which no corresponding changes in England and Wales could be found.

This paper also provides a range of stakeholders which the Committee for Enterprise, Trade and Investment may wish to contact during their scrutiny of the bill.

Executive Summary

The Insolvency (Amendment) Bill amends the Insolvency (Northern Ireland) Act 1986 to introduce amendments brought into law in England and Wales by the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 and the Insolvency Order 2010. Further changes to insolvency law in England and Wales are working their way through the UK Parliament. These are included in the Deregulation Bill. This is at Committee stage in the House of Lords, having previously worked through all stages in the House of Commons.

The purpose of this paper is to provide an overview of the changes to be introduced by the Insolvency (Amendment) Bill, to confirm their equivalent in England and Wales, and identify potential consultees to aid the Committee for Enterprise, Trade and Investment's scrutiny of the bill.

The Bill makes the following changes to Insolvency Law in Northern Ireland:

- Provisions concerning Electronic Communications will, with a number of exceptions, ensure anything relating to insolvency that is currently submitted or delivered in writing can also be submitted or delivered electronically. Equivalent measures have been introduced in England and Wales through the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010;
- Provisions concerning communication by website will allow office holders to make information previously mailed out to creditors to be made available by website. The purpose of the measure is to save money, particularly in insolvency cases with numerous creditors. Creditors will retain the right to receive paper copies if they chose. Equivalent measures have been introduced in England and Wales through the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010.
- Provisions concerning virtual attendance at meetings – will allow creditors or company members to attend meetings by way of technologies such as video-calls and teleconferencing rather than attending them physically. A proportion of creditors (10% value) or company members (10% of voting rights) can request to have physically attended meetings rather than virtual ones. This applies to company and individual insolvency cases. Equivalent measures have previously been introduced in England and Wales through the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010.
- Provisions concerning the abolition of sanction remove the requirement on liquidators and trustees in bankruptcy to seek sanction of creditors or the Department to reach a compromise over debt payment. Similar measures have been introduced in England and Wales through the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010.
- Provisions concerning the abolition of the requirement for progress report in voluntary winding up to be laid at a meeting of creditors or members replaces the requirement to call a meeting of members or creditors to inform them of progress in a winding up, with a requirement for the liquidator to produce a progress report and send it to interested parties. This mirrors provision introduced in England and Wales by the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010.
- Provisions concerning Repeal of the Deeds of Arrangement repeal a seldom used insolvency instrument, namely the Deeds of Arrangement. The instrument is seldom used and has, in effect been replaced by individual voluntary arrangements. The Deregulation Bill will repeal the same instrument in England and Wales.
- Provisions to remove the requirement for reports to be filed in court in Individual Voluntary Arrangements were to be included in this bill, but following misgivings by the Chancery and Probate Liaison Committee and the Crown Solicitor the Department has decided not to pursue the bulk of these legislative changes. Some smaller changes in this area have been included in the latest draft of the bill. These are outlined in section 3.1 of the paper. Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 removed

the requirement for reports to be filed in the court in Individual Voluntary Arrangements in England and Wales.

- Clauses concerning the definition of debt make provision for any debts incurred by a company after the date of liquidation or administration the responsibility of the liquidator or administrator. Should a company enter into administration prior to liquidation; the creditor will only be allowed to prove debt up to the point of the earlier proceedings. The Insolvency (Amendment) Rules 2010 introduced equivalent changes in England and Wales.
- Clauses on liability in tort ensure that such debts will only be provable up to the date in which the company went into liquidation. If the liquidation is preceded by administration these will only be provable up to the point of the earlier proceedings. The Insolvency (Amendment) Rules 2010 brought in similar changes in England and Wales.
- Provision to repeal references in the Insolvency (Northern Ireland) Order 1989 to a form of holiday arrangement which is now illegal – the bill removes references to *'year in hand'* holiday schemes which, since the introduction of the Working Time Directive, have been illegal. The Deregulation Bill will do likewise in England and Wales.
- Repeal of provision for early discharge from bankruptcy – this repeals the power of the Official Receiver to discharge a bankruptcy earlier than the typical one year discharge if it is deemed unnecessary or if the bankruptcy is complete. The power was seldom used. The Enterprise and Regulatory Reform Act 2013 repealed the same powers in England and Wales.
- The amendment to prevent trustees in bankruptcy having any claim against banks in respect of payments made out of the accounts of bankrupts provides protection to banks by preventing a trustee from taking action against a bank in bankruptcy cases. The Deregulation Bill will do likewise in England and Wales.
- Provision to make bank deposits covered by the Financial Services Compensation Scheme a preferential debt – the Department originally intended to use the Insolvency (Amendment) Bill to introduce the requirements of the EU Bank Recovery and Resolution Directive. These concerned the treatment of deposits covered by Financial Services Compensation Scheme as preferential debts in insolvency in particular. Due to time constraints – the directive necessitates implementation prior to 31 December 2014 – the bill will no longer contain such measures (they remain in the 19th Draft of the bill, on which this paper is based). The necessary changes will instead be made through a UK wide Statutory Instrument. The Financial Services (Banking Reform) Act 2013 partially introduced the necessary changes in England and Wales. The remaining changes will be brought in via a UK wide Statutory Instrument.
- Amendment to remove licensing by competent authorities – this makes professional bodies the sole licencing authority for insolvency practitioners in NI. The Deregulation Bill will do likewise in England and Wales. Currently insolvency practitioners in NI can be authorised by professional bodies and competent authorities. In NI the Department is the competent authority in this context.
- Amendment to create the option of being authorised as an insolvency practitioner to act solely in personal or corporate insolvencies – will enable insolvency practitioners to act as either personal insolvency practitioners or corporate insolvency practitioners. Currently they must be authorised as both. The Deregulation bill will make the same change in England and Wales.
- Correction of omission in Article 363 of the Insolvency (Northern Ireland) Order 1989 – this clause rectifies an omission in the 1989 Order which should have included a clause to allow the Department to make regulations in the area of insolvency practitioners and their qualifications. The Insolvency Act 1986 gives the Secretary of State power to make regulations concerning insolvency practitioners and their qualifications.

- Amendment to Departmental order making powers so that they can be exercised as intended in the case of any credit union - The Insolvency (Northern Ireland) Order 2005 included provisions which were intended to allow the Department to make orders to enable credit unions to enter a company arrangement or administration. The provision as stands only covers those credit unions registered under the Industrial and Provident Societies Act (Northern Ireland) 1969, excluding those registered under the Credit Unions (Northern Ireland) Order 1985. This clause rectifies the omission. The power to make regulations in relation to GB societies registered under the Industrial and Provident Societies Act 1965 was provided to the Secretary of State by section 255(1)(a) of the Enterprise Act 2002.
- Provisions concerning the Lord Chief Justice's right to be consulted are included to ensure that the Lord Chief Justice is consulted on any orders made by NI Departments which might modify the provisions excluding bankrupt individuals from holding office (the power to make such orders was granted to Departments by the Insolvency (Northern Ireland) Order 2005). In England and Wales, the Enterprise Act 2002 contains provisions which require the Secretary of State to make any orders in relation to disqualification provisions in concurrence with the Lord Chief Justices of England and Wales, and/or Northern Ireland, as the case demands.
- Provisions to ensure Statutory Demands to be in writing clarify the need for statutory demands to be in writing in individual and company insolvency cases. This is made clear in England and Wales by Statutory Demands to be in writing in the case of company insolvency. With regard to individual insolvencies the same act states that these must be in the prescribed form.
- Provisions concerning correction of error in Article 185 of the Insolvency (Northern Ireland) Order 1989 correct errors concerning the winding up of unregistered companies and clarify points around the geographical location of these companies.
- Provisions concerning the correction of an error in paragraph 1A of Schedule B1 to the Insolvency (Northern Ireland) Order 1989 correct errors concerning which companies are covered by the order. This deals with the geographical location of companies that can be made insolvent under the terms of the order.
- Provisions concerning the repeal of superfluous definition of "nominee" in the 1989 Order do away with unnecessary definitions of nominee that are deemed to be confusing and fully defined elsewhere in the order.
- The clauses concerning the repeal of the provision enabling individuals other than insolvency practitioners to act as nominees and supervisors in voluntary arrangements removes the power of the Department *'to be able to recognise bodies for the purpose of authorising individuals, who are not insolvency practitioners, to act as nominees or supervisors in relation to corporate or individual voluntary arrangements'*. This corresponds to changes to be brought in by the Deregulation Bill in England and Wales.

From the above it is evident that the Bill includes amendments in law equivalent to measures existing or due to be introduced in England and Wales. The exceptions to this are a number of provisions which make corrections to existing law in Northern Ireland for which no corresponding changes in England and Wales could be found.

Additionally, the provisions to remove the requirement for reports to be filed in court in Individual Voluntary Arrangements which were to be included in this bill but have subsequently been removed, have been retained in England and Wales

The final section of this paper provides a list of potential consultees the Committee for Enterprise, Trade and Investment may wish to contact during their scrutiny of the bill.

Contents

1 Background

In 2012 the Enterprise, Trade and Investment Committee was briefed by departmental officials on changes to insolvency procedures due to be introduced by the Insolvency (Amendment) Bill (the Bill). Insolvency law in Northern Ireland (NI) has historically been kept in parity with that of England and Wales. The original purpose of the Bill was to replicate changes to insolvency processes in England and Wales introduced by the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 and other amendments introduced by the Insolvency Order 2010.

The initial intention was to introduce the Bill to the Assembly in April 2013. However, subsequent legislative changes to the England and Wales insolvency system have since been proposed by the Deregulation Bill, introduced in January 2014. As such, the Bill the Committee was briefed on in 2012 has been changed to include the new amendments proposed in the GB Deregulation Bill.

The bill will amend the Insolvency (Northern Ireland) Order 1989 (the 1989 Order). At the time of writing the bill has not been introduced. As such it remains in draft from. This paper refers to the 19th draft of the bill. It is possible that some changes may be made between the writing of this paper and the introduction of the final bill. In addition, as the paper makes clear in section 3.5, some amendments originally intended for inclusion in the bill have already been dropped due to time constraints and will instead by introduced by the Treasury through a UK wide Statutory Instrument. These concern the amendments necessitated by the EU Bank Recovery and Resolution Directive which has a deadline for implementation of 31 December 2014.

The purpose of this paper is three-fold:

- To outline amendments proposed in the 2012 drafting of the Insolvency Bill and to compare these to the insolvency law in England and Wales;
- To outline amendments proposed in the 2014 drafting of the Insolvency Bill and to compare these to the changes to insolvency law proposed in England and Wales; and
- To provide the Committee with a list of potential stakeholders who the Committee may wish to contact in relation to the Bill.

2 Proposals included in the 2012 drafting of the Insolvency Bill

2.1 Electronic Communications

2.1a Relevant section(s) of bill (latest draft)

See: section 2(1) & (2) of the 19th draft of the Insolvency (Amendment) Bill.

2.1b Purpose

Previous amendments to NI insolvency law[1] introduced electronic communications into insolvency law by defining *'a thing in writing'* to include *'a reference to a thing in electronic form'*. The rules, governing Debt Relief, also enable certain documents to be completed electronically.

Ambiguity over the status of electronic documents remains however. This has, according to the Department given *'rise to doubt as to whether documents which are required to be in writing would be valid if transmitted by email'.*

To counter this, the bill amends existing law to provide clarity on the use of electronic communications. To this effect, the current draft of the bill provides that the electronic forms of documents will be considered to be the same as the written version of documentation included in the 1989 Order, with the following exceptions:

- Article 92(2) of the 1989 Order - the requirement to advertise the time, place and object of the *'final meeting prior to dissolution'* in Belfast Gazette;
- Article 103(1) of the 1989 Order which the statutory demand served on a company by creditor which has the effect of deeming the company 'unable to pay its debt' (this applies when a creditor is owed £750 or more);
- Article 186 (1) of the 1989 Order which refers to the serving of a written demand on an unregistered company unable to pay debt of £750 or more by creditor;
- Article 187 of the 1989 Order which refers to the serving of a notice in writing on an unregistered company who has been unable to satisfied debts after action has been brought; and,
- Article 242 (1) (2) of the 1989 Order which refers to the definition of 'inability to pay' and includes the serving of a 'statutory demand' on the debtor by creditor, and a creditor's petition.[2]
- To ensure those without access to electronic communications are protected the Department has stated that:

  It will only be possible to send documents electronically with the intended recipient's consent. Anyone receiving an electronic document will also have the right to request a paper copy free of charge.[3]

2.1c Equivalent law in England and Wales

The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 amended the Insolvency Act 1986 to allow notices and information to be sent or received by electronic means, provided that the intended recipient has consented and provided an electronic

1 Amendment to the Insolvency (Northern Ireland) Order 1989 introduced by the Insolvency (Northern Ireland) Order 2010

2 The Insolvency (Northern Ireland) Order 1989 http://www.legislation.gov.uk/nisi/1989/2405

3 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2012)

address for delivery. These extended to England, Scotland and Wales. As is the case with corresponding NI regulations, a number of exceptions were included. In this case the exceptions were:

- Mode of appointment by holder of charge;
- Report by receiver;
- Reference to instrument creating a charge;
- Dissent from arrangement under s. 110 - acceptance of shares, etc., as consideration for sale of company property;
- In the case of a winding up of a company registered in Scotland, section 111(4) – this again refers to the acceptance of shares, etc., as consideration for sale of company property,
- The definition of inability to pay debts;
- The duties of sheriff principal as regards examination;
- Inability to pay debts: unpaid creditor for £750 or more; and
- Inability to pay debts: debt remaining unsatisfied after action brought.[4]

2.2 Communication by website

2.2a Relevant section(s) of bill (latest draft)

See: section 1 of the 19th draft of the Insolvency (Amendment) Bill.

2.2b Purpose

Existing legislation requires that *'office-holders'* send information via mail to interested parties, such as creditors, throughout the insolvency process. In larger insolvency cases this is thought to place a significant administrative burden and cost upon the creditor as *'the money to pay* [such mail outs] *would ultimately come from the funds available to the creditor'*. The Department argues that sending such information via email would be impractical, due to the size of the documents being sent and the number of recipients who might require a copy.[5]

As such, the bill allows office-holders to comply with requirements by making the relevant information available on a website. Creditors will, however, retain the right to receive paper copies of documents. If they choose to receive paper copies, the creditor will not be charged for this service.

This applies to both company insolvency and individual insolvency (but is limited to bankruptcy and a voluntary arrangement in the case of individual insolvency).

In company insolvency an office holder is defined as the liquidator, provisional liquidator, administrator, administrative receiver of a company, or, in the case of a voluntary arrangement, the nominee or the supervisor of the voluntary arrangement.[6]

In individual insolvency an office holder is defined to include the official receiver, the trustee in bankruptcy, the nominee, or the supervisor of the voluntary arrangement

4 The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 s2 http://www.legislation.gov.uk/uksi/2010/18/contents/made

5 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2012)

6 19th draft of the Insolvency (Amendment) Bill 2014 s1

2.2c Equivalent law in England and Wales

Equivalent provisions were included in the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010. This amended the Insolvency Act 1986 to the effect that any provision of the act requires an office holder *'to give, deliver, furnish or send a notice or other document or information to any person, this is satisfied by making it available on a website'*.[7] This extended to England and Wales.[8]

In Scotland, the Insolvency (Scotland) Amendment Rules 2010 provided administrators and CVA supervisors *'with the option of publishing documents and reports on a website as an alternative to sending such information to creditors by post or e-mail'.*[9] The Insolvency (Scotland) Amendment Rules 2014 made similar provisions in relation to receivership and the process of liquidation.[10]

2.3 Virtual Meetings

2.3a Relevant section(s) of bill (latest draft)

See: section 1 of the 19th draft of the Insolvency (Amendment) Bill.

2.3b Purpose

The legislation as it currently stands allows creditors and company members input in insolvency proceedings through attendance of meeting at various stages of the proceedings. At present this can only be accomplished by interested parties physically attending such meetings. Any travel expenses incurred are paid for by the creditor or company member, a cost which the Department argues could be significant especially in cases with an international dimension.

To address this, the Department proposes enabling the virtual attendance of meetings by allowing interested parties to contribute to proceedings via technologies such as video-calls and teleconferencing.[11]

In this respect, the bill states, with regard to company insolvency:

> *Where the person summoning a meeting ("the convener") considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.*[12]

It also includes a clause which will ensure that for a physical meeting a specified proportion of those attending the meeting request a physical, as opposed to virtual, meeting:

- In the case of a meeting of creditors or contributors, creditors or contributors with not less than 10% in value may make such a request; or
- In the case of a meeting of members, members representing not less than 10% of voting rights may make such a request.[13]

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7 http://www.insolvencydirect.bis.gov.uk/technicalmanual/Ch37-48/chapter48/Annex%20A.htm

8 The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 s3(1) http://www.legislation.gov.uk/uksi/2010/18/contents/made

9 Explanatory Memorandum to the insolvency (Scotland) Amendment Rules 2010 http://www.legislation.gov.uk/uksi/2010/688/pdfs/uksiem_20100688_en.pdf

10 http://www.legislation.gov.uk/ssi/2014/114/pdfs/ssi_20140114_en.pdf

11 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2012)

12 19th draft of the Insolvency (Amendment) Bill 2014 s1

13 *Ibid*

In the case of individual insolvency, the bill also holds that the convener may summon a virtual meeting. Again, creditors (holding 10% in value) may request a physical meeting.[14]

2.3c Equivalent law in England and Wales

Section 3(1 and 2) of the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 provide for equivalent powers in England and Wales.[15] The Insolvency (Scotland) Amendment Rules 2010 include measures which legislate for Flexible Meetings, these allow for meetings to be attended via telephonic or other electronic means.[16]

2.4 Abolition of Requirement for Sanction

2.4a Relevant section(s) of bill (latest draft)

See: articles 7 and 8 of the 19th draft of the Insolvency (Amendment) Bill.

2.4b Purpose

Under current arrangements liquidators or trustees are required to seek sanction from the company members, the creditors or the Department to reach a compromise over debt payment. It is, however, not always possible for those owing debts to pay the sum in full, and legal action to recover the sum may, in some cases, cost more than the amount unpaid. As such the Department is of the view that *'it can be better for trustees and liquidators to take a pragmatic approach and settle for the lesser amount'.*

The Department argues that the need to secure sanction is *'a hurdle through which liquidators and trustees should not have to pass'.* They add:

> *As insolvency practitioners they are experienced members of a regulated profession. The decision as to whether to compromise over settlement of a debt is properly a commercial one, not something to be second guessed by company members, creditors or the Department. Money which could be going to creditors should not be expended paying liquidators and trustees to go through a pointless formality.[17]*

To achieve this, Articles 7 and 8 of the bill provide liquidators the power to reach compromise without sanction in a winding-up, and trustees with the same power in a bankruptcy.

2.4c Equivalent law in England and Wales

Articles 10 and 11 of the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 *'remove the requirement on liquidators and trustees in bankruptcy in England and Wales to obtain the sanction of creditors, company members or the court, as the case may be, for certain actions they propose to take as part of their conduct of the insolvency'.*[18]

2.5 Abolition of Requirement for progress reports in creditors' and members' voluntary winding up to be laid at a meeting of members/creditors

2.5a Relevant section(s) of bill (latest draft)

See: section 3 of the 19th draft of the Insolvency (Amendment) Bill.

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14 *Ibid*

15 The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 s3(1&2) http://www.legislation.gov.uk/uksi/2010/18/contents/made

16 Explanatory Memorandum to the insolvency (Scotland) Amendment Rules 2010 http://www.legislation.gov.uk/uksi/2010/688/pdfs/uksiem_20100688_en.pdf

17 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2012)

18 The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 Explanatory Note http://www.legislation.gov.uk/uksi/2010/18/contents/made

2.5b Purpose

Current law requires the liquidator to summon annual meetings of company members or creditors if a voluntary liquidation lasts for longer than a year. This requirement no longer applies in England and Wales on the grounds that such meetings were not well attended.

The current draft of the bill replaces the requirement to hold an annual meeting by placing a requirement on the liquidator to produce a progress report and send it to creditors, company members and *'such other persons as may be prescribed'* annually.[19]

Failure to by the liquidator to comply with this requirement is an offence.

2.5c Equivalent law in England and Wales

Article 6 of the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 removes the requirement for the liquidator to hold annual meetings in England and Wales, and replaces it with a requirement to produce a progress report.[20]

2.6 Repeal of the Deeds of Arrangement Provisions

2.6a Relevant section(s) of bill (latest draft)

See: section 3 of the 19th draft of the Insolvency (Amendment) Bill.

2.6b Purpose

The Bill repeals a specific instrument – the deed of arrangement – which has fallen into disuse. The Department's insolvency disqualification glossary defines it as an:

> *Arrangement (governed by the Insolvency (NI) Order 1989) proposed by the debtor for payments to his or her creditors. It is occasionally used instead of an individual voluntary arrangement, particularly where creditors already agree to the terms of the arrangement and are not likely to take other action to recover their debt.*[21]

According to the Department the instrument has not been used since the 1989 Insolvency Order came into effect in 1991. As such, the Bill repeals Chapter 1 of Part 8 of the Insolvency Order which legislates for deeds of arrangement.[22]

2.6c Equivalent law in England and Wales

The Deregulation Bill 2013/14 – 2014/15 which is currently working its way through parliament includes provision to repeal the Deeds of Arrangement Act 1914. As is the case in NI, deeds of arrangement are seldom used instruments (only one remains in existence having been registered in 2004. The explanatory notes accompanying the bill note that the instrument has been effectively replaced by Individual Voluntary Arrangements as introduced by the Insolvency Act 1986, which *'better meet debtor's requirements as they are binding on all creditors, even where a creditor was unaware of the proposal at the time it was approved'.*[23]

These provisions of the Deregulation Bill will only have affect in England and Wales.

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19 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2012)

20 The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 s3(1&2) http://www.legislation.gov.uk/uksi/2010/18/contents/made

21 http://www.detini.gov.uk/insolvency-disqualification-glossary

22 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2012)

23 http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0033/en/15033en.htm

2.7 Removal of the requirement for reports to be filed in court in Individual Voluntary Arrangements

2.7a Relevant section(s) of bill (latest draft)

See: section 3 of the 19th draft of the Insolvency (Amendment) Bill.

2.7b Purpose

When the Department originally presented their proposals to the Committee they included provisions which would remove the requirement for reports concerning the outcome of creditors' meetings to be filed in court in cases of individual voluntary arrangements and fast track voluntary arrangements. This was because, in normal circumstances, the court would have no involvement in voluntary arrangements.

In their response to the consultation on these proposals the Chancery and Probate Liaison Committee and the Crown Solicitor expressed concern at this specific measure. They argued that removing this requirement could lead to a scenario where the court issue a bankruptcy order in a specific case due to not being aware of the existence of an individual voluntary arrangement.

The Department has chosen not to proceed with this proposal and the similar proposals concerning fast track voluntary arrangements on the basis of the Chancery and Probate Liaison Committee and the Crown Solicitor arguments.[24]

See section 3.1 below for further details.

2.7c Equivalent law in England and Wales

Article 8 of the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 removes the requirement to submit a report to the court in those individual voluntary arrangement cases in which no application has been made to the court for an interim order.

Article 9 substitutes the requirement placed on the official receiver to report to the court on whether a fast track voluntary arrangement has been approved or rejected, with a requirement to notify the Secretary of State.[25] This applies to England and Wales.

2.8 Proof of Debt –companies

See: section 5 of the 19th draft of the Insolvency (Amendment) Bill.

2.8a Relevant section(s) of bill (latest draft)

2.8b Purpose

To prove a debt a creditor seeking to secure payment from a company that has entered into a voluntary arrangement is required to lodge a claim with the office-holder.

In the case of liquidation creditors may claim debt up to the point of liquidation. In the case of administration, creditors may claim debt up to the point at which a company enters liquidation. Debts incurred after this point are deemed to be the responsibility of the liquidator or administrator.

There is some ambiguity caused by the fact that companies may switch from liquidation to administration and vice versa. To rectify this, the bill will amend the law to the effect that creditors will only be able to prove debts incurred up to the point of the earlier proceeding in a case were a company has switched from one form of proceeding to another.

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24 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2014)

25 http://www.legislation.gov.uk/uksi/2010/18/note/made

The Department argues that this will:

> *…regularise the position that if anyone supplies goods or services to a company after it has entered administration or liquidation it is the administrator or liquidator who is responsible for paying them and they have no claim against the company estate, even if the company subsequently enters a different form of insolvency proceedings.*[26]

2.8c Equivalent law in England and Wales

Schedule 1, s80 of the Insolvency (Amendment) Rules 2010 introduced equivalent changes in England and Wales.[27]

2.9 Liability in Tort

2.9a Relevant section(s) of bill (latest draft)

See: section 9(3a) of the 19th draft of the Insolvency (Amendment) Bill.

2.9b Purpose

Liability in tort is defined as:

> *…a liability arising out of a civil wrong, done by one person to another, entitling the victim to claim damages. It is independent of contract and includes actions for libel, assault and trespass.*[28]

Under current rules, liability in tort can be considered a provable debt in a winding order if the company is *'subject to that liability by reason of an obligation incurred at the time the cause of action accrued'.*

In England and Wales this has been amended to include:

- A liability in tort is provable in a winding up or administration if the cause of action had accrued, or all the elements, other than actionable damage necessary to establish the cause of action, existed at the date on which the winding up order was made or the company entered administration;
- For a liability in tort to be provable where a company was in administration immediately before it was wound up or vice versa the cause of action must have accrued or all the elements necessary to establish a cause of action (except for actionable damage) must have existed at the date on which the company entered the earlier proceedings.[29]

The effect of this is to define when an action resulting in a liability in tort must occur for it to be considered a provable debt in a winding up and how this changes in a case were the winding up occurs after an administration.[30]

- To bring this change into NI law, section 9(3A) of the bill holds that liability in tort is a provable debt if:
- (a) the cause of action has accrued:

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26 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2012)

27 Insolvency (Amendment) Rules 2010 Schedule 1, s80 http://www.legislation.gov.uk/uksi/2010/686/pdfs/uksi_20100686_en.pdf

28 http://www.insolvencydirect.bis.gov.uk/freedomofinformation/technical/technicalmanual/Ch37-48/chapter40/part1/part1.htm

29 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2012)

30 http://www.insolvencydirect.bis.gov.uk/freedomofinformation/technical/technicalmanual/Ch37-48/chapter40/part1/part1.htm

- (i) in the case of a winding up which was not immediately preceded by an administration, at the date on which the company went into liquidation;
- (ii) in the case of a winding up which was immediately preceded by an administration, at the date on which the company entered administration;
- (iii) in the case of an administration which was not immediately preceded by a winding up, at the date on which the company entered administration;
- (iv) in the case of an administration which was immediately preceded by a winding up, at the date on which the company went into liquidation; or

■ (b) all the elements necessary to establish the cause of action exist at that date except for actionable damage.[31]

2.9c Equivalent law in England and Wales

Rule 4.93(A1) of the Insolvency (Amendment) Rules 2010 holds that for liability in tort to be provable if it occurs on the "the relevant date". The relevant date is defined as '*the date on which the company went into liquidation or, if the liquidation was immediately preceded by an administration, the date on which the company entered administration.'* This applies in England and Wales.[32]

31 19th draft of the Insolvency (Amendment) Bill 2014 s9(3a)

32 Insolvency (Amendment) Rules 2010 Rule 4.93(A1) http://www.legislation.gov.uk/uksi/2010/686/pdfs/uksi_20100686_en.pdf

3 Proposals included in the 2014 drafting of the Insolvency Bill

As noted above, since Department presented its proposals for amending insolvency law in Northern Ireland to the Committee further changes to GB law have been proposed. To account for this, a number of additional provisions have been introduced into the Insolvency (Amendment) Bill 2014.

These are outlined in the sections which follow.

3.1 Retention for requirement for the Court to be notified of creditors' decision whether to approve proposals for individual voluntary arrangements

3.1a Relevant section(s) of bill (latest draft)

See: section 5 of the 19th draft of the Insolvency (Amendment) Bill.

3.1b Purpose

As noted above, in their 2012 briefing to the Committee the Department outlined proposals which would remove the requirement for reports concerning the outcome of creditors meetings to be filed in court in cases of individual voluntary arrangements and fast track voluntary arrangements.

The Chancery and Probate Liaison Committee and the Crown Solicitor have both had *'misgivings'* about this approach. As a result these proposals have now been dropped.

Some changes to these arrangements have been included in the current draft of the bill, however.

The bill amends Article 230(A) of the Insolvency Order 1989 to the effect that in the case of an individual voluntary arrangement, if the nominee is *'of the opinion that the debtor is an undisclosed, or is able to petition for his own bankruptcy'* then the nominee must submit a report to the debtor's creditors which states:

- Whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented;
- Whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal; and
- If in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.[33]

In the current drafting of the 1989 Order this was to be submitted to the court.

Article 231 of the 1989 Order, which deals with summoning of a creditor's meeting as a result of the above report, has been amended to reflect this change – that is it now includes a reference to debtor's creditors whereas it had not previously.

Article 237B(2) of the 1989 Order, which deals with fast track voluntary arrangements, states that if the Official Receiver *'thinks that the voluntary arrangement proposed has a reasonable prospect of being approved and implemented, he may make arrangements for inviting creditors to decide whether to approve it*'. Article 237C states that once these arrangements have been implemented the official receiver *'shall report to the High Court whether the proposed*

33 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2012)

voluntary arrangement has been approved or rejected'. The bill amends, requiring the official receiver to report to the high court *and* the Department.[34]

3.1c Equivalent law in England and Wales

As noted in section 2.7c:

- Article 8 of the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 removes the requirement to submit a report to the court in those individual voluntary arrangement cases in which no application has been made to the court for an interim order.
- Article 9 substitutes the requirement placed on the official receiver to report to the court on whether a fast track voluntary arrangement has been approved or rejected, with a requirement to notify the Secretary of State.[35]

3.2 Provision to repeal references in the Insolvency (Northern Ireland) Order 1989 to a form of holiday arrangement which is now illegal

3.2a Relevant section(s) of bill (latest draft)

See: section 10 of the 19th draft of the Insolvency (Amendment) Bill.

3.2b Purpose

The Insolvency Bill 1989 contains references to a type of holiday scheme which has since been made illegal by the Working Time Regulations (Northern Ireland) 1998. Such schemes were known as *'year in hand';* workers under these contracts were entitled to earn an employee holiday for the year ahead. The Working Time Regulations in GB and NI both made these types of contract illegal. As such, the bill removes references to these contracts in insolvency law.[36]

3.2c Equivalent law in England and Wales

This will be introduced in GB by sections 24 to 28 of the Deregulation Bill 2013-14 to 2014-15. The explanatory notes state that removing this *'unnecessary provision from the statute book reduces a burden'.*[37]

3.3 Repeal of provision for early discharge from bankruptcy

3.3a Relevant section(s) of bill (latest draft)

See: section 12 of the 19th draft of the Insolvency (Amendment) Bill

3.3b Purpose

The Insolvency Bill 1989 holds that discharge from bankruptcy will automatically take place on the first anniversary of the making of the Bankruptcy Order. It also provides that the Official Receiver may file notice with the court to discharge a bankruptcy earlier if investigation shows that the bankruptcy is not necessary or is complete.

The bill will repeal Article 253(2) of the Insolvency Order 1989, which contains this second provision on the basis that it is has been *'little used'* in Northern Ireland.[38]

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34 http://www.legislation.gov.uk/nisi/1989/2405/article/237C

35 http://www.legislation.gov.uk/uksi/2010/18/note/made

36 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2014)

37 Deregulation Bill – Explanatory Notes http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0033/en/15033en.htm

38 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2014)

3.3c Equivalent law in England and Wales

This provision was repealed in England and Wales by Schedule 21, Part 3, Section 5 of the Enterprise and Regulatory Reform Act 2013.[39]

3.4 Amendment to prevent trustees in bankruptcy having any claim against banks in respect of payments made out of bankrupts accounts

3.4a Relevant section(s) of bill (latest draft)

See: clause 13 of the 19th draft of the Insolvency (Amendment) Bill.

3.4b Purpose

As the law currently stands in Northern Ireland it allows the person appointed trustee to *'claim for the bankrupt's estate any property which has been acquired by, or has devolved upon, the bankrupt'* up until the point the bankruptcy is discharged.

Notice served by the trustee to this effect is back dated to the date it was acquired by the bankrupt. This allows the trustee to recover property no longer belonging to the bankrupt. This also applies if the property in question is in the form of money processed through a bank account belonging to the bankrupt. In such a scenario, the trustee may take action against the bank.

Current law does provide protection to banks in cases where the bank was not aware of the bankruptcy case. Such an occurrence is deemed unlikely, however, as the Official Receiver *'routinely notifies the bank each time a Bankruptcy Order is made'*. Un-discharged bankrupts are also obliged to inform a bank of their status when opening an account.

It is argued by the Department that these provisions make it difficult for bankrupt persons or companies to open bank accounts. The Department has stated that in their view the risk of the trustee taking action against a bank may negatively affect the bank's willingness to let bankrupts have accounts.[40]

As such the Bill introduces a new provision that prevents the trustee from taking action against the bank, it states:

> *Where a banker enters into a transaction before the service on the banker of a notice under this Article the trustee is not in respect of that transaction entitled by virtue of this Article to any remedy against the banker.*
>
> *This paragraph applies whether or not the banker has notice of the bankruptcy.*[41]

3.4c Equivalent law in England and Wales

The Deregulation Bill takes banks outside the scope of current arrangements and provides additional protection to them. A new section of that bill – 307,4(a) – *'prevents a trustee making a claim against a bank in circumstances where the bank has not been served with notice by the trustee specifically regarding the after-acquired property he or she wishes to claim, regardless of whether the bank has notice of the bankruptcy.'*

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39 Enterprise and Regulatory Reform Act 2013 Schedule 21, Part 3, Section 5 http://www.legislation.gov.uk/ukpga/2013/24/contents/enacted

40 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2014)

41 19th draft of the Insolvency (Amendment) Bill s13

3.5 Provision to make bank deposits covered by the Financial Services Compensation Scheme a preferential debt

3.5a Relevant section(s) of bill (latest draft)

See: clause 14 of the 19th draft of the Insolvency (Amendment) Bill.

3.5b Purpose

This was included in 19th draft of the insolvency bill – but the situation has changed since the committee was briefed on this draft. The background is as follows:

- Clause 14 of the 19th draft of Insolvency (Amendment) Bill makes provision to ensure deposits covered by Financial Services Compensation Scheme are treated as preferential debts in an insolvency;
- These changes relate to the EU Bank Recovery and Resolution Directive which requires implementation by 31 December 2014;
- The Financial Services Compensation Scheme reimburses deposits in banks or other financial institutions up to a value of £85,000 in the event of an institution becoming insolvent;
- The Financial Services (Banking Reform) Act 2013 brought about this reform in England and Wales;
- The Department had intended to include this reform in the Insolvency (Amendment) Bill, but the timetable for that change dictates that it has to be brought in by 31 December 2014; and
- Further amendments will also be necessary to meet other requirements of the directive – namely legislating to make debts held in branches of European Economic Area banks situated outside of that area a sub-preferred category of debt.[42]

After correspondence with the Treasury the Minister for Enterprise, Trade and Investment has agreed to allow the Treasury to make all required amendments to NI law through a UK wide Statutory Instrument. As such, clause 14 of the bill will be dropped.

3.5c Equivalent law in England and Wales

As noted above, the Financial Services (Banking Reform) Act 2013 partially introduced the necessary changes in England and Wales. The remaining changes will be brought in via a UK wide Statutory Instrument.[43]

3.6 Amendment to remove licensing by competent authorities

This amendment and those which follow concern the licencing system for insolvency practitioners. Under current arrangements a person is qualified to act in such a capacity if they are:

- Authorised to act as an insolvency by one of the seven professional bodies[44] recognised by the Department;
- Authorised by a competent authority – in NI the Department is the competent authority in this context; or

42 Correspondence from the Minister of Enterprise, Trade and Investment to the Committee of Enterprise, Trade and Investment 06 June 2014

43 *Ibid*

44 These bodies are: The Association of Chartered Certified Accountants; The Insolvency Practitioners Association; The Institute of Chartered Accountants in England & Wales; The Institute of Chartered Accountants in Ireland; The Institute of Chartered Accountants of Scotland; The Law Society; and The Law Society of Northern Ireland.

- Authorised by a competent authority in GB.[45]

3.6a Relevant section(s) of bill (latest draft)

See: clause 15 (5), and Schedule 3 of the 19th draft of the Insolvency (Amendment) Bill.

3.6b Purpose

The purpose of this specific amendment is to make professional bodies the sole licencing authority for insolvency practitioners in NI. This will be achieved by removing references to competent authorities.

Currently, only practitioners are authorised through the competent authority in NI. These organisations will be required to seek authorisation again. The five professional bodies[46] who can achieve this have informed the Department they will be willing to do so provided the organisations in question prove to be *'fit and proper persons to be insolvency practitioners'.* [47]

3.6c Equivalent law in England and Wales

Similar provisions have been incorporated into paragraph 20 and Schedule 6 of the Deregulation Bill. On this the Deregulation Order's explanatory notes state:

> *It will improve the overall regulation of insolvency practitioners and public confidence in the arrangements for their authorisation in that it will remove the perceived conflict of interest between the Secretary of State's role as the oversight regulator of the insolvency practitioner profession and his role as a direct authoriser of insolvency practitioners. The government also considers that the interference is proportionate and strikes a fair balance.*[48]

3.7 Amendment to create the option of being authorised as an insolvency practitioner to act solely in personal or corporate insolvencies

3.7a Relevant section(s) of bill (latest draft)

See: clause 15 of the 19th draft of the Insolvency (Amendment) Bill.

3.7b Purpose

Current arrangements only allow a person/organisation to be authorised to take both individual and company insolvency cases.

The bill will amend this situation to enable a person/organisation to become partially authorised, that is authorised to take individual *or* company cases. It also includes provisions which enable the Department to recognise professional bodies as being capable of providing either full and partial authorisation or partial authorisation only. Additional provisions ensure that existing professional bodies will be capable of providing their insolvency specialist members with full or partial authorisation to *'allow insolvency practitioners, authorised by recognised professional bodies under the existing legislation, to continue to be treated as fully authorised'.*[49]

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45 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2014)

46 Five in this case as the Law Societies will not be able to authorise in these specific cases as the organisation in question are not solicitors.

47 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2014)

48 Deregulation Bill – Explanatory Notes http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0033/en/15033en.htm

49 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2014)

3.7c Equivalent law in England and Wales

Corresponding provisions are included in clause 18 of the Deregulation Bill (as brought from the House of Commons on 24th June 2014). The explanatory notes state that this change is intended to increase accessibility to the profession:

> *The new regime is intended to increase accessibility to the insolvency practitioner profession and improve competition. It will also reduce the cost of training and on-going regulation for applicants who wish to specialise.*[50]

3.8 Correction of omission in Article 363 of the Insolvency (Northern Ireland) Order 1989

3.8a Relevant section(s) of bill (latest draft)

See: clauses 16 of the 19th draft of the Insolvency (Amendment) Bill 2014.

3.8b Purpose

Article 363 of the 1989 order, which concerns entitlement to practice as an insolvency practitioner, should have included a provision that gave the Department power to make regulations in this area.

Clauses 16 of the Insolvency (Amendment) Bill 2014 will amend this article to correct this omission.[51]

3.8c Equivalent law in England and Wales

Section 419 of the Insolvency Act 1986 gives the Secretary of State power to make regulations concerning insolvency practitioners and their qualifications.[52]

3.9 Amendment to order making power so that it can be exercised as intended in the case of any credit union

3.9a Relevant section(s) of bill (latest draft)

See: clause 17 of the 19th draft of the Insolvency (Amendment) Bill 2014.

3.9b Purpose

The Insolvency (Northern Ireland) Order 2005 included provisions which were intended to allow the Department to make orders to enable credit unions to enter a company arrangement or administration. This was to correspond with equivalent powers granted to the secretary of state through the Enterprise Act 2002.

However, the Order, as drafted only extends to credit unions registered under the Industrial and Provident Societies Act (Northern Ireland) 1969. As the Department notes it *'was not realised at the time that Article 10(2) of the Insolvency (Northern Ireland) Order 2005 was being drafted that some credit unions in Northern Ireland are registered under the Credit Unions (Northern Ireland) Order 1985'.*

As such, the bill will address this situation by amending current law to extend the Department's power to make regulations to those credit unions registered under the Credit Unions (Northern Ireland) Order 1985.

The Department has noted that:

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50 Deregulation Bill – Explanatory Notes http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0033/en/15033en.htm

51 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2014)

52 Insolvency Act 1986 s419 http://www.legislation.gov.uk/ukpga/1986/45/part/XV/crossheading/insolvency-practice

HM Treasury are consulting on plans to apply the "bank insolvency" regime under Part 2 of the Banking Act 2009(c.1) to credit unions. They have advised that before this can happen it will be essential for legislation to be in place enabling credit unions in Northern Ireland to enter administration. This necessitates an amendment to Article 10 of the Insolvency (Northern Ireland) Order 2005 to make possible the making of an order allowing all credit unions to enter administration.[53]

3.9c Equivalent law in England and Wales

The power to make regulations in relation to GB societies registered under the Industrial and Provident Societies Act 1965 was provided to the Secretary of State by section 255(1)(a) of the Enterprise Act 2002.

3.10 Lord Chief Justice's right to be consulted

3.10a Relevant section(s) of bill (latest draft)

See: clause 18 of the 19th draft of the Insolvency (Amendment) Bill 2014.

3.10b Purpose

Article 24 of the Insolvency (Northern Ireland) Order 2005 enables Northern Ireland Departments to make orders amending or modifying the effect of provisions which disqualify bankrupt individuals from holding certain offices (the Department states these provision are to be found in *'various pieces of legislation'*).

The Article provides that such orders can allow for disqualification *'to be subject to the discretion of a specified person, body or group'* and that this discretion can be *'made subject to appeal to a specified court or tribunal'.*

The Bill amends Article 24 to ensure that the Lord Chief Justice is consulted with regard to the making of any Order which creates a right of appeal to a court. This has been included on the suggestion of the Minister for Justice.[54]

3.10c Equivalent law in England and Wales

Article 268 (7) Enterprise Act 2002, which gives the Secretary of State power to make orders in relation to disqualification provision, states that any such order made in England and Wales must be made *'with the concurrence of the Lord Chief Justice of England and Wales'.* It also notes that any such order made by the Secretary of State impacting Northern Ireland must be made *'with the concurrence of the Lord Chief Justice of Northern Ireland.'*[55]

3.11 Statutory Demands to be in writing

3.11a Relevant section(s) of bill (latest draft)

See: paragraphs 4, 7 and 8 of Schedule 2 to the 19th draft of the Insolvency (Amendment) Bill 2014.

3.11b Purpose

This takes forward two amendments, namely:

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54 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2014)

55 The Enterprise Act 2002 s268(7) http://www.legislation.gov.uk/ukpga/2002/40/section/268

- An amendment of Article 103 of the 1989 Order to clarify that *'a statutory demand*[56] *for payment served on a company before proceedings are taken to have it wound up for non-payment of debt must be in writing'*; and
- An amendment of Article 242 1989 Order to clarify *'that a statutory demand for payment served on an individual before proceedings are taken to have them adjudged bankrupt must be in writing'.*[57]

3.11c Equivalent law in England and Wales

In relation to Article 103 company insolvency of the 1989 Order, the equivalent section of Statutory Demands to be in writing (Article 123 (1a), relating to company insolvency) already states that a statutory demand must be made in writing.[58]

With regard to Article 242 of the 1989 Order, the equivalent section of the Insolvency Act 1986 (GB) is Article 268 (relating to individual insolvency), states that the statutory demand must be in the prescribed form, it does not expressly say that it should be in writing.[59]

3.12 Correction of error in Article 185 of the Insolvency (Northern Ireland) Order 1989

3.12a Relevant section(s) of bill (latest draft)

See: paragraph 5 of Schedule 2 to the Bill coupled with repeal of words in Article 185 by Schedule 3 of the 19th draft of the Insolvency (Amendment) Bill 2014.

3.12b Purpose

Article 185 of the 1989 Order contains an error. Specifically, paragraph 2 of this Article states:

> *If an unregistered company has a principal place of business situated in England and Wales or Scotland, it shall not be wound up under this Part unless it has a principal place of business situated in Northern Ireland, and the principal place of business in Northern Ireland is, for all the purposes of the winding up, deemed to be the registered office of the company*

The Department argues that this is flawed, they state:

> *It provides that if an unregistered company has principal places of business in both GB and Northern Ireland the one in Northern Ireland is to be deemed to be its registered office. However, it would be perfectly possible for an unregistered company which does not have a principal place of business in GB to be wound up in Northern Ireland. There is nothing to deem the principal place of business in Northern Ireland of such a company as its registered office.*

For this reason, the article has been amended to read as follows:

> *If an unregistered company has a principal place of business situated in England and Wales or Scotland, it shall not be wound up under this Part unless it has a principal place of business situated in Northern Ireland.*[60]

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56 A statutory demand is a special type of written request from a creditor (someone who is owed money) for payment of a debt.

57 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2014)

58 Insolvency Act 1986 (GB) s123(1a) http://www.legislation.gov.uk/ukpga/1986/45/section/123

59 Insolvency Act 1986 (GB) s268 http://www.legislation.gov.uk/ukpga/1986/45/section/268

60 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2014)

In addition, a new paragraph has been added *'to provide for the principal place of business in Northern Ireland of any unregistered company, not just unregistered companies with principal places of business in both GB and Northern Ireland, to be deemed to be its registered office.'*

This reads:

> *For all purposes of winding up, the principal place of business in Northern Ireland of the unregistered company is deemed be the registered office of the company.*[61]

3.12c Equivalent law in England and Wales

Not applicable.

3.13 Correction of error in paragraph 1A of Schedule B1 to the Insolvency (Northern Ireland) Order 1989

3.13a Relevant section(s) of bill (latest draft)

See: paragraph 13 of Schedule 2 to the 19th draft of the Insolvency (Amendment) Bill 2014.

3.13b Purpose

Paragraph 1A of Schedule B1, which establishes the legal framework for the conduct of company administrations, contains an error. It states:

> *A company incorporated outside Northern Ireland that has a principal place of business in England and Wales or Scotland (or both in England and Wales and in Scotland) may not enter administration under this Schedule unless it also has a principal place of business in Northern Ireland.*[62]

The Department states that this instead should read *a company incorporated outside the United Kingdom'* since companies within the UK but outside Northern Ireland are already prevented from entering administration in Northern Ireland *'by the virtue of the fact that paragraph (1A) of schedule B1 defines "company" for the purposes of that schedule to mean a company registered under the Companies Act 2006 in Northern Ireland'*.[63]

The bill therefore amends the above provision, submitting *'a company incorporated outside Northern Ireland'* with *a company incorporated outside the United Kingdom'*.

3.13c Equivalent law in England and Wales

Not applicable.

3.14 Repeal of superfluous definition of "nominee" in the 1989 Order

3.14a Relevant section(s) of bill (latest draft)

See: Schedule 3 to the 19th draft of the Insolvency (Amendment) Bill 2014.

3.14b Purpose

Individuals or companies entering into voluntary arrangements in Northern Ireland are required to nominate an insolvency practitioner – the nominee – to oversee the arrangement.

The 1989 Order contains definitions in a number of places that are to be repealed (Articles 5(1) and 9(1) as they are deemed to be confusing and adequately defined elsewhere in the Order, namely Parts 2 and 8 and in Schedule A1.[64]

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61 *Ibid*

62 *Ibid*

63 *Ibid*

64 *Ibid*

3.14c Equivalent law in England and Wales

Not applicable.

3.15 Repeal of the provision enabling individuals other than insolvency practitioners to act as nominees and supervisors in voluntary arrangements

3.15a Relevant section(s) of bill (latest draft)

See: Schedule 3 to the 19th draft of the Insolvency (Amendment) Bill 2014.

3.15b Purpose

Under current arrangements individuals other than qualified insolvency practitioners can act as nominees and supervisors in voluntary arrangements if they are authorised by recognised body for that purpose.

The bill amends current law by removing the power of Department *'to be able to recognise bodies for the purpose of authorising individuals, who are not insolvency practitioners, to act as nominees or supervisors in relation to corporate or individual voluntary arrangements'*

3.15c Equivalent law in England and Wales

This corresponds to paragraph 18 and 19 of Schedule 6 to the Deregulation Bill.[65] The explanatory notes state:

> *Paragraphs 18 and 19 repeal sections 389(1A) and 389A of the Insolvency Act 1986. These provisions allow individuals to be authorised to act solely as nominees or supervisors in voluntary arrangements. Once the partial authorisation regime for insolvency practitioners in clause 18 is introduced, it is considered there will be no demand for authorisation to act in voluntary arrangements alone, hence the provisions will become obsolete.*[66]

65 Deregulation Bill Schedule 6 s18&19 http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0033/en/15033en.htm

66 Department of Enterprise, Trade and Investment – Briefing to the Committee for Enterprise, Trade and Investment Insolvency (Amendment) Bill (March 2014)

4 Potential consultees

Table 1 is a list of potential consultees that the Committee may wish to contact in relation to the Insolvency (Amendment) Bill. Please note, the organisations listed below should not be considered a definitive list of potential consultees.

Table 1: List of Potential consultees for Committee for Enterprise, Trade and Investment in their consideration of the Insolvency (Amendment) Bill

Body	About
Advice NI	Independent advice network operating throughout Northern Ireland. Money advice is amongst its areas of work.
Association of Chartered Certified Accountants	Global body for professional accountants.
Chartered Accountants Ireland	A professional body of accountants that oversees the professional conduct of accountants in Ireland.
Chartered Management Institute	Chartered professional body dedicated to promoting the highest standards in management and leadership excellence.
Citizens Advice Bureaux NI	Northern Ireland's largest advice charity, Citizens Advice free, independent, confidential and impartial advice to everyone on their rights and responsibilities.
Confederation of British Industry	UK business lobbying organisation, providing a voice for employers at a national and international level.
Construction Employer's Federation	The Construction Employers Federation (CEF) is the certified representative body for the construction industry in Northern Ireland. The organisation has over 1200 member companies
Consumer Council	Independent Consumer Organisation. Their work includes taking a lead role in the Financial Capability Partnership NI.
Debt Managers Standards Association	Established in 2000 to promote good practice within the debt management industry.
Deloitte	Deloitte Touche Tohmatsu Limited, commonly referred to as Deloitte, is one of the "Big Four" professional services firms.

Body	About
Department for Employment and Learning (Redundancy Payments Service)	Division of DEL which pays certain entitlements (within limits) owed to former employees of insolvent employers.
Disability Action	Disability Action works to ensure that people with disabilities attain their full rights as citizens, by supporting inclusion, influencing Government policy and changing attitudes in partnership with disabled people.
Engineering Employers Federation	Manufacturers Organisation, work with policy makers to develop policy and represent members.
Ernst and Young	One of the Big Four professional services firms.

Body	About
Federation of Small Businesses	Membership organisation promoting the interests of small businesses and the self-employed throughout the UK.
Insolvency Practitioners Association	The IPA, formally constituted as a company limited by guarantee, is a membership body for those in insolvency practice; those engaged in insolvency related work; and those with an interest in insolvency.
Institute of Directors	The Institute of Directors (IoD) is a Professional Institute with Members which promotes directors, develops corporate governance and represents Members.
Intertrade Ireland	InterTradeIreland has been given responsibility by both Governments to boost North/South economic co-operation to the mutual benefit of Northern Ireland and Ireland
Invest NI	Regional business development agency.
Irish League of Credit Unions	Representative body for Credit Unions on the island of Ireland.
KPMG	KPMG in the UK is a leading provider of professional services including audit, tax and advisory.
Labour Relations Agency	The Labour Relations Agency (the Agency) was established in 1976 as a Non-Departmental Public Body with responsibility for promoting the improvement of employment relations in Northern Ireland
Law Centre (NI)	Law Centre (NI) is a not for profit agency working to advance social welfare rights in Northern Ireland. The Law Centre promotes social justice and provides specialist legal support to advice giving organisations and disadvantaged individuals
Local Authorities	Local Authorities in NI, including the new Shadow Councils.
Money Advice Trust	UK Charity formed in 1991 to assist people in dealing with debt and managing their money.
NI Chamber of Commerce and Industry	NI Chamber is a quality assured, customer focused membership organisation with over 230 years commitment to the Northern Ireland economy
NIC/ICTU	The Irish Congress of Trade Unions (ICTU) is the single umbrella organisation for trade unions on the island of Ireland. Congress is the largest civil society organisation on the island. It is the apex body representing 832,000 workers affiliated through 64 trade unions in Northern Ireland and the Republic of Ireland
Body	About
NICVA	Membership and representative umbrella body for the voluntary and community sector in Northern Ireland.
NICVA	The Northern Ireland Council for Voluntary Action is a membership and representative umbrella body for the voluntary and community sector in Northern Ireland.

Body	About
Northern Ireland Adviser on Employment and Skills	Provides evidence based employment and skills advice to the Minister for Employment and Learning and the UK Commission for Employment and Skills.
Northern Ireland Court Service	• An Agency within the Department of Justice (DOJ). The Agency's role is to: • provide administrative support for Northern Ireland's courts and tribunals; • support an independent Judiciary; • provide advice to the Minister of Justice (the Minister) on matters relating to the operation of the courts and tribunals; • enforce civil court judgments through the Enforcement of Judgments Office (EJO); • manage funds held in court on behalf of minors and patients; • provide high quality courthouses and tribunal hearing centres; and • act as the Central Authority for the registration of judgments under certain international conventions.
Northern Ireland Equality Commission	The Equality Commission for Northern Ireland is a non-departmental public body established by the Northern Ireland Act 1998. Its powers and duties derive from a number of statutes which have been enacted over the last decades, providing protection against discrimination on the grounds of age, disability, race, religion and political opinion, sex and sexual orientation.
Northern Ireland Local Government Association	The Northern Ireland Local Government Association (NILGA) represents the collective interests of elected members in local councils and facilitates the development of the sector
Office of Industrial Tribunals and Fair Employment Tribunal	The Office of the Industrial Tribunals and the Fair Employment Tribunal (OITFET) is staffed by 59 personnel responsible for the administration and organisation of the Industrial and Fair Employment Tribunals. The staff are provided by the Department for Employment and Learning (DEL) and the team is led by the Secretary of the Tribunals.
Ombudsman	The Ombudsman has the power to investigate the actions of most public organisations in Northern Ireland including Government Departments, their Agencies and Health Service providers.
PriceWaterhouse Coopers	PricewaterhouseCoopers is a multinational professional services network. It is the world's largest professional services network, as measured by 2014 revenues, and is one of the Big Four auditors, along with Deloitte, Ernst & Young and KPMG
Rural Community Network	Regional voluntary organisation established by community groups from rural areas in 1991 to articulate the voice of rural communities on issues relating to poverty, disadvantage and equality.
Body	About
StepChange Debt Charity*	Operating throughout the UK the StepChnage Debt Charity provides free advice on dealing with debt to individuals. They offer debt management plans and provide advice on insolvency options.

Body	About
The Attorney General for Northern Ireland	Chief legal adviser to the Northern Ireland Executive for both civil and criminal matters that fall within the devolved powers of the Northern Ireland Assembly
The Law Society of Northern Ireland	Represents and regulates the solicitors' profession in Northern Ireland with the aim of protecting the public
Ulster Community Investment Trust	Ulster Community Investment Trust Ltd (UCIT) was established in 1995 in response to decreasing grant support from government and the difficulties experienced by community organisations in accessing commercial loan facilities. The organisation now stands as the key provider of social finance, free advice, business support and mentoring to the social economy sector in Northern Ireland and the Republic of Ireland.
Ulster Federation of Credit Unions	Representative body for Credit Unions in Northern Ireland.
Women's Forum NI	Women's Forum Northern Ireland is an "umbrella" body for women's organisations in the Province. Currently, it continues to represent a broad range of constituent organisations and hence approaching 100,000 women across Northern Ireland.

* Previously the Consumer Credit Counselling Service

Appendix 6

List of Witnesses

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1. Department of Enterprise, Trade and Investment
2. Institute of Chartered Accountants Ireland
3. PricewaterhouseCoopers

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