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Department for the Economy – Call for Evidence: Insolvency (Amendment) Bill 2025 (the Bill)

14 October 2025

IPA Response

About the IPA

The Insolvency Practitioners Association (IPA) is a membership body recognised in statute for the purposes of authorising Insolvency Practitioners (IPs) under the Insolvency Act 1986 and Insolvency (Northern Ireland) Order 1989. It is the only Recognised Professional Body (RPB) to be solely involved in insolvency and for more than sixty years the IPA is proud to have been at the forefront of developments and reform within the insolvency profession.

The IPA's population of over 600 Licensed Insolvency Practitioners (IPs) are subject to a robust regulatory regime, applied by the IPA's dedicated regulation teams carrying out complaints handling, monitoring and inspection functions.

The IPA has a longstanding and continuing commitment to improving standards in all areas of insolvency (and related) work. It was the first of the recognised bodies to introduce insolvency-specific ethics guidance for IPs, and the IPA continues to be a leading voice on insolvency matters such as the development of professional standards, widening access to insolvency knowledge and understanding, and encouraging those involved in insolvency case administration and insolvency-related work to acquire and maintain appropriate levels of competence and skills.

The comments and opinions expressed below represent the views of the IPA's Secretariat and are not intended to reflect the opinion of each individual and firm member of the IPA. Our comments in this response are based primarily on our role as an RPB.

We set out below our response to the Call for Evidence.

Further enquiries should be addressed to:

[redacted]

Insolvency Practitioners Association

46 New Broad Street, London, EC2M 1JH

[redacted]

IPA Response

1. The Explanatory and Financial Memorandum accompanying the Bill sets out 22 objectives which the Bill is intended to achieve. The IPA supports these objectives which are, broadly speaking, designed to reduce the administrative burden of dealing with insolvencies, simplify procedures and provide Office Holders with more direct access to powers, by removing the requirements for sanction, to enable them to progress insolvency appointments.

2. Similarly, the introduction of new powers, such as the power for an Administrator to bring claims for fraudulent or wrongful trading[1] and the powers of an Administrator or Liquidator to assign causes of action[2], address the weakness that office holders often are simply unable to pursue potential realisations due to a lack of funds, and will be beneficial.

3. The Bill recognises the move in business and commercial practice towards digital means of communication and decision making. As such, the proposed abolition of the requirement to hold meetings of creditors is welcomed. This change should benefit creditors by saving time and costs whilst not impeding their engagement with the process.

4. The IPA would, however, express a note of caution regarding clause 2 of the Bill which, by amending S208ZE of the Insolvency (Northern Ireland) Order 1989, appears to remove an Office Holder's discretion to convene a meeting of creditors unless doing so has been requested by a specified minimum number of creditors. It seems unlikely that, given the alternative decision procedures that are available, an Office Holder would convene a meeting of creditors or contributories without good reason even if a request from the minimum number of creditors could not be obtained in a reasonable time. We would not want the amendments to make convening a meeting of creditors too difficult to do.

[1] Clause 2 of the Bill
[2] Clause 3 of the Bill

5. The IPA welcomes other amendments that will save costs and improve efficiency such as:

    - Enabling creditors to opt out of routine hard copy communications
    - Increasing the use of websites and remote meeting attendance at meetings
    - The agreement of 'small' claims without the submission of proof
    - The extension of an Administrator's term of office by consent
    - The simplification of distributing the prescribed part

6. The alignment of Northern Ireland's insolvency procedures with those of England and Wales should be beneficial in that it will allow practitioners and other stakeholders, especially those operating in both jurisdictions, to simplify and align their own procedures and expectations. It should also improve regulatory efficiency in promoting consistency in monitoring, oversight and training provision.

7. The proposed amendments will modernise the insolvency regime in Northern Ireland whilst maintaining its local character and building confidence in it amongst individuals, businesses and investors.

FW: Insolvency (Amendment) Bill - Call for Evidence FAO Mr P McCallion, Clerk to the Committee for the Economy,

Tue 04/11/2025 10:04

[redacted]

Dear Peter

I attach my email to you of 30 October 2025 and regret that I had made an error in your email address and have since been away, hence its late delivery.

I apologise for any inconvenience caused.

Kind regards

[redacted]

[redacted]

Sent: 30 October 2025 16:58

To: committee.economy@niassembly.gov

[redacted]

Subject: Insolvency (Amendment) Bill - Call for Evidence FAO Mr P McCallion, Clerk to the Committee for the Economy,

Dear Peter

Thank you for your letter of 24 October 2025.

The insolvency practice review to which we referred was the "First Review of the Insolvency (England and Wales) Rules 2016" published on 5 April 2022, which is available on the Insolvency Service website at:

First Review of the Insolvency (England and Wales) Rules 2016 - GOV.UK

Although it is not directly relevant to the changes to NI insolvency legislation proposed in the Insolvency (Amendment) Bill, I would mention that the framework for Insolvency regulation in England and Wales has been subject to an extensive review since 2020. The most recent government response to review was published in September 2023 and may be of interest to the Committee. The paper can be viewed at:

https://www.gov.uk/government/consultations/the-future-of-insolvency-regulation/outcome/the-future-of-insolvency-regulation-government-response

We would be happy to provide further assistance to the Committee in its consideration of the Insolvency (Amendment) Bill.

Yours sincerely,

[redacted]
Director of Regulation & Policy

[redacted]

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The Insolvency Service

Corporate report

First Review of the Insolvency (England and Wales) Rules 2016

Published 5 April 2022

Applies to England, Scotland and Wales

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This publication is available at https://www.gov.uk/government/publications/first-review-of-the-insolvency-england-and-wales-rules-2016/first-review-of-the-insolvency-england-and-wales-rules-2016

Introduction

I am pleased to publish this first report on the operation of the Insolvency (England and Wales) Rules 2016 ("the Rules"), as required under the review framework introduced by the Small Business, Enterprise and Employment Act 2015.

The Rules came into force in 2017 following a wider effort to streamline the insolvency regime and reduce unnecessary regulation, the ultimate goal of which was to provide better outcomes from insolvency and increased returns to creditors. Achieving that important aim in respect of such a large body of detailed legislation was by no means a straightforward task. The Rules consolidated the bulk of the existing secondary legislation, updated the insolvency framework with modern and gender-neutral language, and provided a clearer and more user-friendly rulebook for insolvency processes. At the same time, they introduced the supporting provisions for the changes to insolvency law and practice contained in the Deregulation Act 2015 and the Small Business, Enterprise and Employment Act 2015.

Given the significance of this detailed insolvency legislation, it is right that we should periodically re-examine its operation to ensure that its provisions remain both necessary and fit for purpose. This first review following such a large change represents an especially important milestone, and the Government has approached it accordingly. The Insolvency Service issued a Call for Evidence in March 2021, eliciting comments on over one hundred different points from across the insolvency sector and other interested parties. These responses, many of which deal with very specific technical issues within the Rules, demonstrate the depth of interest in securing an insolvency framework that is excellent on all levels.

I am grateful to everyone who responded, including the insolvency professionals who provided extensive descriptions of their experiences working with the Rules on a day to day basis. A detailed analysis of all of the responses has been completed, the results of which are presented here.

This report meets the Government's legal requirement to report on the operation of the Rules, as well as supporting our ongoing commitment to ensuring that the UK's insolvency regime remains among the best in the world.

Lord Callanan

Executive Summary

The Rules contain a five-yearly review clause, that also requires the publication of a report on the findings. This first review has been informed by a Call for Evidence on the operation of the Rules, carried out between March and June 2021, which attracted numerous in-depth responses from across the insolvency sector.

The report finds that the Rules as a whole are operating correctly and achieve the goals that were set for them. They provide appropriate detailed procedures to support the Insolvency Act 1986, as well as consolidating and modernising the preceding secondary legislation; implementing policies contained in two other acts of Parliament; and introducing other modernisations such as electronic communication between officeholders and creditors. Those policies remain appropriate ones, and could not be achieved with less regulation.

The review and Call for Evidence also uncovered numerous other issues related to the Rules and the insolvency regime. Some of these are minor technical points, while others, although they do not compromise the operation of the insolvency regime or the system of regulation established by the Rules, remain significant items in their own right. Respondents to the Call for Evidence highlighted, for example, that while the Rules permit officeholders to deliver documents via website, this does not extend to directors; and that various deadlines prescribed in the Rules can be very tight and so difficult to comply with. Certain issues that derive from primary legislation fall outside of the scope of the review, such as the low take up of the provisions allowing creditors to opt out of receiving correspondence. These have nevertheless been noted.

Where the Government has determined that it may be possible to improve the current regime, further work will be done to follow up on the issues that have been raised. This includes addressing a small number of very minor and simple points, which will be resolved via amending secondary legislation. A longer list of more substantial items will be reviewed in future as other work and priorities allow. Of these, attention will initially be given to the Creditors’ Voluntary Liquidation process and the scope of insolvency applications.

The Review

This section covers the legal requirement for the Secretary of State to carry out a review and publish this report, the work that has been done to accomplish this, and the findings of the statutory review.

Requirements

A report is required by rule 7 of the Rules, inserted in compliance with the Small Business, Enterprise and Employment Act 2015. In line with the Government's view that regulations affecting business should be subject to periodic review, rule 7 requires the Secretary of State to carry out a review of the Rules; set out the conclusions of the review in a report; and to publish the report.

The law further specifies that the report must:

- set out the objectives intended to be achieved by the regulatory system established by the Rules;
- assess the extent to which those objectives are achieved; and
- assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

The objectives that underpin the Rules are, therefore, set out below, together with the findings of the review in respect of the questions posed.

Regulatory Objectives

The primary aim of the Rules is to establish the detailed procedure for the conduct of company and individual insolvency proceedings under the Insolvency Act 1986, giving effect to that Act. That objective was shared with the previous Insolvency Rules 1986 (SI 1986/1925); the objectives in replacing that existing version with the Rules being (in summary):

- Providing a system that is easier for users to understand than that contained in the Insolvency Rules 1986, by consolidating those Rules and the 28 amending instruments that had been made subsequent to their coming into effect in 1986, as well as updating their structure, language and style so as to better meet the needs of users including the judiciary, insolvency officeholders, creditors, and public officials;
- Giving effect to policy changes made to the Insolvency Act 1986 by the Deregulation Act 2015 and the Small Business, Enterprise and Employment Act 2015; and
- Implementing specific other new policies (described in the Explanatory Memorandum to the new Rules) to modernise the UK insolvency regime.

The policies included in the Deregulation Act and Small Business, Enterprise and Employment Act to which the Rules gave effect included for example:

- Allowing insolvency practitioners to be appointed as interim receivers in bankruptcy cases;
- Removal of the requirement for a bankrupt person in a creditor's petition bankruptcy to submit a Statement of Affairs;
- Removal of the requirement for insolvency practitioners to hold a final meeting of creditors in every liquidation and bankruptcy case;
- Removing the requirement to hold a physical meeting of creditors, replacing it with a new decision-making process that included the concept of deemed consent;
- Giving creditors the ability to opt out of receiving certain notices from insolvency officeholders;
- Officeholders being allowed to use their discretion to not require a proof of debt in certain cases; and
- The official receiver being appointed as trustee on the making of a bankruptcy order.

The additional new policies that the Rules introduced included:

- Providing for electronic communication between officeholders and creditors;
- The use of websites to communicate certain information such as statutory notices;
- Simplification of time periods for progress reports in insolvency cases, particularly where there is a change of officeholder;
- Greater protection for personal information of customers and employees in Statements of Affairs which are filed with the registrar of companies; and
- The abolition of the prescribed forms previously used to communicate certain information.

The Government's Call for Evidence

In order to assist the assessment of the Rules, the Insolvency Service published a Call for Evidence (https://www.gov.uk/government/news/call-for-evidence-on-the-insolvency-rules) on 11 March 2021. This remained open until 30 June 2021, attracting 25 responses from the insolvency sector and others with an interest in the insolvency regime. Some responses collated input from a range of parties, with the result that the true number of individuals and organisations feeding into the review was considerably higher than the raw number of responses.

Many of the questions within the Call for Evidence were directed towards the legal requirements of the review. Questions asked, for example, whether the Rules provide an appropriate framework for the UK's insolvency regime; whether that framework is clear; whether the updated language used in the new Rules improves upon that of the preceding Insolvency Rules 1986; and what changes if any could be made to meet those goals.

Other questions sought information on particular areas that were understood to be of concern to stakeholders, such as creditor engagement.

In order to ensure that everything relevant to the operation of the Rules would be captured, the Call for Evidence invited comment even where the issues in question might not be clearly within scope of the review. It is therefore not unexpected that in many cases, although not all, the responses received were wide-ranging in terms of the topics covered.

Outcome and findings

The UK's insolvency regime has operated efficiently and effectively for many years, and is widely regarded as one of the best in the world. Although insolvency law cannot remain static as the demands of the wider economy and the needs of its users change, any broad finding that the Rules have failed to give effect to the Insolvency Act 1986, or that they do not provide both an appropriate and necessary framework to achieve that goal, would no doubt be surprising to many.

This was borne out in the responses to the Call for Evidence. While not all respondents wished to address all of the questions, the majority of those commenting on the framework as a whole were content that the Rules do provide an appropriate framework for the UK's insolvency regime; and that the framework is clear (while at the same time, there remain a number of individual rules and areas which could be improved upon or clarified, as discussed below).

The majority of respondents likewise agreed that the updated language employed by the Rules improves upon that used in the Insolvency Rules 1986; that the Deregulation Act and Small Business, Enterprise and Employment Act policies have been fully and clearly implemented; and that the implementation of other new policies is clear.

Respondents were less confident that the new policies introduced by the Rules were in all cases positive and effective, with the abolition of prescribed forms for example attracting a fair degree of negative comment (this is further addressed in a separate section below). Taken together, however, most respondents appeared to consider the new policies to be the right ones for a modern efficient regime.

We did not identify any suggestion that there are areas that the Rules cover, but should not, i.e. where less regulation would achieve the same objectives. While there were comments that the contents of certain notices, for example, could be simplified, this did not stretch to any widespread perception that the notices themselves are not needed. The requirements as regards physical meetings of creditors, which were frequently cited, derive from the Small Business, Enterprise and Employment Act rather than the Rules. This also applies to the rules that allow creditors to opt out from correspondence. In that case, notwithstanding that the policy does not originate within the Rules and so is out of scope of the present review, we recognise the general perception that it is unnecessary and will (as noted below) return to it at a future date.

In light of the responses to the Call for Evidence and our review of the points raised, we consider that the system established by the Rules remains fit for purpose: taken as a whole, it achieves the objectives set out above for which it was established; those objectives remain appropriate ones for the Rules; it is not possible to achieve the objectives through a system that imposes less regulation.

Notwithstanding the above, a considerable number of issues were raised on technical points in the Rules, and on particular topics where those responding felt that the rules were in error or could be improved. These can be grouped into categories, reflecting the main concerns shared by the respondents:

- Clarity and consistency of the Rules
- Omissions, errors and unnecessary rules
- Removal of prescribed forms
- The creditor opt out process
- Electronic communication
- Insolvency applications and claim forms
- Pre-appointment work
- Fee estimates
- Creditor approval of proposals and fees
- Decision-making processes
- Creditor committees
- Data disclosure issues
- Claims and dividends

- EU exit
- New proposals
- Restriction on calling physical meetings of creditors

These topics are further explored in individual sections below. Additional sections have also been included to capture the relatively small number of issues that did not fall into one of the other categories, and cross-cutting remarks regarding creditor engagement.

Issues Raised

Clarity and consistency of the Rules

While on the whole respondents appeared content that the overall framework provided by the Rules is clear and that updated language is helpful, a number of responses were more critical. This mixed response largely reflects various individual rules which the responses highlighted as being unclear or apparently contradictory, rather than criticism of the Rules as a whole.

Commentary suggests that some users do find the structure of the Rules less intuitive than the previous Insolvency Rules 1986, and it was suggested that the headings provided may not always fully describe the content. It was proposed that guidance on navigating the Rules would be appreciated by new users, and we will produce a brief summary of the structure of the Rules for that purpose.

It is important for the reader to hold in their mind that the Rules clarify and provide detail to the Act, and that the law should be read holistically. When read in this manner, apparent discrepancies often fall away and the correct interpretation is clear. A number of points raised fall into this area, for which the Rules do not need correction in our view. For example, the Rules' more consistent use of "deliver", in contrast to the Act's use of various terms such as “send”, “furnish” or “deliver”, gives a precise meaning to those general expressions, which would otherwise be ambiguous. Similarly, the meaning of “previous” and “former” liquidator, in rule 7.73, is apparent when considered in the context of a handover from one (former) liquidator to a successor.

By contrast rule 10.87(3)(f), regarding the contents of the notice sent to creditors prior to the release of a trustee, makes a reference to it being filed at court that does not appear to be reflected elsewhere in the Rules or the Act. On the face of it this requirement should be made clearer. We have set aside, for further review, whether the differing use of the word “between” in rules 6.14(6)(a) and 15.4(b) is sufficiently clear in context.

A number of points have been raised querying whether particular phrasing for certain documents is acceptable under the Rules, and we appreciate that there will always be some uncertainty as to whether a given approach is sound until it has been tested in court. However, we are not aware of any widespread dispute or confusion between parties as to the requirements, or any issue where the law is producing a surprising or unhelpful result in practice, so as to suggest that the Rules should be amended. We are therefore content that the Rules provide clear and sufficient guidance on the content of documents, while the question of whether specific wording or content meets the requirements is a matter for the courts to adjudicate rather than the Government.

Previous amendments to the Insolvency Rules 1986 converted time periods of less than two weeks into business days, whereas for the most part other, longer periods have been left in calendar days. We are not aware that this has created any difficulties for users of the Rules but will nevertheless consider whether, at a future point, the time periods should be rationalised so as to provide consistency throughout.

We agree that there is disparity between the different rules for different types of insolvency procedures, which creates what can appear on the face of it to be unhelpful inconsistencies between them. This has been highlighted to us as making the rules governing remuneration more difficult to follow for creditors, for example, and we will consider whether these can be brought into line and simplified. It is not always true that individual and corporate insolvency are comparable or should be subject to the same rules, but we accept that differences between processes raise the possibility for confusion and so in general should be kept to the minimum necessary. One example of a necessary discrepancy is between rule 14.29(1)(a) in administration, where the notice sent to creditors triggers set off on the debts owed (see rule 14.24(1)), hence all creditors must receive it even if they have already proved their debt; and rule 14.29(1)(b) in liquidation which, although superficially similar, does not fulfil the same purpose.

There may be other disparities in the Rules where the original justification for the disparity no longer applies, or is no longer sufficient. For example, the rules for meetings vary from those for other decision procedures, notably requiring gazetting. When the new rules on decision procedures were introduced an effort was made to remain consistent with the previous rules where possible, so as to help this change occur smoothly. We will consider if this rationale continues to apply.

Fees and expenses are a common topic as regards clarity but, aside from discrepancies between insolvency procedures mentioned above, it is not certain that the rules on a necessarily moderately complex topic can be made clearer. It is necessary to ensure that creditors are aware of the fees charged by an insolvency officeholder and the work that has been done to justify them, as well as what remuneration has actually been drawn, and where the case stands as regards any fee estimate that has been made. Nevertheless, we have particularly noted concerns around rules 18.24 to 18.27 on changes to the basis of remuneration. In view of their importance to many of the users of the Rules, we will further review the rules on remuneration at a future date.

The Creditors' Voluntary Liquidation (CVL) process was raised in this context as being unhelpfully inconsistent and opaque. Respondents have also raised a number of issues on this front in other areas of the review, as noted below, and we consider that the process as a whole should now be further reviewed. We will examine what changes need to be made to improve it and to ensure that it remains fit for purpose.

Some responses suggested changes to the Rules that were not legal matters but instead intended to assist the reader. This included for example the insertion of cross-references, annotations, or revised headings. Such non-legal changes would not be appropriate for inclusion in any amending legislation but could be considered for inclusion in future guidance. Other responses proposing changes to the way in which specific provisions, such as rule 7.111, are numbered, would if implemented put those provisions at odds both with modern drafting convention and the numbering of similar provisions elsewhere in the Rules.

Omissions, errors and unnecessary rules

Overall, the responses to the Call for Evidence demonstrated that there are no significant errors within or omissions from the Rules and that users are broadly content. The points raised do not appear to be causing significant issues with the operation of the regime and, in many cases, were raised by a sole respondent who had identified them.

A number of responses in this area appear to relate to misunderstandings, for instance the inclusion within regulatory guidance (Statement of Insolvency Practice 6) of requirements in relation to an insolvency practitioner's report under section 98 of the Insolvency Act 1986: the relevant legal requirements are covered within the Rules and have not been omitted.

Other points have been resolved since the introduction of the Rules through other legislation, for example by subsequent amendments, such as the [Insolvency (England and Wales) (Amendment) Rules 2017 (https://www.legislation.gov.uk/uksi/2017/366/contents/made)](https://www.legislation.gov.uk/uksi/2017/366/contents/made), which resolved an issue with rule 6.20(2) concerning the status of a liquidator where creditors appoint a replacement liquidator.

However, there are other areas which we agree warrant further consideration and/or rectification. A number of the issues raised are discussed in greater detail below:

Concerns that the new Rules are not effective for small cases, including the absence of the ability of remuneration in a CVL to default to Schedule 11 scales, have been noted. However, feedback received from stakeholders suggests that reintroducing this measure (which was a feature of the regime prior to its removal in 2010) would make the process more complicated. Due to the wide-ranging nature of businesses utilising the rules, the inclusion of different criteria for smaller businesses risks making the process burdensome and more expensive rather than more efficient.

A concern was raised that the opt out process is mentioned in the Rules even where it is not possible: the statement required by rule 15.8(3)(g) has to be given, even in cases where opting-out is not possible and there are therefore no creditors to whom the statement might apply. Officeholders do however have discretion as to the precise wording of the statement, which allows them to include appropriate caveats should they think that reproducing the literal wording of the rules could cause confusion.

The updated wording shown within rules 2.44(4) and 8.31(5), which replaced the previous "shall not" in the Insolvency Rules 1986 with "must not", appears to be causing some confusion as to when a voluntary arrangement supervisor can vacate office. We will consider whether this should be amended in any future changes to the Rules.

Some responses suggested that the inclusion of the time and date of an administration appointment within the notice of appointment appears to be superfluous and could lead to confusion when compared to the time and date of the court's endorsement. We will give further consideration to removing this requirement, on the basis that the court's time and date will be sufficient.

Similarly, it appears that rule 6.16 contains an unnecessary requirement for an administrator who then becomes liquidator to provide information to new creditors. We will likewise consider removing or modifying this requirement, given that the information is also available at Companies House.

The inclusion of anachronistic references to "registrars" does not affect the Rules in practice, as this is a defined term. We will however consider updating this to use more modern terminology in a future update to the Rules.

One respondent asked why Hire Purchase creditor rights are not the same in an administration as they are in other procedures. This difference is intentional rather than an error, as the key objective of an administration is to rescue the business, making the ongoing use of secured assets essential, whereas in in other procedures the Hire Purchase agreement is terminated and the creditor can subsequently prove, and vote, for any shortfall in their security.

Although the prescribed wording for bankruptcy disclaimers contained in the new Rules differs to the wording in the Insolvency Rules 1986, we consider that the meaning remains clear.

By contrast, the omission of a replacement Rule allowing the court to consolidate two or more bankruptcy petitions presented against the same debtor may be unhelpful, albeit this was a deliberate decision at the time that the Rules were drafted. We will consider whether this should be reinstated in a future update to the Rules.

Concerns that the rules regarding Company Voluntary Arrangements are lacking a rule for Companies House to be notified of a change of supervisor appear to be well-founded. There is no such rule at present and the public record is out of date after a change has taken place. We will consider whether this justifies creating an additional filing requirement for officeholders, and if so we will look to include it in any future changes.

The omission of a reference to companies in rule 18.3(1)(b) (which deals with the contents of officeholders' progress reports) gives the appearance of an error so may be confusing, and we will look to rectify this in a future update to the Rules.

The risk of overlapping appointments where there is a change of officeholder was raised in more than one context. This is not considered to be a matter of significant concern as the regime makes adequate provision for the existence of multiple simultaneous officeholders.

It was noted that meetings resolutions have been reduced in scope. This reflects the fact that rule 6.7 now includes expenses that were omitted from the Insolvency Rules 1986. These expenses were previously paid via "any other resolution which the chairman thinks it right to allow for special reasons". As this is no longer necessary, the provision has been removed from the new Rules.

Whilst overseas postal deliveries are not directly addressed in the Rules, officeholders have been encouraged to take a pragmatic approach and, where appropriate, extend time limits and deadlines to reflect when notices are likely to be delivered in reality. This position was confirmed in the content of Dear IP issue 76 (https://content.govdelivery.com/attachments/UKIS/2017/04/21/file_attachments/805162/Dear%2BIP%2BIssue%2B76%2BApril%2B2017.pdf), which was published contemporaneously with the Rules.

Responses highlighted a number of references to repealed legislation, which we will look into removing or replacing in due course. References to the repealed Schedule A1 of the Insolvency Act 1986 have been removed by the Insolvency (England and Wales) (No.2) (Amendment) Rules 2021 (https://www.legislation.gov.uk/uksi/2021/1028/contents/made).

Removal of prescribed forms

The current Rules were drafted to facilitate the transfer of information by electronic means, and encourage the use of modern ways of working and communicating within the UK's insolvency regime. This policy informed the decision to specify the content of documents within the body of the rules, and remove the requirement to use rigidly prescribed forms. Removing prescribed forms avoids the risk that a person who has clearly provided all of the necessary information will nevertheless be considered not to have complied with the Rules, purely because the information was not provided in a particular form.

Some respondents highlighted that one consequence of the decision to remove these forms, which had previously served as templates for users, has been a degree of inconsistency and errors in providing the correct information. It has been suggested that the forms should be reintroduced. However, as was intended, the abolition of a statutory format has also enabled practitioners and other organisations to devise replacement templates that are tailored to their particular needs and system requirements.

The Rules continue to provide comprehensive detail regarding the information that must be included within different notices and communications, and it does not appear that the removal of forms has caused any gap in what information is legally required. Nor does there appear to be truly widespread difficulty. The real-world experience reported to us is in line with the impact assessment undertaken during development of the Rules, which acknowledged that there would be a familiarisation cost to practitioners in implementing the changes. Similarly, reversing that decision would result in additional costs to the insolvency sector to implement further changes, as well as to the public purse. Several agencies, including HM Courts and Tribunals Service and the Insolvency Service, have since provided templates for users encompassing a large number of the previously prescribed forms, to facilitate the provision of information in a format which interfaces with their own systems.

We therefore remain of the view that the decision to abolish prescribed forms was the correct one, and that it should not be reversed.

The creditor opt out process

The Call for Evidence asked respondents to provide, in their estimation, what percentage of creditors choose to opt out of receiving information. It sought views on whether the creditor opt out process could be improved, and if so, how. We received feedback from a number of respondents on these questions.

The overwhelming response was that the creditor opt out is rarely used, with estimates that less than 1% of creditors chose to exercise the option. In some cases, respondents were not aware that the opt out had ever been requested. There was a general feeling that rule 1.50 allowing the use of websites to deliver documents has effectively made the provision redundant, as creditors who do not want to receive information need not log onto the website (although it was also pointed out that a significant number of smaller practices might not use websites).

Respondents commented that the provisions add to the amount of material which had to be included in the first communication to creditors. They also present a compliance risk for the officeholder in the event that they communicate with an “opted out” creditor, or fail to communicate with a creditor who has opted back in. It was felt that the amount of information which a creditor has to provide in order to opt out could be confusing and might deter creditors from doing so. One respondent also considered that the ability to opt out gave the impression that information provided by officeholders has no value or interest.

Overall, respondents felt that Rules 1.38 and 1.39 should be removed in light of the infrequent use of the opt out procedure. It was recognised that this would also require amendment to primary legislation, and so falls outside of a review of the Rules.

If the provisions are not removed, it was proposed that they should be streamlined. Suggested amendments included, for example, that the ability to opt out should be at the officeholder’s discretion, or that there should be a certain number of creditors before the officeholder is required to inform creditors of the ability to opt out.

The opt-out provisions are used infrequently and represent a burden on officeholders, and there is therefore merit in the argument that they should be repealed. Equally, as the provisions are used, albeit in a limited number of cases, there remains an argument that those who wish to should be able to opt out of unwanted correspondence whether in letter or electronic form. We will give further thought to whether there should be any changes to, or removal of, these provisions in a future amendment to the Rules or primary legislation.

Electronic communication

The introduction of the Rules expanded the possible use of electronic communication in managing insolvency cases, which already existed in the Insolvency Rules 1986 but until that point was subject to onerous restrictions. Responses to the call for evidence suggest that a small number of issues remain to be resolved in order to make electronic communication fully effective.

One broad issue relates to the use of websites to deliver documents. Under the Rules, the officeholder in an insolvency can make use of a website following the issue of a notice to the documents' recipients. However, this is not always available to directors and insolvency practitioners acting prior to the commencement of the insolvency, nor to creditors who wish to communicate electronically in return. Observing that delivery of documents through websites by officeholders appears to have worked well, we will consider (subject to further exploration of any difficulties that may be involved and the safeguards that might be required) extending this option to others where they are engaging with insolvency processes involving multiple recipients, for possible inclusion in a future update to the Rules.

The challenge facing creditors is a different one. While they are unlikely to need to issue documents via website, there is no explicit requirement under the current Rules for officeholders to accept electronic communication when managing cases, and so creditors might be required to provide hard copy letters and documents. Accepting electronic communication is a modern business practice and we consider that it would be unreasonable for insolvency practitioners to adopt a less flexible approach other than in exceptional circumstances. As this is a matter of maintaining professional standards and the reputation of the profession, any necessary guidance to practitioners will be via the regulatory process rather than through a change to the law.

With the increasing use of email for communication, businesses and individuals often use email addresses as their main contact details, rather than their physical addresses. As noted under "data disclosure issues", below, we will keep the use of email under review and will consider how it should be reflected in the Rules in future.

Another issue has arisen in respect of the limited number of statutory declarations required by the Act, as a result of the Covid-19 pandemic. It is understood that a statutory declaration must be signed in the physical presence of an authorised person, but this has been impossible or inadvisable in many cases throughout the last two years. The matter has been resolved as regards the pandemic under the Temporary Insolvency Practice Direction 2020, with courts recognising the defect in the process that remote swearing creates as not prejudicial. While the suggestion that these temporary arrangements should be replaced with a more permanent change to the law has been noted, particularly for consideration in the further review of the CVL process that we will undertake, a permanent change would require the amendment of primary legislation and is outside the scope of this review of the Rules.

Respondents highlighted, following the introduction of electronic "CE filing" at the High Court, a number of seeming contradictions between the Rules and court practice. For the most part these contradictions are illusory, as rule 1.46 allows the filing requirements in the Rules to be overridden by the court rules (contained in, for example, Practice Direction 510 on Electronic Working). This includes rule 3.20 that deals with out of hours appointment of an administrator and was addressed in the recent [Temporary Insolvency Practice Direction (https://www.judiciary.uk/announcements/temporary-insolvency-practice-direction/)](https://www.judiciary.uk/announcements/temporary-insolvency-practice-direction/). We understand however that the interaction of the different requirements has, for example, led a respondent to attempt to physically take documents to court, so as to be sure of not breaking the law, in full knowledge that they would be turned away and required to use the electronic filing process.

There is an argument therefore for the Rules to be updated to reflect electronic filing. Nevertheless, this remains a developing area. As electronic filing is not used in the County Court, it would not be possible at present to maintain consistency throughout the Rules were they to be amended with High Court practice in mind. We will nevertheless keep under consideration what amendments may be needed to reflect any future developments in this area. As a separate matter, we consider that minor changes to the Rules could be made to facilitate the transfer and use of electronically sealed documents where, for example, the court is currently required to send multiple copies even where transferring documents by email.

Insolvency applications and claim forms

Following the court's ruling in Manolete Partners plc v Hayward and Barrett Holdings Ltd & Ors [2021] EWHC 1481 (Ch), concerns have been raised about the scope of "insolvency applications" that can be made with reference to rule 1.35. Whether a particular claim can be made as an insolvency application can determine both which court should be applied to and the court fee that will be charged, making this an important administrative point for court users as well as for the courts themselves. The judgment clarifies that insolvency applications are available in respect of a relatively narrow set of claims, and has implications for (among others) claims that have been assigned by insolvency officeholders to third parties.

As a result of the ruling, respondents are mindful of the need to issue both an insolvency application and a Part 7 claim where matters fall both within and outside of Parts I-XI Insolvency Act 1986. Respondents suggested that, where such proceedings turn on the same facts, this has some unhelpful consequences, including the risk of matters being heard by different courts with differing procedures, increased costs, protracted proceedings and an unnecessary administrative burden.

Whilst this is not an anomaly caused directly by the introduction of the new Rules, we acknowledge the concerns that have been raised. We agree in principle that court proceedings should be addressed as efficiently as possible, in an appropriate forum, and without unnecessary bureaucracy.

We will carefully consider the above points, as well as the possible changes that can be made to the Rules and their implications, to determine whether the scope of insolvency applications should be amended.

Pre-appointment work

Respondents have suggested that the payment of pre-appointment expenses in a CVL should be allowed in the winding up on a similar basis to their treatment in an administration.

In practice, we understand that an insolvency practitioner engaged by directors intending to enter a CVL will ensure that their pre-appointment costs (including costs other than those allowed by rule 6.7) will be paid by either the company or a third party before the winding up commences. The effect of this is that funds available in the winding up may be diminished, but without the creditors being given the opportunity to approve the costs in the way they would in an administration, and without full details being provided to creditors (which in administration would be required by rules 3.35(10)(a) and 3.36). The informal arrangements are therefore by comparison less transparent to and subject to less control by creditors, albeit mitigated by Statement of Insolvency Practice 7, which imposes requirements that insolvency practitioners must follow when presenting financial information, as a condition of their authorisation. Respondents further suggested that allowing these costs to be formally paid post-appointment would enable the VAT element of the costs to be recovered in the CVL for the benefit of creditors.

We will consider the above further, to confirm whether the law can and should be amended, as part of our review of the CVL process.

Respondents also suggested that there is a lack of clarity in the 2016 Rules as to whether it is possible for a proposed liquidator in a CVL to seek approval of their (payable) pre-appointment expenses and liquidator's remuneration by convening a separate decision alongside the deemed consent procedure used to appoint them as liquidator. In the majority of CVL cases the creditors confirm the nomination of the liquidator chosen by the company. It would be appropriate therefore to align the confirmation of the appointment of the liquidator with the decision procedure for pre-appointment expenses and liquidator's remuneration, where circumstances permit. This does create a risk for the insolvency practitioner that the liquidator nominated by the company is not the same as the person nominated by the creditors, in which case the decision procedure on remuneration will be ineffective.

Fee estimates

The Rules set out the detailed basis on which remuneration and expenses of officeholders are determined. Remuneration may be based on either a fixed amount, a percentage value of the assets, on a time cost basis, or a combination of all of these. Where any element of the officeholder's fee is based on time costs, they must provide creditors with detailed information in the form of a fee estimate, including details of work to be undertaken, hourly rates to be charged and any expenses likely to be incurred. On whichever basis the remuneration is set, the officeholder must provide an estimate of anticipated costs, which must be approved by creditors.

A number of respondents commented that the level of detail required of an officeholder in providing a meaningful fee estimate to creditors absorbs significant resource, making the fee approval process both lengthy and costly. One respondent commented that the burden of producing a fee estimate of the anticipated time and cost for work in more complex insolvencies, for instance trading cases, can push the cost up considerably. Another respondent stated that a better understanding of the position of a case is often required in order to produce a fee estimate, meaning that rather than being issued before any work has been undertaken, it may not be issued for a number of weeks. The general view expressed in responses received regarding fee estimates was that the requirement to provide a fee estimate adds to the administrative expenses of a case and so impacts negatively on the funds available for creditors.

An alternative proposed in one of the responses would be to require a cap to accompany any time-based remuneration resolution. The cap would not need to be accompanied by a detailed justification of how it had been arrived at, saving time and costs in producing the fee estimate. If the officeholder found that the estimate was no longer accurate, they could be required to report to creditors to explain and justify any increase, but would not be able to draw any remuneration over the estimate unless agreed by creditors.

Against the above concerns, it is important to hold in mind the background to this element of the Rules. The requirement for practitioners to produce a fee estimate was introduced to address concerns expressed by stakeholders that there was no statutory obligation to provide early information about the likely level of fees, or details of the likely expenses of a case. Creditors therefore usually only discovered the officeholder's remuneration and costs at the end. In these circumstances creditors' only route of appeal is to the court, which can be both time-consuming and expensive.

The requirement for fee estimates also aligns with the statutory objectives introduced by the Small Business Enterprise and Employment Act 2015, which require insolvency regulators to ensure that insolvency practitioners provide high quality services at a fair and reasonable cost to the recipient. The level of fees charged by officeholders have often been a cause of complaint amongst creditors and sanctions by their regulators. It is therefore right that there should be transparency in relation to remuneration and costs at an early stage, to provide creditors and other interested parties with the confidence that the rules have been properly complied with. It is also right that creditors should be able to challenge the officeholder regarding the expected remuneration and costs at an early stage before any fee is taken.

We acknowledge the concerns that have been expressed, that producing fee estimates may take longer than was originally envisaged. However, we remain of the view that officeholders will have the professional skill and judgement to provide sufficient information about the likely remuneration and costs of a case, meeting the requirements set out in legislation, the statements of insolvency practice, and published guidance. Amending the Rules in the ways that have been suggested would have the effect that creditors would once again find it difficult to scrutinise and challenge remuneration due to a lack of timely information, undermining the reputation of the insolvency regime and profession.

Officeholders are required to make every effort to ensure that the initial estimates accurately reflect the work that will be completed. However, it is clear from the responses to the Call for Evidence that some cases will take longer than expected or will require further unforeseen work, and thereby incur greater costs than were initially forecast. The Rules have specific provisions for both eventualities, to enable an officeholder to seek an additional estimate to account for the unanticipated costs. In such cases the officeholder is required to produce a revised estimate for approval by creditors.

Creditor approval of proposals and fees

Engagement with creditors is a crucial part of the insolvency process and one that is enshrined in both the primary and secondary legislation. It is creditors that have lost out in an insolvency and it is right that it is creditors from whom key decisions are sought.

Decisions pertaining to remuneration in particular are deeply embedded in the reporting process.

- The report is the medium by which an officeholder informs creditors of the remuneration charged in a period…
- …alongside the activity that that remuneration reflects and,
- where relevant, how that compares with the fee estimate set by creditors.
- It is from a period following the date of the report that creditors may challenge the remuneration charged in a period[1].

A number of respondents commented on the reporting provisions, suggesting that they were overly complex (leading to unnecessary costs) and disproportionate to creditors' interests. One respondent advocated that the reports in some procedures be made discretionary. While appreciating the impact on insolvency practitioners, we consider that the reporting requirements are a valuable engagement medium for communicating with creditors and that this should continue. A suggestion was made that an 'executive summary' should be provided for in the rules. Nothing in the Rules prevents such a summary being included within a report under the existing rules. Indeed, we would encourage insolvency practitioners to present necessary information to creditors in the most attractive way possible – an executive summary may be the best medium to convey information in a complex case. Equally, mandating an executive summary in every case would be disproportionate: some cases would not merit such an approach. We remain confident that practitioners will use their professional judgement in conveying statutory information in the most efficient and effective way possible.

Some respondents raised issues related to administration cases where statements had been made pursuant to paragraph 52(1)(b) of Schedule B1 to the Insolvency Act 1986, highlighting the difficulties that can sometimes occur when only secured and/or preferential creditors need to be consulted on certain matters under the Rules. It is clear that in some cases engagement with this smaller group of creditors can be difficult. However, we consider that the overall efficiencies provided for by the Insolvency Act and Rules across all such cases outweigh the difficulties that can occur in a minority of them.

Several respondents asked for clarification on the position of secured and preferential creditors that had received payment in full. It has been the Government's position for some time that the classification of a creditor is set at the point of entry to the procedure and that this remains, even if payment in full is subsequently made. We believe that to legislate away from this position could cause more problems than it would seek to solve. Accordingly, the Government has no plan to change its long-standing view on this matter. We will amend rule 15.11(1) to be clearer that where the Insolvency Act 1986 or the Rules require a decision from creditors who have been paid in full, notices of decision procedures must still be delivered to those creditors.

There were a number of more minor changes suggested to the reporting rules. Where these would make the process more efficient, while not depriving creditors of information relevant to them, we will consider them for inclusion in a future amendment to the Rules. We are mindful that much of the reporting content in the Rules is related to the underlying policy on officeholder remuneration. Accordingly, the reporting requirements should not be considered in isolation from the wider issue of remuneration.

Decision-making processes

The Small Business, Enterprise and Employment Act 2015 ("SBEEA"), which received Royal Assent on 26 March 2015, made changes to the Insolvency Act 1986 which would remove the use of physical meetings as the default mechanism for decision making by creditors in insolvency proceedings. Instead, officeholders would be able to use a variety of other procedures which did not involve creditors meeting together in the same space, including a new process of deemed consent, whereby in certain cases a decision could be proposed and if there was no objection then that decision would be made. Physical meetings could still be held, but this would only be when a certain number of creditors had made such a request. That number was 10% of creditors by voting value or by number of creditors, or ten individual creditors.

The SBEEA changes did not come into force until 6 April 2017, at the same time as the Insolvency (England and Wales) Rules 2016, which gave the framework under which the new processes would operate. The implementation of measures in the primary legislation was one of the stated objectives of the new Rules, and Part 15 was drafted specifically to give effect to the new decision-making processes. In doing so the drafting did not attempt to go behind the various decisions which are made by creditors in insolvency proceedings, but rather replace the requirement to hold physical meetings with modern alternatives which were more in line with current business practices. The timing of the decisions in the context of the insolvency proceedings, as well as time limits for notices etc, were therefore maintained wherever possible, in line with those set out in the Insolvency Rules 1986.

This did mean that in some cases there would be tight deadlines for delivery of notices to creditors by directors and officeholders, and some cases where creditors would be required to act quickly in order for their votes to count. In mitigation, it was considered that the increase in opportunities for creditors to engage, which would be provided by the new measures, would lead to increased creditor awareness and interest, and so there would be increased motivation to meet the tighter deadlines.

The rules for the appointment process for CVLs, in particular, were drafted with the specific intention of ensuring that existing efficiencies which had been developed by insolvency practitioners over many years could be retained. A process of CVL commencement and liquidator appointment was being used by many firms, whereby the directors would call the company meeting for the purposes of voting on a resolution to wind up voluntarily, and appointing a liquidator, and a creditors' meeting would be called the same day, where the creditors' vote on the appointment of the liquidator would be taken. This meant that the period between appointment of the liquidator by the company and the agreement of the appointment by creditors was minimised, reducing the risk of there being an extended period where the liquidator's powers would be restricted by section 166 of the Insolvency Act 1986. The rules for the appointment of the liquidator in a CVL, and the agreement of that appointment by creditors, were drafted in such a way that the decision date for creditors could be on the same day as the meeting at which the company resolved to wind up voluntarily.

The process of decision making was of great interest to respondents to the Call for Evidence, and numerous stakeholders including insolvency lawyers, consultants, regulators, and insolvency practitioners gave their views.

Some key themes emerged in those responses:

- the new rules are complex, and difficult for officeholders to operate and many creditors to understand;
- some time limits set out in the rules are difficult or impossible to adhere to; but
- there is some suggestion that the new processes have not been detrimental to creditor engagement; and
- the rules have been successful in implementing the changes made to primary legislation.

Complexity of the new rules

The decision-making parts of the new Rules were drafted to replace physical meetings as the default mechanism for all decisions made in insolvency proceedings. There was no intention to otherwise change processes for which decisions were being made, or to introduce new time periods. At the same time, it was considered important not to remove creditors' rights to require that a physical meeting be convened, especially since the costs of such a meeting would be met out of estate funds which would otherwise be available to make dividend payments. The deemed consent procedure was introduced, which can streamline decision-making in many cases but will add an additional step to the process where creditors object to its use.

These constraints inevitably led to a more complex set of procedures than had previously been the case. The current policies are underpinned by an expectation that officeholders will select the most appropriate method for each decision based on the facts of each case. For example, if there could be opposing opinions amongst creditors, deemed consent should not be used to seek a decision; and where there is significant creditor interest, a virtual meeting might be the most appropriate method to use. In this way the incidences of situations where, among others, creditors object to a proposal presented by a deemed consent process and a second decision procedure is needed, can be minimised.

A specific piece of feedback received from respondents was that the Rules provide too many options for decision making, and one respondent went so far as to suggest that only deemed consent and virtual meetings are needed, given the successful use of virtual meetings during the Covid-19 pandemic. This was balanced by the view of another respondent who stated that electronic voting and voting by correspondence were popular processes and had been widely used. The Rules were drafted with an intention to give officeholders the greatest possible flexibility with regard to how they went about seeking decisions, and that included an option to use a process which had not been specifically covered, as long as that process allowed for a fair vote, and the opinions of all relevant creditors to be heard. Despite the acknowledged complexity of this approach, there does not appear to be consensus amongst stakeholders or strong evidence as to how it might be simplified without removing options that officeholders find valuable.

One respondent highlighted that whilst the restrictions on the use of deemed consent for certain procedures, such as the approval of voluntary arrangement proposals or approval of insolvency practitioner fees, was reasonable, these processes were scattered through the Rules. It was felt that this had led to confusion. During development of the Rules it was recognised that it would be useful to refer to the restrictions on the use of deemed consent in one place, and a corresponding note was added to rule 15.7.

A further issue was raised regarding the cut off point for a decision which is made by means other than a meeting or deemed consent. The Rules set this at 11.59pm on the decision date. The point was made that it would be better if this was during business hours, for example midday or 4pm. This matter was considered carefully during drafting. It was necessary for voting to end at a defined point, and it was decided that this should be at the end of the day rather than at the end of business hours in the UK, recognising that many creditors are outside of this jurisdiction. The new processes were designed to increase creditor engagement, and a cut off during business hours could be perceived as having been designed for the convenience of officeholders, rather than creditors.

Some stakeholders commented that consideration should be given to extending the Rules to provide a mechanism for creditors to change their minds after they have voted in non-meeting decision procedures. There have been instances where creditors had tried to change their votes using correspondence, which had had the effect of making their vote a negative one, and was unlikely to be what they had intended. As things stand, a change of vote is expressly prohibited by rule 15.31(8). Again, this matter was considered during development of the Rules, and it was concluded that the vast majority of creditors would recognise the concept of a decision or vote being final, without the ability to reverse it once made. A creditor’s vote at a meeting would be counted and applied, and the decision made based on the vote, with no option to change the vote at a later time. Amending the Rules to allow a vote made outside of a meeting to be changed once it has been cast would require a framework to govern exactly how and when that could happen, which would have the unfortunate consequence of adding further complexity.

Another additional mechanism suggested by respondents was the ability to adjourn decisions which are being made by processes other than meetings. The lack of such a provision was intentional, and the ability to adjourn has been deliberately limited to meetings, whether virtual or physical. The rationale was that naturally officeholders would not use a non-meeting decision procedure where there was any indication that an adjournment might be needed, though it was acknowledged that they would not be able to predict all eventualities. Non-meeting procedures were considered to be more suitable for straightforward yes or no decisions, where calling a virtual meeting may not be the best use of resources, and leaving the possibility of their remaining open not only adds complexity but raises the risk of manipulation of the vote.

The question of potential technology limitations during a virtual meeting, which may mean that the meeting does not qualify as a virtual meeting according to the definition in rule 15.2, was also raised. Again, this question was considered during development of the Rules. We remain of the view that an officeholder will be able to use their judgement and experience to deal appropriately with such a situation, without the need for a prescriptive set of rules setting out what must happen.

A further point raised was the situation where the officeholder is seeking more than one decision from creditors concurrently, and a physical meeting is requested in one of those decisions but not the others. A suggestion was made that in those circumstances it might be better to apply the request for a physical meeting to all of the ongoing decisions, or at least clarify that the request would only apply to one. We consider that the Rules are clear that each decision is treated separately for the purposes of requests for physical meetings, and applying a provision that the request applies to all ongoing decision processes could result in some being delayed unnecessarily (for example where the decision dates are different).

Respondents also commented on the large amount of information that was now required to be sent to creditors, and the several different notice periods, which could easily lead to mistakes being made and, at worst, invalid appointments. This too was noted during drafting of the Rules, and was the main driver for the inclusion of rule 15.11, which in large part restated provisions included elsewhere in the Rules. It was suggested that some information currently required to be sent with notices, such as information on small debt provisions or the option for creditors to opt out of receiving correspondence, should be permitted to be placed on a website. Another proposal was that creditors whose debt qualifies as small debt in accordance with paragraphs 13A of Schedule 8 and paragraph 18A of Schedule 9 to the Insolvency Act 1986, should not be required to prove their debt in order to vote in a decision procedure. We will give further consideration to whether these suggestions can and should be included in a future amendment to the Rules.

Lastly in this section, a reference was made to a perceived inconsistency of language within the rules, when referring to “qualifying decision procedures”, “creditors’ decision procedures”, and simply “decision procedures”, for example in rule 15.3. It was suggested that it would be helpful if the Rules simply used “qualifying” or “creditors’” where applicable. Although we have noted that point, and will consider how concepts referred to Part 15 might best be expressed when considering any future amendments to those provisions, rule 15.2 defines “decision procedure” as including both “qualifying” and “creditors’” decision procedure. It is debateable however whether (where a rule covers both types of decision procedure) substituting each reference to a decision procedure with a reference to “a qualifying or a creditors’ decision procedure (as the case may be)” would make for clearer drafting.

Time limits

The Rules were intended to replace the position where physical meetings were the default mechanism for decision making, with the new processes. Wherever possible, existing timeframes were preserved, so as not to prolong decisions and to avoid unintended consequences. Given the nature of some of the processes, this did lead to some timeframes being short.

Respondents observed that in some cases there was insufficient time for the creditors to object to deemed consent or to request physical meetings, and this had had a detrimental impact on engagement. This was especially apparent in the process of agreeing the appointment of a liquidator in CVL proceedings, and rules 6.14(7) and 6.14(8)(d) (which deal with the provision of information during that process) were specifically mentioned.

The process of liquidator appointment in a CVL has two stages. The company appoints the liquidator at the meeting at which it is resolved that it will enter voluntary liquidation proceedings. The creditors must then agree the appointment, but if they do not they must also be given the opportunity to nominate a different liquidator, and then a vote taken on that nomination. The notice period for the creditors’ meeting which took place under section 98 of the Insolvency Act 1986 (prior to its revocation by the SBEEA) was 7 days, but in that case the Statement of Affairs was laid before the meeting. The new Rules observed that notice period by requiring that the Statement of Affairs be delivered to the creditors on the day before the decision date at the latest, and then requiring that the decision date be within 14 days of the date that the company resolved to enter voluntary liquidation. It was intended that this would allow for creditors to nominate a different liquidator to that appointed by the company, and then for there to be sufficient time for the directors to seek a decision procedure on those nominations. Only deemed consent or a virtual meeting could initially be used, because of the possibility that there could be more than one nomination, which would require rounds of voting.

This did lead to tight timeframes, reflecting the pre-existing tight section 98 notice period. During development of the Rules, stakeholders had indicated that the requirement to lay the Statement of Affairs before the creditors' meeting allowed directors to call the meeting and then have several days in which to prepare it. The new Rules sought not to remove this flexibility, at the cost of there being only limited time available to creditors to make their decisions. We will consider whether this should be amended as part of our further review of the CVL process.

One respondent noted that the Rules permit the creditors to request a physical meeting of creditors before a notice of a decision procedure or deemed consent has been sent. It was suggested that this could be problematic where the nominee in a CVA is working to a particular timescale, in which case the request for a physical meeting became very disruptive. To address this it was proposed that the period in which creditors can request a physical meeting could be altered in order to minimise the risk of this happening. However, this is an intentional feature of the Rules: if it is clear that a physical meeting will be beneficial, creditors are able to request it without the need to bear the cost of notices being sent. It also reduces the time taken to reach a decision. One of the reasons for limiting the period during which creditors could make such a request to five business days (a week) was to prevent decision procedures from continuing indefinitely, balancing the time that the creditors need to consider the position with the need to minimise uncertainty for the officeholder organising the decision procedure.

An observation was made on the operation of rules 7.52(5) and 10.67(6), which require creditors to provide details of insolvency practitioners whom they wish to nominate for the office of liquidator or trustee in compulsory liquidation or bankruptcy proceedings respectively. The nominations must be made within five days of the date of the notice inviting them to do so. The issue identified appears to be driven by rules 7.52(8) to 7.52(11) or 10.67(8) to 10.67(11), as the case may be. Where creditors require the official receiver to seek nominations then the decision date must be within 21 days of the date when the period for nominations ends. The creditors must then be given 14 days' notice of the decision date. This is to ensure that when the decision is requisitioned, it takes place in a timely manner, and followed the time limits previously set down in the old rule 4.57 of the Insolvency Rules 1986. The 28 days previously prescribed by the old rule 4.57(2) now has to include the nomination period plus the 14 days (including deemed CPR postage dates). Having the new decision date within 21 days of the nomination period ending allows for the 14 days' notice, but means that the nominations must be received within five days of the nomination request. It was envisaged that where such a scenario arose, creditors would already be interested and would be observing the proceedings closely, but it is clear that in practice the very short time period involved has caused issues. We will therefore consider whether the time periods should be amended in a future update to the Rules, and if so in what way.

Rule 8.22(7), which prescribes the parameters for when a decision date for consideration of an IVA proposal by creditors must be, was also mentioned as a rule where the required timeframe was very tight. We will similarly consider whether this should be extended.

Evidence of impact on creditor engagement

The new decision-making procedures were in part intended to give creditors increased opportunities to engage with the process. For example, a creditor told us that having lost money in an insolvency, they were most unlikely to compound that loss by spending time and money travelling to a meeting, which could even involve an overnight stay if it was in a different part of the country, but that they would be very likely to attend if they could simply join online at little cost to themselves.

Feedback from stakeholders shows that there is some engagement with the new processes. Comments that creditors have found the new processes to be confusing, that they have attempted to change their votes, and that time limits are too short, all highlight features of the Rules that have caused difficulty. However, they are also indicators of creditor engagement with the decision-making processes. Previously insolvency practitioners had estimated that only four per cent of creditors typically attended meetings (though more used proxies to allow the chair to cast a vote for them): the feedback we have received leaves open the question of whether the new processes have in fact been detrimental to creditor engagement, which is not to say that this could not be further improved, for example through less complexity or more flexible timeframes.

One response which did question the impact on creditor engagement, suggested that the requirement for a deposit where a decision was being requisitioned as required by rule 15.19 was deterring creditors from making such a requisition. Provision to this effect has been in existence for many years (see for example old rules 2.37 and 4.61 in the Insolvency Rules 1986), and we consider it to be an important protection for officeholders against potentially vexatious requisitions. It is important to note that it only applies to situations where the creditor wishes for the officeholder to commence a decision procedure. It does not apply to the situation where there is an ongoing decision procedure and the creditor wishes to request a physical meeting.

The impact of the Rules as a whole on creditor engagement is further explored under the heading of "Creditor engagement", elsewhere in this report.

Successful implementation of the measures in the Small Business, Enterprise and Employment Act 2015

There were no instances where information provided by respondents suggested that specific processes did not work, or certain timetables were impossible to comply with. That is, on the evidence available, the Rules have successfully implemented the decision-making processes introduced by the SBEEA.

Two responses did refer to difficulties with the requirements regarding timing of the holding of a physical meeting to consider a CVA proposal in rule 2.31. The problem identified appeared to be with interaction of that rule with rule 2.27, which specifies that a decision date must not be less than 14 days from the delivery of the notice of the decision. However, rule 2.27 applies where there is no physical meeting, and rule 2.31 will apply when the creditors request one: there does not appear to be a conflict, even if creditors request the meeting before the notices are sent.

Similarly there appeared to be confusion over the term "initial decision" in paragraph 51(2) of Schedule B1 to the Insolvency Act 1986, in the context of an objection to deemed consent where that process is used to seek the agreement of the creditors to the administrator's proposals. The initial decision date is intended to be the first one set, whether using deemed consent or a decision procedure, and the date must meet the requirements of paragraph 51(2). If creditors objected to deemed consent then a decision procedure would be needed, and a new decision date set in accordance with the requirements of Part 15 of the rules.

Creditor committees

Cases where creditors' or liquidation committees are formed are comparatively few across the whole insolvency landscape. However, where they occur they are a valuable representative tool via which the creditors (and in certain situations, contributories) can engage with the insolvency officeholder. A committee is wholly a creature of the insolvency framework. Its creation, formation and function is outlined in the Insolvency Act and Insolvency Rules. Accordingly, it is important to ensure that the Rules provide a clear, concise and efficient legislative framework to nurture engagement with creditors.

Respondents made a number of comments on the committee rules. Many suggested that the changes to the committee formation rules, as a result of the wider changes in respect of decision-making, led to the committee rules becoming unnecessarily bureaucratic. The value of continually requesting that creditors decide whether to create a committee, alongside other decisions, was particularly questioned. Suggestions were made to end this practice, and only require a decision from creditors on the formation of a committee alongside the first other decision to be sought, or to only refer to the creditors' right to create a committee rather than seeking a decision each time.

Committees set the basis for an officeholder's remuneration (other than where the official receiver is officeholder). In the absence of a committee, or where the officeholder considers a basis set by the committee insufficient, the basis can be set by the general body of creditors; and similarly, if the general body of creditors does not set an acceptable basis for fees, the officeholder can ask the court to do so. Where fees are set on a 'time and rate' basis, the officeholder may not exceed their initial estimate of their fees without first reverting to the body that set the basis initially – that is, the committee, the creditors or the court. Some respondents queried why the creditors or court should be involved in this process if a committee has been formed between the initial setting of the basis (by the creditors or the court) and the exhaustion of the fee estimate. The primacy of the committee – being the first body able to set the basis – should mean that in these circumstances the officeholder should instead revert to the committee. This point may also be relevant where there has been a material and substantial change in the circumstances of the case since the initial setting of the remuneration.

A respondent highlighted that the Rules did not state what should be done when there are greater than five nominations for membership of a committee. This point was considered by the court in respect of the equivalent provisions in the earlier Insolvency Rules 1986 (which do not vary substantively from similar content in the current Rules): in Re Polly Peck International Plc (In Administration) (No.1), [1991] BCC 503. That is, where more nominations are received than available seats on the committee, that a simple election should be held, with those nominees who receive the greatest number of votes (by value) filling the vacancies. Although that caselaw was not codified in the Rules when they were updated, we consider that it remains relevant.

A number of more minor procedural changes were suggested, where it was felt that the existing rules suffered from lacunae that caused officeholders difficulties in practice.

Where the changes suggested above will make committees more efficient and aid engagement with creditors, we will consider them for inclusion in a future amendment to the Rules.

Data disclosure issues

Respondents raised a number of questions as to whether the current processing and disclosure of personal data in insolvency proceedings represents the best possible approach. This included querying inconsistencies in the treatment of personal addresses of individual self-employed creditors and consumer creditors or employees. For example, rule 3.30 provides that in administration, the statement of affairs must include the names and postal addresses of all creditors. Rule 3.35 provides that the details of employees and some consumer creditors may be omitted and kept in separate schedules, but this rule does not apply to individual self-employed creditors.

Some respondents questioned the disclosure of personal details through the provision of creditor lists to other creditors under rule 1.57. While these respondents acknowledged the benefit to creditors of being able to contact each other, they queried whether mandatory provision of personal addresses was proportionate.

Respondents suggested amending the Rules to limit publication of personal addresses of individual creditors, employees, company officers and shareholders. One proposed amendment to the requirements under the Rules would allow for email addresses to be circulated instead of postal addresses. Another suggests that an officeholder also be given the discretion as to whether to disclose a change of residential address of an insolvent.

Following our review, we are satisfied that the current balance struck by the Rules between the needs of the different parties and the administration of insolvency cases remains an appropriate one. While there is clearly an administrative benefit to uniformity in terms of how creditors’ information is processed and used in any given insolvency procedure, we consider that it is also necessary to ensure that, where appropriate, data requirements have due regard to the circumstances of various types of creditor. That may require applying a different approach to those creditors, such as consumer creditors and employees, who are more likely to be acting in a personal (non-professional) capacity. There are substantive benefits to ensuring that creditors are able to contact each other, whereas electronic communication is increasing but not ubiquitous, and any move to substitute electronic contact details for physical addresses would require considerable care.

This is an important area where individuals’ needs and society’s views have continued to evolve. These issues will therefore remain under consideration for amendment in future updates to the Rules.

Claims and dividends

A number of discrete points were raised in respect of creditors’ claims and the payment of dividends, and are addressed below.

Timing to adjudicate claims

Rule 14.32(1) requires that the officeholder admit or reject proofs delivered within 14 days of the last date for proving. One respondent suggested that this be extended to 28 days, on the grounds that the deadline could be difficult to meet in cases with large numbers of claimants or complex claims. The time limit was extended from the five business days set down in the previous Insolvency Rules 1986, which had operated effectively for many years, to 14 days in the current Rules. With this in mind, there are no plans at present to extend it further.

Employee claims

Unless subject to an exemption, all creditors wishing to make a claim in an insolvency must submit a proof of debt (under rule 14.3). One respondent suggested that the current exemptions be extended to include employees whose claims have already been accepted by the Insolvency Service’s Redundancy Payments Service (RPS) for payment from the National Insurance Fund. In such cases, the RPS will submit a subrogated claim in the insolvency for the sum paid over to the employee, while the employee can claim any remaining unpaid amount from the insolvency themselves. Respondents suggested that to require a proof of debt from the employee as well as from the RPS appears to be unnecessary duplication. This will be considered further, for possible amendment in a future update to the Rules.

Dividend deadlines

It was suggested that the deadline to declare a dividend under rule 14.30 be extended from two to four months. The amendment of the equivalent deadline in the Insolvency Rules 1986 in respect of winding up and bankruptcy procedures, which brought the time available to the current two months from the last date of proving, also brought it into line with the deadline for administrations. As with the time available to adjudicate claims, there are no current plans to extend it.

Treatment of small/nominal dividends

Rule 14.27 provides that the officeholder must declare and distribute dividends among the creditors in respect of the debts they have proved. Respondents stated that where the amount of dividend is below a certain amount, many dividends remain unclaimed and the distribution process is onerous. It was suggested that creditors be given the option to waive their entitlement to such dividends, with the funds being donated to a nominated charity.

While there are provisions within client money regulations to pay over unclaimed funds to charity, these apply where the entitled persons cannot be traced. To extend the provisions to cover those creditors who have submitted proofs but are due only small dividends would impair creditors' rights to repayment and would be out of step with other professions handling client money. At the same time, a process whereby creditors must be asked to waive their entitlement to a dividend (and their preferences acted upon) would create an even greater administrative burden on officeholders than carrying out the distributions. For these reasons, while we accept that in certain circumstances small dividends can be onerous, the suggested solution cannot be taken forward.

EU exit

In response to the UK's exit from the European Union, the Rules were amended by the Insolvency (Amendment) (EU Exit) Regulations 2019 (https://www.legislation.gov.uk/uksi/2019/146/contents). References to EU legislation were removed, and other areas were amended to take into account changes to the retained elements of the Insolvency Regulation, in particular changes to the so-called "centre of main interests" (COMI) test. Respondents raised a small number of points in this area in respect of amendments that they felt had been missed, and in relation to COMI and recognition.

Rule 8.24, which requires a report of creditors' consideration of an Individual Voluntary Arrangement to be prepared and specifies its contents, has not been updated to take into account the new COMI test and so is not in synch with the rest of the current regime and legislation. Rule 15.41 retains a special case in respect of companies incorporated in EEA states that, respondents suggested, does not appear to be justified following our departure from the EU.

Not all respondents were clear as to the purpose behind the retention of the (modified) COMI test in UK law following EU exit. This has since been set out in the Insolvency Service's Dear IP newsletter, issue 135 (https://content.govdelivery.com/attachments/UKIS/2021/08/27/file_attachments/1917562/Dear%20IP%20135%20-%20August%202021.pdf). In addition, some concern was raised that where the Rules reference legislation originating in the EU it may not be clear which version, original or retained, is now meant. This is however addressed in section 436 of the Insolvency Act 1986 (as amended) which sets the definition of "the EU Regulation".

Other respondents suggested that it would be helpful to expand the "confirmation" of Creditors' Voluntary Liquidations under rules 21.4 and 21.5, which was also retained to assist with the international recognition of UK insolvency proceedings, so as to cover debtor petition bankruptcies, voluntary arrangements, and administrations entered via the out-of-court procedure.

We will consider the outstanding points above for inclusion in a future amendment to the Rules.

New proposals

We received a number of proposals in responses to the consultation, with some helpful suggestions for improving the insolvency regime. We are grateful to respondents for suggestions in relation to security deposits, special manager and officeholder resignations, and placing IVA information on credit reports. We will keep these proposals under review for development when time permits, as part of our ongoing commitment to maintaining a world class insolvency framework.

Respondents also raised the issue of bonding for special managers. A consultation on the future of insolvency regulation (i.e. the authorisation of insolvency practitioners), which asks questions on this topic, was launched on 21 December 2021 with an end date of 25 March 2022. This can be found at: The future of insolvency regulation - GOV.UK (www.gov.uk) (https://www.gov.uk/government/consultations/the-future-of-insolvency-regulation/the-future-of-insolvency-regulation)

Finally, we also received requests to review the prescribed part calculation, an important source of funds for unsecured creditors. Policy in that respect has been recently reviewed. Following a previous consultation, it was decided not to alter the calculation but to increase the cap from £600,000 as it was previously, to £800,000, in line with inflation since 2003. The change was implemented through the Insolvency Act 1986 (Prescribed Part) (Amendment) Order 2020 (https://www.legislation.gov.uk/uksi/2020/211/contents/made), which came into force on 6 April 2020.

Restriction on calling physical meetings of creditors

Several respondents to the Call for Evidence commented on the restrictions on the use of physical meetings which were introduced on commencement of the new rules. This was a change effected by the Small Business, Enterprise and Employment Act 2015, making the relevant changes to the Insolvency Act 1986. The new insolvency Rules implemented these changes by setting up a framework for decision making, but since the new processes were introduced in primary legislation, specifically in sections 246ZE and 379ZA of the Insolvency Act 1986, they are outside of the scope of this review, and most respondents acknowledged that.

Generally, those that raised this issue said that the measure had gone too far, and that having the discretion to hold a physical meeting would be a useful addition to the officeholder's toolkit. Two respondents said that this was particularly the case for Company Voluntary Arrangements.

The restriction on the use of physical meetings does not apply where 10% of the creditors by value, or number, or 10 creditors, request that one be held. There is no restriction on such a request being made before the initial decision notices have been sent out. It was envisaged that this combination would facilitate holding a physical meeting where it was clear to the officeholder that it would be beneficial, because they would be able to talk to creditors and discuss the benefits in order that they could make a decision on whether a request should be made. They would not however be obliged to make such a request.

Several respondents indicated that officeholders could usefully be given the discretion to hold a physical meeting without a request, where it is clear that it would be beneficial to creditors and the proceedings generally.

While at present we consider that the restriction on physical meetings is operating correctly, this does not rule out future changes in this area. Despite being outside of the scope of this review, the feedback from respondents has been noted for consideration in that event.

Other comments and issues

In addition to those fitting the general themes dealt with in this report, a small number of points have been raised that do not fall into other categories.

Where these representations relate to the operation of parts of the insolvency framework that are not covered by the Rules, or to other primary or secondary legislation, then they fall outside of the scope of this review. We are nevertheless grateful to those who have highlighted areas in which they feel that the current regime can be improved, and these have been noted for consideration in future policy development.

For example, new legislation would be required to address the courts' determination (in The Joint Administrators of LB Holdings Intermediate 2 Limited v The Joint Administrators of Lehman Brothers International (Europe) and others [2017] UKSC 38) that section 189 of the Insolvency Act does not provide for statutory interest to be paid in a liquidation other than from the date that it commenced. This leads to a situation in which statutory interest not paid out in a preceding administration is then "lost" and cannot be paid in a subsequent liquidation. If change is required it cannot be effected through the Rules, however, as the primary legislation is clear, and so this matter falls outside of the scope of the review.

The interaction between the requirements for service in advance of a hearing (under rule 12.9) and provisions for service outside of the jurisdiction was brought to our attention. There is not in our present view any deficiency in rule 12.9 itself. Rule 14(3) sets out the general rule that service should be effected at least 14 days before the date fixed for the hearing; however rule 14(2) and, in particular 14(3)(c) give the court a wide discretion to give different directions regarding service or to extend of abridge the deadline for service. We consider that these provisions strike the appropriate balance between setting a deadline that is appropriate in the vast majority of cases while nevertheless giving the court discretion to give alternative directions as to service where necessary.

We nevertheless remain open to future evidence that the system is not performing as intended with adverse results.

During the course of the review we have also considered whether there are lessons to be learned from the recent emergency legislation brought forward in response to the coronavirus pandemic. While much of that legislation is new and has not yet been fully tested in practice, and other measures were temporary in nature, the second set of temporary restrictions on winding-up introduced the requirement that a creditor must be owed £10,000 to bring a winding-up petition against a company. It is notable that under the normal insolvency regime there is no monetary limit on bringing petitions to wind up a company, and that a creditor may rely on an unpaid statutory demand to demonstrate a company's insolvency where there is a debt of £750 or more, in contrast to the requirement for a creditor bringing a bankruptcy petition to be owed £5,000 or more. We will give further consideration to whether the company limits should be amended (having regard to the experience gained while the temporary coronavirus measures were in place) to provide greater protection for companies against creditors pursuing relatively small debts, and if so, how this should be achieved.

Creditor engagement

One of our aims when developing the rules that govern insolvencies is to ensure that everyone who is affected has a chance to have their say, and to help make decisions about the things that affect them. This often focuses on creditors, as they feel a large part of the impact of an insolvency but (unlike the insolvent or their officeholder) are rarely directly involved in its management. Creditor engagement with insolvencies was highlighted in our Call for Evidence on the operation of the Rules, and one that a number of respondents commented upon in some detail.

Although there is little holistic evidence of the impact, where respondents commented it was largely to suggest that in their experience, certain changes have made it harder for creditors to engage in insolvency processes. These include, in particular:

- The fact that notices and reports can be and are uploaded to a portal, rather than sent directly to the recipients;

- The reduced use of physical meetings; and
- The removal of prescribed forms.

However, not all feedback received was negative. Respondents noted that:

- virtual meetings and votes by correspondence offer more opportunities for creditors to engage meaningfully with an insolvency; and
- the new means of communicating with creditors have made the underlying interactions less onerous.

To an extent, where the changes might discourage creditors from engaging, this highlights a tension between efficiency and engagement in insolvency proceedings: each of the above changes was made to facilitate a modern, effective regime; and following this review they remain, in our view, the correct approach. This was echoed by respondents who recognised the value of changes while at the same time describing a negative effect on creditors' engagement.

The above must also be viewed in light of our aim for the insolvency regime, which is to ensure that creditors have the means to engage where it is appropriate and important to them to do so, not to require that they take part in all cases regardless. The sentiment is often expressed that creditors will be reluctant to "throw good money after bad" by engaging, in the absence of a clear incentive such as a potential dividend. This includes spending time reading reports and contributing to decisions about the insolvency in any form, and it is not our goal to force engagement on a creditor who has made a commercial decision not to take part.

It is perhaps relevant therefore that other significant changes affecting the insolvency landscape, while made in the public interest, have affected creditors' prospects of recovering money through an insolvency process. It was suggested that this has in turn impacted on engagement. The reintroduction of Crown Preference through the Finance Act 2020, the new powers of the Pensions Regulator under the Pension Schemes Act 2021, and restrictions on creditor action during the pandemic under the Corporate Insolvency and Governance Act 2020 were highlighted in this regard.

Taken in this context, the introduction of decisions by correspondence and deemed consent may encourage creditor engagement precisely because they reduce the need to spend time and money actively interacting with officeholders in cases of lesser interest: where creditors might have previously not been able or willing to attend a physical meeting, under a deemed consent process they no longer need to take action in order to agree with the proposed approach, and retain the ability to object should they wish. While an increase in creditor complaints about the complexity of processes and documentation is concerning, and cannot be dismissed (not least when similar concerns have been raised by established and frequent creditors), it may in some cases reflect increased creditor interest in affecting the outcomes of insolvencies.

A core concern however appears to be one of “information overload”. As noted in the main body of the report above, the decision-making process is now necessarily more complex than in the past. The impact of this complexity appears to go beyond the requirement for officeholders, who are expected to be comfortable with the regime, to select the best option and explain it to creditors. Although it mirrors the previous requirements and prescribed forms, or perhaps as a consequence of this, respondents considered the information that the Rules require is too detailed. It was suggested that a degree of simplification could be achieved in officeholders’ reports, focusing on the key information that is relevant to creditors. One non-officeholder noted that there is now more paperwork for creditors at the outset of a Creditors’ Voluntary Liquidation than there was before – and that while many of these documents have always been provided to creditors, the process has become more confusing rather than less.

To some extent this may be an initial confusion. It is clear from respondents’ comments that at least some insolvency practitioners are still in the process of determining how best to use and present the new decision-making options, as might be expected in the first few years of the operation of the Rules. The anecdotal evidence suggests little change in engagement from the most experienced creditors. Nevertheless, we have noted the above concerns and will consider what future changes can be made to improve creditors’ experiences without undermining the other aims of the regime.

Conclusions

As suggested earlier in this report, the responses to the Call for Evidence confirm our view that the insolvency regime, taken as a whole, remains fit for purpose. The Rules are necessary and appropriate legislation that provide the detailed process and safeguards governing insolvencies in the UK.

The purpose of the review has been to evaluate the Rules and their operation, not to develop solutions to specific issues. However, in a small number of cases the Call for Evidence has highlighted errors and similar straightforward issues in the Rules, which we will correct. In addition, a larger number of specific areas have been identified for further review and, potentially, inclusion in future updates to the Rules. We consider the CVL process and the scope of insolvency applications to be the most pressing of the latter, reflecting the numerous representations made to us regarding those issues. Inclusion on the latter list does not in itself indicate that legislative change is definitely needed in that area: in many cases it reflects a need for additional investigation to determine what action, if any, should be taken.

The tables below summarise the necessary corrections and areas to be considered further:

Corrections

Rule(s)	Action
e.g. 7.22	Remove the need for multiple copies of electronic documents to be provided by the court
8.24	Amend to reflect the current Centre of Main Interests test
10.87	Clarify the requirement to file the notice to creditors at court
15.11	Clarify when notices must be sent to creditors who have been paid in full
18.3	Clarify rule 18.3(1)(b)

Future work / further consideration

Rule(s)	Action
Part 1 Ch. 9	Extending delivery of documents through websites to non-officeholders
1.35	Determine the appropriate scope for insolvency applications in light of Manolete Partners plc v Hayward and Barrett Holdings Ltd & Ors [2021] EWHC 1481 (Ch)
E.g. 1.37	Whether the opt out provisions should be amended or revoked
2.448.31	Whether the current “must not” is clear or should be amended
3.24	Consider removing the time and date of an administration appointment from the notice of same
Part 6	Review the CVL process, including but not limited to: use of statutory declarations; timing and content of the information provided to creditors; pre-appointment expenses
6.14(6)(a)15.4(b)	Whether use of the word “between” is sufficiently clear
6.16	Consider removing the requirement for an administrator who then becomes liquidator to provide information to new creditors that is readily available at Companies’ House
7.5210.67	Whether the time periods for nominating a liquidator or trustee, in compulsory liquidation or bankruptcy, should be amended
8.22	Whether the decision date for an IVA proposal should be extended
14.3	Consider adjusting the proof of debt rules so that employees do not need to submit a claim where the Redundancy Payments Service has already provided full details of the debt
14.23	Address the issue of statutory interest that is not paid in administration being “lost” if the company subsequently enters liquidation (linked to section 189 of the Insolvency Act 1986)

Rule(s)	Action
E.g. 14.31	Whether information currently required to be sent with notices, such as information on small debt provisions or the option for creditors to opt out of receiving correspondence, should be permitted to be placed on a website
15.13	Consistency in whether meetings and other decision procedures should have to be gazetted
15.41	Whether, and if so how, the treatment of companies incorporated outside the UK should be harmonised
Part 17	Consider changes suggested to make committees more efficient and aid engagement with creditors
18.24 – 18.27	Review the rules on remuneration for clarity. Alongside this, consider suggestions made in respect of reporting requirements in the Rules.
21.421.5	Consider expanding the "confirmation" of Creditors' Voluntary Liquidations to cover debtor petition bankruptcies, voluntary arrangements, and administrations that are entered via the out-of-court procedure
-	Consider adding a rule requiring Companies House to be notified of a change of supervisor in a CVA
-	Give further consideration to whether the company limits should be amended to provide greater protection for companies against creditors pursuing relatively small debts
-	Whether rules are needed to govern the consolidation of two or more bankruptcy petitions presented against the same debtor
-	Whether creditors whose debt qualifies as "small" under the Insolvency Act 1986 should be permitted to vote in a decision procedure without proving their debt

Rule(s)	Action
-	Produce a brief summary of the structure of the Rules
Various	Whether the use of “business days” in the rules should be further harmonised
Various	Update anachronistic references to “registrars”
Various	Remove or update highlighted references to repealed legislation
Various	Remove any unnecessary disparities between the rules for different insolvency procedures
Various	Whether the disclosure of personal information required by the Rules should be amended, to provide greater privacy and/or to reflect the frequent use of email as opposed to physical addresses for communication purposes
Various	Examine in greater detail proposals in relation to security deposits, special manager and officeholder resignations, and placing IVA information on credit reports
Various	What future changes can be made to improve creditors’ experiences

Next Steps

Future work will be undertaken in respect of each of the above areas. Where policy changes are identified and it is appropriate to do so, public consultations will be issued setting out the Government’s proposals. It is not expected that any of the work that we have identified will necessarily lead to consultations or other public documents, as preliminary reviews may conclude that (despite any initial views expressed in this report) the Rules should not be changed.

The progress of further review work, any future proposals to make changes to the Rules, and particularly any legislation, are subject to the Government's prioritisation of its work and the scheduling of the parliamentary calendar in the usual fashion.

Further Information

Enquiries regarding this report may be sent to the Insolvency Service's Policy team, by email to Policy.Unit@insolvency.gov.uk.

Physical written correspondence may be sent to:

Policy Team
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Please mark correspondence for the attention of Andrew Shore.

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[1] The close connection between reporting and remuneration is the reason that the official receiver – whose remuneration is not set by creditors – does not issue periodic progress reports. While this discrepancy between insolvency practitioners and official receivers was noted by several respondents, the reasoning had been outlined in the impact assessment to the Insolvency (Amendment) Rules 2010, which brought in progress reports for compulsory winding up and bankruptcy.

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The Insolvency Service

Consultation outcome

The future of insolvency regulation: Government Response

Updated 12 September 2023

Contents

Annex A: List of consultation questions

Annex B: List of respondents to the consultation

This publication is available at https://www.gov.uk/government/consultations/the-future-of-insolvency-regulation/outcome/the-future-of-insolvency-regulation-government-response

Ministerial Foreword

I am pleased to publish this response to the government's consultation on the future of insolvency regulation, which sets out a transformational and forward-looking package of reforms to bring the insolvency regulatory framework into the 21st century. These proposals represent the biggest change to the way the insolvency profession is regulated in nearly 40 years and will future-proof the regulatory framework as the insolvency market continues to evolve.

Our insolvency framework is rightly regarded as one of the best in the world: delivering economic confidence by supporting those in financial distress, tackling financial wrongdoing and maximising returns to creditors. The insolvency profession that helps deliver that framework is key to maintaining our reputation as a world-leading jurisdiction, creating a level playing field, and an environment that encourages investment and economic growth.

The nature of insolvency is such that, where there is financial failure, it is rare for creditors to get all of their money back, and there are often wider impacts on employees, suppliers and customers, as well as the economy generally. It falls to Insolvency Practitioners to make difficult and contentious decisions. The unique responsibilities they bear and the decisions they take help save jobs and businesses, and deliver a fair, effective and orderly winding up to deal with financial failure where that is not possible.

The vast majority of Insolvency Practitioners do a good job in challenging circumstances, making a valued contribution to our economy and supporting those in financial difficulty. But there continue to be instances of poor conduct that have a direct impact on those closely involved. When that happens, it tarnishes the reputation of the whole profession, and undermines confidence. It is crucial that misconduct is dealt with promptly and that Insolvency Practitioners are regulated in a way that is proportionate and robust. Insolvency Practitioners must be regulated within a modern framework that reflects the way the insolvency sector has developed since formal insolvency regulation was first introduced in 1986.

Our consultation on the future of insolvency regulation drew detailed and helpful responses with many different perspectives, and I am thankful to those who took the time to contribute and help shape the debate about the way Insolvency Practitioners ought to be regulated.

The views of stakeholders have helped inform the government's thinking and shape the package of reforms in this area that will now be taken forward.

Introducing the regulation of firms offering insolvency services will transform the regulatory framework by closing a gap in regulatory coverage and bringing insolvency regulation in line with other regulated and qualified professions. We will ensure that the firms who engage in offering insolvency services are subject to appropriate regulation and scrutiny alongside the existing framework for regulating individual practitioners appointed in each case.

We will also strengthen transparency, by introducing a single, publicly accessible register of authorised Insolvency Practitioners and firms offering insolvency services that includes details about their regulatory history. The public rightly needs to be able to make informed decisions, and a one-stop platform to check what someone is authorised to do, alongside key regulatory information, will provide them with the tools to do just that.

The government will also take control of the ethical and professional standards that Insolvency Practitioners must maintain, to ensure they are fit for purpose and quickly adapt to changes in the insolvency and business environments.

The government is committed to ensuring the quality of regulation markedly improves over the coming years. I am grateful for the constructive and collaborative approach that the Recognised Professional Bodies (RPBs) have taken since the consultation, and my officials will be working with them to achieve a step change in the regulatory environment, with visible, measurable improvements. I am keen, if possible, to avoid large scale disruptive changes in the regulatory landscape and so I am choosing at this stage not to introduce a single regulator of Insolvency Practitioners. I am hopeful that the package of measures outlined above – together with a willingness on the part of the RPBs to embrace a swift, nimble and robust regulatory approach – will avoid the need to do that. The government will introduce a new legislative power to create an independent single regulator, should its creation prove necessary in the future.

Finally, strong insolvency regulation should act as a deterrent to poor practice. However, if poor practice does occur, it must be swiftly identified, remedied, and where appropriate any losses put right. That is why the government is committing to develop further proposals for a redress and compensation scheme for those adversely impacted by Insolvency Practitioner misconduct.

Although some of these reforms will require legislation to implement fully, the government remains committed to delivering them as soon as possible and when Parliamentary time allows. We will continue to work swiftly and creatively with stakeholders to implement non-legislative improvements.

This package of reforms will make a real difference and bring the regulatory regime into line with the way Insolvency Practitioners now work.

KEVIN HOLLINRAKE

Minister for Enterprise, Markets and Small Business

Introduction

General Purpose

The government’s consultation on The Future of Insolvency Regulation was open for responses from 21 December 2021 until 25 March 2022. It sought views on new proposals to reform the regulatory framework for Insolvency Practitioners. This document sets out the views and comments received during the consultation and the government’s next steps.

Territorial extent

The territorial extent of the consultation proposals is Great Britain. Insolvency regulation is a wholly-transferred function in Northern Ireland. In developing and implementing the reforms, the government will work closely with Northern Ireland to establish the scope for UK-wide reform.

Issued: 12 September 2023

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Executive Summary

Introduction and background

This document summarises responses to the government's consultation The Future of Insolvency Regulation (December 2021) and sets out the government's plans for action in light of the 102 responses received.

The UK is widely regarded as having a world-class insolvency regime. It supports those in financial distress, tackles financial wrongdoing and maximises returns to creditors. The insolvency profession is relatively small and highly specialised, with in the region of 1,600 professionally-qualified Insolvency Practitioners authorised under the Insolvency Act 1986 to act as office-holders in formal insolvency procedures. The work of Insolvency Practitioners can preserve economic value and productivity, rescue viable businesses, save jobs, and help individuals deal with their problem debt.

Building on the responses to the Call for Evidence issued in 2019, the consultation on the future of insolvency regulation put forward proposals to reform, strengthen and modernise the way Insolvency Practitioners are regulated. It proposed the creation of a single regulator of Insolvency Practitioners that would be housed in the Insolvency Service to replace the existing Recognised Professional Bodies (RPBs), the introduction of firm regulation, and the creation of a public register of Insolvency Practitioners and firms that offer insolvency services. Additionally, there were proposals for some limited interim reforms to the Insolvency Practitioner bonding regime, as well as questions exploring the potential for future wholescale reform of the bonding regime and a system of redress and compensation.

During the consultation, Insolvency Service officials also held discussions and attended briefings and events with a range of stakeholders, including some of those that responded. Many of the responses received were substantial, containing a large amount of useful evidence and insight representing the diverse views of those within the insolvency sector and those who have had experience of it. The feedback from stakeholders was gratefully received, and the government has carefully considered all the views and arguments put forward in reaching its conclusions.

The government’s overall approach

The government’s objective is to strengthen the regulatory framework to provide those involved in insolvency proceedings with confidence that the regime is fair and transparent, and ensure those responsible for administering it are properly regulated. The government seeks to address challenges posed by the current regulatory regime, which has been in place since 1986. In pursuing this aim, the government recognises the need to maintain proportionate regulation for what is a relatively small profession, while increasing regulatory effectiveness by addressing the weaknesses identified in the current regulatory framework.

The government will take steps to implement a transformational package of reforms to markedly improve the quality of regulation. This will reform the existing framework to ensure it operates more effectively and introduce new measures in order to address the weaknesses identified.

Some of these reforms are likely to take time to implement and will require the government to work in close collaboration with a wide range of stakeholders.

The government's response to the proposals is summarised below.

A single regulator of Insolvency Practitioners

The government proposed creating a single regulator of Insolvency Practitioners to replace the four RPBs that currently perform this function. The consultation suggested that the new regulator should be a statutory office-holder situated in the Insolvency Service and be responsible for, with power to delegate, a range of regulatory functions.

Whilst a majority of respondents supported the principle of moving to a single regulator as a way to strengthen regulatory outcomes and ensure consistency of regulatory decisions, there were significant concerns and, in some cases, strong opposition to establishing it within the Insolvency Service. Stakeholders argued that such an outcome would replace one set of conflicts of interest (membership bodies regulating their members) with others (including the perception that the regulator might not be sufficiently independent from government, particularly in higher profile cases). Some of those stakeholders opposed to establishing a single regulator within the Insolvency Service also cited concerns that creating a new regulator within government would result in a loss of expertise within the RPBs that would take time to redevelop and build from scratch. It was argued that this would pose significant risks to creditors and to confidence in the framework, particularly in the short term whilst a new regulator was being established.

The government remains of the view that there are strong arguments in favour of a single regulator to promote consistency and strong regulatory outcomes. However, it also recognises that, to promote confidence in the regulatory regime, all stakeholders need to be confident that the framework is proportionate and does not have actual or perceived conflicts of interest built in.

The government has therefore decided that it will not create a single regulator of Insolvency Practitioners situated within the Insolvency Service.

In its consultation, the government expressed the view that creating a new standalone single regulator for the relatively small number of Insolvency Practitioners was unlikely to be a financially viable option. The potential costs of setting up and servicing such a body could be disproportionate to the limited size of the profession. Once established, the body would need to be self-funding and this could potentially result in a heavier financial burden on those regulated, leading to an adverse impact for smaller practices. In the light of consultation responses, officials have explored in detail how to create a single regulator that would not impose undue costs on the insolvency profession, that would command confidence, and that would not be situated within government.

Given that creating a standalone single regulator at this time has the potential to be disruptive, the government will instead focus on improving the existing regulatory framework by introducing new measures (detailed below) whilst also working closely with the RPBs to measurably improve regulatory outcomes.

The government will, however, legislate when Parliamentary time allows to introduce a new power to enable the creation of an independent single regulator of Insolvency Practitioners and firms offering insolvency services should that be needed in the future. It will keep the need for a single regulator under review, while the other measures proposed are implemented and evaluated.

Statutory objectives

Alongside establishing a single regulator of Insolvency Practitioners situated within the Insolvency Service, the consultation proposed revising the current set of principles-based statutory regulatory objectives. Respondents were broadly supportive of the proposed new objectives, although debtor representatives suggested there should be more of a consumer focus. Those within the insolvency profession were concerned about the potential for conflict between an Insolvency Practitioner’s specific obligations under insolvency law and the more subjective aims in the regulatory objectives.

The government remains of the view that statutory regulatory objectives should be principles-based to ensure flexibility. However, it would be most appropriate to consider changes to the current objectives alongside the creation of any new future single regulator. As there is no current plan to introduce a single regulator, the government has decided that it will not update the current regulatory objectives at this time beyond any minor amendments required to reflect the introduction of the regulation of firms offering insolvency services.

Standard setting

The consultation proposed that the single regulator (situated within the Insolvency Service) should have responsibility for setting ethical and technical standards for the profession. Whilst some respondents acknowledged the government's concerns around the current standard setting process, others questioned whether a single body should be responsible for both setting and enforcing standards.

The government is persuaded that standards should be set independently of regulators and in collaboration with relevant stakeholders. However, it remains of the view that the current standard setting process requires reform. The government therefore intends that the Secretary of State be given the overall responsibility to set ethical and technical standards for the insolvency profession, doing so in collaboration with experts from the sector and the RPBs. The government will work with stakeholders to develop a new way to set standards and, if required, will introduce any necessary legislation when Parliamentary time allows.

Regulation of firms offering insolvency services

The consultation proposed extending regulation in the insolvency sector to firms offering insolvency services.

Responses to the proposals on regulation of firms were overwhelmingly supportive, and the government intends to legislate for the following when Parliamentary time allows:

- a framework that includes a basic set of qualifying principles for the statutory authorisation and regulation of all firms (other than sole trader Insolvency Practitioners) to sit alongside the authorisation and regulation of individual Insolvency Practitioners

• a prohibition on firms offering insolvency services unless they are properly authorised

• a requirement for each authorised firm to appoint a senior responsible person, who will be registered as such with the firm’s regulatory body

• an appropriate sanctioning mechanism

• the facility to recover proportionate costs of regulation from regulated firms

In advance of legislation, we will work with the RPBs to assess what steps towards firm accountability can be taken within the parameters of the current framework.

A public register of Insolvency Practitioners and firms offering insolvency services

The government proposed creating a register of regulated individual Insolvency Practitioners and firms offering insolvency services, and proposed that the application to be registered would replace the current system of applying for a licence.

There was widespread support amongst respondents for introducing a public register, but concerns about how this would interact with licensing requirements. Respondents generally agreed that a register of this nature would increase transparency, although some stakeholders expressed concerns about the level of detail concerning sanctions that would be published, and for how long this would remain on a public record.

The government therefore plans to introduce a register to improve transparency and public trust in the profession, and intends to legislate when Parliamentary time allows to introduce a mandatory public register for all licensed Insolvency Practitioners and firms authorised to offer insolvency services, accessible to the public.

The register will not replace the current licensing regime but will include details of determined regulatory sanctions against firms or individuals. These sanctions will remain on the register for a period of time proportionate to the severity of the sanction (and there will be further work undertaken in conjunction with the RPBs to determine proportionality guidance).

The government will also take forward work to determine where the register should be situated and how it should be maintained.

A compensation scheme for the insolvency profession

The consultation sought initial views on introducing a mechanism for compensation where there are poor standards of service by an Insolvency Practitioner which adversely impact a party involved in the insolvency proceedings.

The government is grateful for the detailed responses received and has carefully considered the views expressed. The government has concluded that a system of redress and compensation is an important feature to instil confidence in a modern framework. It therefore intends to undertake further work to determine how such a scheme could operate, and detailed proposals will be presented to stakeholders as part of a future consultation.

Amendments to the existing framework for Insolvency Practitioner security

The consultation also asked a range of questions about whether the provisions regarding Insolvency Practitioner security (“bonding”) need to be changed.

Responses to many of the proposals on minor reforms to the bonding regime were positive, and the government will implement the following amendments through secondary legislation when Parliamentary time allows:

- increasing General Penalty Sum cover from £250,000 to £750,000

• prescribing that, where a maximum indemnity period is applied by a bond provider, this must be at least 6 years from the date of appointment, with the ability to extend with the agreement of the bond provider

• prescribing that a bond may only be cancelled due to non-payment of the premium once application has been made to the Insolvency Practitioner and at least 60 days' notice has been provided to the Insolvency Practitioner and their regulator

• extending the current minimum requirements of a bond, to include:

o an allowance for reasonable associated costs of a bond claim

o a period of run-off cover for a minimum of 2 years after an Insolvency Practitioner has left office

o interest to be claimable against a bond to be calculated on the amount of the loss from the date it was incurred, with the Sterling Overnight Index Average (SONIA) being the appropriate benchmarking rate

o General Penalty Sum cover to be available for all of an Insolvency Practitioner's appointments, including those where no Specific Penalty Sum cover has been obtained

Wider reform of the bonding regime

As well as the modifications set out above, the consultation explored the potential for more fundamental changes to the bonding regime. The government wishes to consider these matters in more detail and will issue a further consultation in due course.

Security for special managers

Finally, the consultation sought views on whether the current arrangements for security to be provided by special managers are fit for purpose. The government acknowledges the general opinion that bonds provide sufficient security for special managers, and therefore reform of special manager security will not be explored further at this time.

Part A – a single government regulator of Insolvency Practitioners

A single regulator of Insolvency Practitioners

Currently, Insolvency Practitioners are authorised and regulated by one of four Recognised Professional Bodies (RPBs). The RPBs are responsible for monitoring and investigating complaints against the Insolvency Practitioners they regulate, as well as taking disciplinary action where appropriate. The Insolvency Service, on behalf of the Secretary of State, acts as the oversight regulator of the RPBs.

The government consultation highlighted concerns that the present regulatory landscape does not work as well as it could. Some weaknesses had been highlighted first by respondents to the Call for Evidence, and subsequently by a report published by the All-Party Parliamentary Group on Fair Business Banking. Separately, the Secretary of State’s own oversight of the RPBs had identified the need for improvement. Areas included inconsistencies in regulatory outcomes and poor co-operation between the RPBs, timeliness of complaint handling and disciplinary decision-making, and the potential for actual or perceived conflicts in membership bodies regulating their own members.

Views were sought on the government’s preferred option to address these weaknesses by replacing the current regulatory model with a single regulator of Insolvency Practitioners to be situated within government, in the Insolvency Service. Under the consultation’s proposals, the regulator would be a statutory office-holder and would have powers to authorise, regulate and discipline Insolvency Practitioners and firms offering insolvency services. The regulator would also be responsible for setting professional, ethical and educational standards.

Summary of responses: the single regulator

Question 1: What are your views on the government taking on the role of single regulator for the insolvency profession?

Question 2: Do you think this would achieve the objective of strengthening the insolvency regime and give those impacted by insolvency proceedings confidence in the regulatory regime?

There were 98 responses to question 1 and 89 to question 2.

There was widespread support amongst respondents outside the insolvency profession for the principle of a single regulator, notably from creditor organisations, debt advice providers, and professional and trade bodies. Those in favour felt that changes to the framework were needed, and that a single regulator would address the weaknesses highlighted in the consultation. Most RPBs, along with around half of Insolvency Practitioners and firms offering insolvency services, strongly opposed moving to a single regulator model. Concerns expressed included a view that the issues highlighted by the consultation do not warrant wholesale reform with a consequential potential loss of the expertise currently regulating the profession.

“We strongly agree that there should be a single regulator for the insolvency sector. This will bring much needed uniformity to insolvency regulation and will hopefully achieve consistent outcomes for debtors and creditors impacted by insolvency solutions.” – Association of British Credit Unions Limited

“We remain unconvinced as to the need for a single regulator […] It appears to us that the weaknesses in the existing system identified in the Consultation […] can be addressed and improved by cooperation between the Insolvency Service as oversight regulator and the RPBs.” – Insolvency Lawyers Association

Notably, Chartered Accountants Ireland (an RPB) and R3 (the trade association for the insolvency profession) supported the principle of introducing a single regulator, but expressed some concerns over whether the proposed reforms were the best way to achieve the desired outcomes.

"In principle, we are supportive of a proposed 'single regulator' as the most efficient way of achieving the aims of the regulatory objectives …[but] of particular concern to us is the hiatus that is likely to arise in the sufficiency of regulatory capacity that will arise as a result of the length of time required to implement the single regulator framework." – Chartered Accountants Ireland

"[…] in response to our survey on the consultation, a sizable proportion of R3 members (25%) are in favour of introducing an independent single regulator. [But] while there is little doubt that this reform would help to address concerns around perception, there is no guarantee that the practical aspects of its work would be carried out in a more effective or successful manner. Without adequate resourcing and experienced staff, the proposed single regulator could in fact undermine confidence in the framework." – R3

The proposal to locate the single regulator within the Insolvency Service received far less support than the general concept of a single regulator itself. Credit unions, most (but not all) debt advice providers and some creditor organisations supported the single regulator operating within the Insolvency Service, but others did not. Citizens Advice, along with some professional, trade and creditor organisations, the RPBs, and most Insolvency Practitioners and firms offering insolvency services, opposed the proposal.

The chief concern was that this would merely replace one set of conflicts of interest within the framework with another. This included views that the Insolvency Service would be responsible for casework through the Official Receivers while also becoming responsible for regulating the casework of Insolvency Practitioners. Stakeholders shared concerns that the Insolvency Service would become 'judge and jury' by setting the standards for the profession, regulating the profession, and disciplining misconduct in the profession. It was felt that the conflicts of interest criticised in the consultation would therefore be replaced by new conflicts in the new regulator, with some respondents also suggesting that housing the regulator inside a government agency would risk undermining its perceived impartiality and expose it to claims that it might not be sufficiently independent from government, as well as risk a significant loss of expertise.

"[…] we suggest that [the single regulator] should be constituted as an independent non-departmental public body to ensure that it will always be seen to be operating free of perceived conflicts of interest and political pressure. Since the Government, particularly through HM Revenue & Customs […] is frequently a significant creditor in insolvency, there may be a risk of conflict or lack of impartiality for a government body to take on this important regulatory function […] Even a perception of conflicting priorities or a lack of impartiality could compromise the objectives of moving to a single statutory regulator." – UK Finance

"We agree with the concept of a single regulator to ensure consistency of approach to insolvency regulation. In our view, the single regulator should be accountable to the Government but independent of it, in order to build trust and confidence in a system of regulation that acts impartially and transparently. Setting up the single regulator as a non-ministerial department or a public body would, in our view, enable independence from Government." – PricewaterhouseCoopers

"The APPG welcomes proposals for the introduction of a single regulator as it should strengthen the insolvency regime if properly funded […] A Governmental body would carry the most credibility. There is an existing body of expertise within the Insolvency Service which could be deployed but, in line with comments from the profession and work by parliamentarians, the new regulator should be an external unit (not directly within the IS) […] It should be subject to independent oversight comprising a balance of those with backgrounds in the insolvency industry and suitable professionals from outside the industry." – APPG for Fair Business Banking

Government Response

In light of responses to the consultation, the government now believes that replacing the current regulatory model with a single regulator situated within the Insolvency Service would not sufficiently address the weaknesses with the current model, which in turn will not improve confidence in regulation.

Despite the safeguards set out in the consultation document to separate the work of the regulator from the operational work of the Insolvency Service, it is also acknowledged that the proposals could give the potential for perceived new conflicts of interest or stakeholder views that the proposed regulator might not be sufficiently independent from government, particularly in more high-profile cases. This could affect trust in the new regulator.

The government is also concerned by the potential for a critical loss of the existing regulatory expertise that could result in the proposed regulator being unable to be fully effective in regulating the sector for an initial period of time. Any loss of regulatory expertise has the potential to damage overall confidence in the framework.

The government will not proceed with its proposal to introduce a single regulator of Insolvency Practitioners situated in the Insolvency Service.

There remain strong arguments in favour of a single regulator, to address stakeholder concerns around inconsistencies and regulatory outcomes, and promote confidence in the framework. However, and as examined in the consultation, there are potentially significant costs in setting up and maintaining such a body. There is also a need to ensure that fees are set in a way that is proportionate to the limited size of the profession, preventing an adverse impact on the smaller practices that make up its majority.

In the light of consultation responses, the government has explored a range of single regulator models that are independent from both government and the profession. While considering these models, the government has been grateful for the constructive approach that many of the RPBs have taken in engaging with discussions on how to take forward the government's wish to improve the robustness of the regulatory regime.

The government believes that there is scope for further improvement without introducing a single regulator at this time, and intends to work with the RPBs to make innovative improvements and enhance performance using the existing framework. This approach will preserve and build on the high levels of insolvency and regulatory expertise within the profession. The government does however intend to introduce a new legislative power, when Parliamentary time allows, to enable the creation of a single regulator of Insolvency Practitioners, should that be necessary in the future.

In addition, the current regime will be further strengthened by the introduction of regulation of firms and by government taking control of standard setting for the profession. These changes will be introduced as soon as Parliamentary time allows and are discussed further below.

The government will work with the RPBs to implement significant and measurable improvements to the current regulatory model. It will also work to introduce new measures to further strengthen the regime and provide the RPBs with additional tools to improve regulatory outcomes. The government will legislate when Parliamentary time allows to introduce a new power to enable the creation of a single regulator, should it be needed in future.

Summary of responses: the statutory objectives

The consultation proposed a revised set of statutory, principles-based regulatory objectives. It was suggested that these be supported by non-statutory duties and aims, to be produced by the regulator in collaboration with stakeholders. The proposed objectives were:

“To have a regulatory system that:

• secures fair treatment for those impacted by insolvency and acts impartially and transparently with regard to those regulated

• encourages a competitive and innovative industry, that acts with integrity, promotes the maximisation and promptness of returns to creditors, protects the public interest and offers high quality services at a fair and reasonable cost

• supports those regulated in complying with their responsibilities and ensures consistent and effective outcomes”

Question 3: Do you consider the proposed objectives would provide a suitable overarching framework for the new government regulator or do you have any other suggestions?

The 82 responses received in respect of this question were broadly supportive of the revised proposed objectives and of the continued flexibility offered by a principles-based approach. There was substantial support from debt advice providers for an additional, consumer-focused objective. Some stakeholders, including most credit unions and debt advice providers, suggested the FCA approach should be followed, by introducing an overarching “Consumer Duty”. It was felt that this would address issues within the volume individual voluntary arrangement (IVA) market, particularly with regard to vulnerable debtors. Respondents also pointed out that maximising returns to creditors may conflict with other objectives such as consumers’ interests, and that perhaps “optimisation” would be more appropriate.

“We have noted before that we feel the current statutory objectives are fit for purpose, but that the regulatory framework surrounding them is not capable of delivering them.” – British Property Federation

The response from the insolvency profession was mixed, with some support for the suggested objectives. Some said that statements such as “fair and reasonable” and “public interest” were subjective and therefore lacked clarity. Some stakeholders within the insolvency profession suggested that the statutory objectives should retain the requirement that regulatory activities be “proportionate and targeted”, and that they should include principles relating to independence. Some Insolvency Practitioners and legal professional bodies were concerned about the potential for conflict between an Insolvency Practitioner’s specific obligations under insolvency law and the more subjective aims in the objectives, and felt that any objectives should aim for consistency between the two. Some Insolvency Practitioners and firms offering insolvency services, along with most RPBs, stated that Official Receivers should be subject to the same objectives. One firm offering insolvency services suggested that the regulatory framework should be extended to all those working in the insolvency field, including turnaround professionals.

“I think that overall, the proposed objectives are appropriate although the use of the phrase “fair and reasonable” is subjective and meaningless without further definition.” – an individual Insolvency Practitioner

Some respondents, notably from creditor organisations and those within the insolvency profession, noted that the proposed objectives are similar to the current statutory objectives and therefore questioned the rationale for change.

“The proposed objectives are very much similar to the previous objectives, so not sure why there is a need to change them.” – an individual Insolvency Practitioner

“While we don’t see any pressing need to change the principles from what they currently are, the proposed new principles appear to us very similar to the existing ones (at least in as far as concerns creditors) and accordingly would support them.” – British Property Federation

Government Response

The government remains of the view that statutory regulatory objectives should be principles-based to ensure flexibility, to allow regulators to respond quickly to changes in the market and emerging risks. The government also agrees that the objectives should allow for a proportionate, targeted and risk-based approach to regulation.

The proposed statutory objectives were developed with a view to them being delivered by a single regulator situated within the Insolvency Service. The government considers it would be more appropriate to consider changes to the regulatory objectives alongside introduction of a new regulator should it be necessary in the future. As there are no current plans to introduce a single regulator of Insolvency Practitioners, the government does not intend to amend the statutory objectives at this time beyond any minor amendments required to reflect the introduction of the regulation of firms offering insolvency services.

Summary of responses: functions of the single regulator

In the consultation, the government proposed that the regulator should have powers to carry out the following functions:

• to set the requirements for authorisation of individuals to act as Insolvency Practitioners and for firms to offer insolvency services

• to authorise individuals (either fully or partially) to act as Insolvency Practitioners

• to authorise firms to offer insolvency services

• to regulate and monitor the activities of Insolvency Practitioners and firms offering insolvency services

• to investigate complaints against Insolvency Practitioners and firms offering insolvency services

• to discipline and impose sanctions in respect of Insolvency Practitioners and firms offering insolvency services

• to set technical, educational, professional and ethical standards for Insolvency Practitioners

- to set professional and ethical standards for firms offering insolvency services

- to create and manage a public register of authorised Insolvency Practitioners and firms offering insolvency services

- to share and receive intelligence

- to require the production of information

- to levy a fee to cover the cost of regulation

- to delegate certain functions to other specified bodies and to make payment for the cost of undertaking those functions

Question 4: Do you consider these to be the correct functions for the regulator in respect of Insolvency Practitioners and in respect of firms offering insolvency services?

Question 5: Are there any other functions for which you consider the regulator would require powers?

There were 74 responses to question 4, and 54 to question 5. All stakeholder groups that provided a response to question 4 felt that the majority of functions listed were appropriate for a regulator. This included stakeholders within the insolvency profession who opposed the proposals for a single regulator. The exceptions to this were the setting of standards and the proposal that the regulator should be able to delegate some of its functions to other bodies. These exceptions are considered in more detail below in the responses to question 6 and questions 7 to 11, respectively.

"We consider the stated list of functions to be appropriate and necessary for an insolvency regulator to be responsible for. The proposed list of functions covers all the responsibilities we feel are needed to sit with an authoritative single regulator." – Association of British Credit Unions Limited

"We believe that the functions set out in the consultation proposal are correct for an independent single regulator. If the government is to be the single regulator […] then we have serious concerns about the appropriateness for government to set standards." – Mazars

“Notwithstanding our broader concerns around the introduction of a government single regulator as proposed in the consultation, the functions put forward are the correct ones for the regulator.” – R3

In response to question 5 and linked to later consultation questions, debt advice providers, creditor organisations and some within the insolvency profession suggested that the functions should include a power to award compensation. There was also substantial support within the debt advice sector and creditor organisations for increased transparency around investigations and sanctions, and the performance of individuals and firms offering insolvency services.

“There is mention in the list of functions that the regulator can “require the production of information”, which presumably will be from IPs and firms. We believe that this should go further and place a duty on the regulator to publish a broader range of statistical information about IVAs in the spirit of transparency […] This type of information could help the regulator to identify and investigate poor practices by firms, or creditor voting policies and so on.” – Money Advice Trust

Government Response

The government welcomes stakeholders’ general agreement that the functions set out were appropriate for a single regulator. The government also appreciates the concerns raised by some respondents specifically about standard setting and the delegation of functions, which are addressed in more detail in the later sections of this response.

While the government is not intending to introduce a single regulator of Insolvency Practitioners at this time, the responses provided will help shape any single regulator should it be deemed necessary to implement such a model in the future.

Summary of responses: standard setting

The consultation proposed that an Insolvency Service based single regulator should have responsibility for setting standards, and that the regulator would work with industry experts to produce effective standards and requirements for authorisation. It also proposed that the current standards, such as the Statements of Insolvency Practice (SIPs) and the Code of Ethics, be consolidated into one resource, such as a manual.

Question 6: Do you agree that the single regulator should have responsibility for setting standards for the insolvency profession?

There were 75 responses to this question across all stakeholder groups, and opinion was divided. Debt advice providers and most creditor organisations were in favour of the proposals.

“Standard-setting should properly sit with a body that is independent of industry and has the capacity to move quickly where required […] Guidance should be accessible to the public and to consumer groups. The Insolvency Service should engage with consumer groups and industry to monitor consumer detriment issues.” – Citizens Advice

“the single regulator should be responsible for setting standards for the insolvency profession. Like the FCA, the regulator can adopt a principle-based approach to provide firms the flexibility to fulfil its regulatory objectives […] Monitoring the outcomes will allow the regulator to identify and intervene early to prevent harm to consumers and maintain the integrity of the insolvency profession, driving up standards” – Christians Against Poverty

There was some acknowledgement amongst respondents, including some within the insolvency profession, that the current standard setting process is inefficient and lacks transparency. There was also support within the insolvency profession for the consolidation of the current ethical, professional and technical standards into a manual.

“[…] we agree that the current process is far too slow and there are justified criticisms that the current model is incapable of acting quickly enough when needed to keep pace with changes in business practices. We would welcome the development of a principles-based approach to replace the current model of SIPs and an Ethics Code and would also caution against a too rigid structure that could work against flexibility and agility in responding to changes.” – Creditfix

“We believe that the current process for setting standards is not as effective as it could be because of the ‘trade off’ between different stakeholders in order to reach agreement.” – National Credit Union Forum

“[…] it will enable standards to be developed and implemented more quickly in response to emerging issues of concern. It will also be advantageous for the regulating body to know how standards have been, and should be, developed” – Ernst & Young LLP

However, there was substantial opposition within the insolvency profession and trade and professional bodies to a regulator sitting within the Insolvency Service both setting and enforcing the standards. Respondents stated that the process should be separated from the regulator, and warned against the loss of expertise and experience of practical application that would arise if stakeholders were not involved in the process of setting standards.

“The currently existing inclusive approach to setting standards is essential to produce standards that are: (i) authoritative and supported by users and regulators alike, (ii) relevant, as they address concerns raised by those affected by them including stakeholder and professionals, and (iii) realistic, as they are practical from both compliance and cost of compliance perspectives. The IPA is concerned that the IS as SR monopolising standard setting would lose these benefits and result in standards that are unworkable and or do not have support and engagement by the profession and the wider constituency of stakeholders.” – IPA

“[…] there should be a separation of the regulatory and compliance function (which should lie with the new single regulator) and the policy function (including preparation of SIPs and reviews of the Insolvency Rules). Policy should remain with those who have the necessary expertise and processes (including consultation processes) to develop it. The Insolvency Service already has this capacity.” – City of London Law Society

Many of those stakeholders who were supportive of the proposed single regulator being the “standard setter” nonetheless cautioned that this should be done in consultation with the profession in order to retain expertise.

“Whilst our members feel that regulators should have responsibility for setting standards, the content and structure of these standards is often greatly assisted by acquiring insight and knowledge provided by Professional Bodies and independent committees… [and] without these parties, valuable input could be lost.” – Chartered Institute of Credit Management

“On a practical level, it is essential there is full consultation with all stakeholders when proposing changes to standards. This will ensure feedback is obtained on how the current standards are working in practice and give all stakeholders the opportunity to comment on how the proposed changes may work in practice.” – PayPlan

Government Response

The government is persuaded that standards should be set independently of regulators and in collaboration with relevant stakeholders. However, the concerns set out in the consultation around the current process of standard setting remain, and are echoed by some respondents.

It is the government’s intention that the standard setting process be more agile and able to adapt quickly to changes in the profession. This would help ensure that the regulatory framework is more able to keep pace with changes in the way the market functions and better reflect the landscape in which it operates, thereby improving confidence in the overall framework.

The government proposes that the Secretary of State be given the overall responsibility to set standards for the profession. The government will work with the RPBs and key stakeholders to improve the current standard setting framework, but if necessary this responsibility will be implemented through legislation when Parliamentary time allows.

The government recognises the high levels of skill and experience of the stakeholders currently and previously involved in the setting of standards, and is keen to retain that expertise in any new process. It is envisaged that standard setting will continue to be a highly collaborative and transparent process, and will involve detailed and ongoing consultation with insolvency professionals, the RPBs, and other relevant stakeholders. This will ensure that the standards are authoritative, workable and fit for purpose. The Secretary of State will develop standard setting policies, including timeliness objectives to ensure efficiency, and will aim to consolidate the standards into one resource.

Summary of responses: complaints and disciplinary procedures and delegation of functions

In addition to standard setting, the consultation proposed that the following functions be retained by the regulator:

- complaint investigations
- targeted and intelligence-led investigations
- disciplinary and enforcement proceedings

While the government felt it appropriate for the regulator to retain these functions to ensure consistency and public confidence, it was suggested that certain functions may be appropriate to delegate to other bodies. Examples given included routine monitoring and authorisation of Insolvency Practitioners and firms, as well as the provision of education and training for the profession.

The consultation also set out the single regulator's proposed disciplinary and enforcement process. This would see an Insolvency Practitioner able to challenge the regulator's recommended sanction through written representations in the first instance, although the right to a face-to-face hearing would be automatic in the most severe cases. Where the matter remains unresolved an Insolvency Practitioner would be able to appeal to an independent Appeals Officer, which includes a right to an oral hearing, with a fee being charged to discourage vexatious appeals. There would be a final route of appeal to the court where the matter remains in dispute.

There were 77 responses to this series of questions across almost all categories of respondent. Not all respondents answered all questions and around half of trade and professional bodies and one quarter of individual Insolvency Practitioners did not provide a response. Bond providers did not respond to these questions.

Question 7: Do you agree that it would help to improve consistency and increase public confidence if the function of investigation of complaints was carried out directly by the single regulator?

Question 8: What are your views of the proposed disciplinary and enforcement process and the scope to challenge the decision of the regulator?

Opinions about whether the regulator should handle all complaints was divided. Debt advice providers and trade and professional bodies tended to support the proposals. Creditor organisations and those within the insolvency profession tended to oppose, although some of that opposition was linked to the concept of the single regulator being within government. Some respondents within the insolvency profession raised concerns over the volume of relatively minor consumer complaints that the regulator may face and the impact that could have on the investigation of serious misconduct.

“Clearly there would be some benefits in terms of consistency for the single regulator to have a degree of oversight over the investigation of complaints. This does not mean the regulatory body has to provide the complaint management function itself, however […] Government may wish to retain the option of a hybrid model, combining oversight by the regulator with a specialist complaint/Alternative Dispute Resolution (ADR) function which could be delivered by a specialist ADR provider.” – UK Finance

“There is potential for a substantial volume of complaints from consumers given the scale of IVA mis-selling. The single regulator may struggle to deal with these consumer complaints alongside institutional complaints from creditors or consumer advocates which will require pro-active investigative work. We support an ombudsman style structure for consumer redress complaints with the body joined to the regulator through memorandums of understanding to facilitate monitoring of trends in consumer grievances. The single regulator would then be given greater capacity to conduct investigations and respond to wider institutional failings in the market.” – StepChange

The RPBs and wider insolvency profession tended to strongly oppose the proposed disciplinary and enforcement process, citing concerns over fairness, the potential to trade robustness for efficiency, and a lack of independence. Specific concerns included the Secretary of State’s appointment of the Appeals Officer, the ability to provide in-person representations being limited to the most serious cases and appeals, an increase in the cost of appealing disciplinary decisions, and an Insolvency Practitioner’s inability to appeal directly to the court. Debt advice providers, creditors, and trade and professional bodies tended to state that the proposals were fair and reasonable, and that removing the RPBs from the process would be a positive step towards improving public trust.

“The disciplinary and enforcement process described seems to be entirely unfair. We are concerned that the Government thinks it is appropriate for disciplinary hearings to be conducted outside of an independent tribunal.” - Mazars

“The proposed process seems sensible. We agree that the first appeal in relation to the regulator’s decision should be made to an Appeals Officer rather than to a tribunal.” – Law Society of England and Wales

“It is essential that there is some form of accessible and substantial appeal process other than judicial review before a sanction against an insolvency practitioner or firm is finalised and publicised. We agree that using a tribunal for this process is unlikely to be cost effective but emphasise for reasons of fairness, the need for the appeals officer to be highly skilled and/or supported by a legal team as we are aware that those challenging the decisions of the current regulators invariably engage legal teams. If feasible, we question whether the appeals role would be best occupied by an ICC judge.” – Grant Thornton

Question 9: Are there any other functions which you think should be carried out directly by the single regulator?

Question 10: In your view should the specified functions be capable of being delegated to other bodies to carry out on behalf of the single regulator?

Question 11: Are there any other functions that you think should be capable of being delegated to other bodies to carry out on behalf of the single regulator?

The proposals concerning the delegation of certain functions again divided opinion. Some trade bodies and individual Insolvency Practitioners recognised that this may be necessary and would be appropriate if done transparently. However, there was substantial opposition to delegation amongst the debt advice sector and some creditor organisations (although some respondents in these categories suggested that education, training and examinations would best be carried out by the RPBs). These respondents felt that outsourcing regulatory work to existing RPBs would not address the issues raised in the consultation. Concerns were also raised within the insolvency profession and some creditor organisations about the impact on consistency and expertise.

“In order for the regulatory regime to be strengthened, insolvency regulation needs to be applied cohesively and consistently. This is unlikely to be the case if core authorisation and monitoring functions can be delegated to different RPBs or other bodies. Direct handling of both authorisations and routine monitoring would also strengthen the regulator’s supervision of the insolvency sector by allowing direct oversight on the standard of conduct and compliance taking place on the ground.” – Association of British Credit Unions Limited

“We think that there is a risk that it would be counterproductive to set up a new single regulator and then delegate the regulator’s functions to specified bodies rather than focus on recruiting and developing the requisite expertise internally. It could lead to duplication of work and dilute any advantages of increased independence, knowledge and consistency that could be derived from the introduction of a single regulator. As regards the setting of professional examinations, however, we think delegation will be necessary.” – Grant Thornton

“[…] we believe all functions are capable of being delegated to another body. However, delegating to more than one body risks the continuation of inconsistencies in approach and outcomes identified with the current regulatory framework.” – Chartered Accountants Ireland (CAI)

Most respondents did not identify any functions beyond those specified in the consultation (routine monitoring and authorisation of Insolvency Practitioners and firms, as well as providing education and training) that could be capable of delegation. Responses from Insolvency Practitioners and firms offering insolvency services were split, with some suggesting that no functions should be delegated and others suggesting all functions should be delegated.

“I think all functions could potentially be delegated out, as they are all currently being done well by the existing RPBs.” – an individual Insolvency Practitioner

“[…] we do not think it is appropriate to delegate the functions, that should be undertaken by a regulator. In our view, this would be in complete contradiction to achieving consistency of approach. The only aspect we consider capable of delegation under the current proposals is, potentially, the provision of training. That said, there is, we believe, currently a disparity in approach in terms of Continuing Professional Education amongst the RPBs.” – RSM Restructuring Advisory LLP

Government Response

Proposals for the delegation of functions and a new disciplinary process were developed as part of the proposal for a single regulator situated within the Insolvency Service, which the government has decided not to implement at this time.

The government is grateful for the detailed responses received, which will help shape any single regulator model should it be deemed necessary in future.

Impact Assessment and Funding

The government consultation included a draft Impact Assessment and asked for further evidence to help inform it.

The government's aim was for the single regulator to be cost-neutral. Proposals for funding it included nominal fees for authorisation and registration, annual levies charged on a sliding scale, additional "polluter pays" charges (aimed at those presenting the highest risk) for those subject to the additional requirements regime, and fees charged to appeal decisions of the regulator. The views of stakeholders were invited to inform the development of the funding model.

The impact assessment also set out potential impacts of the proposals outlined in the consultation. This included a range of cost impacts affecting the RPBs, Insolvency Practitioners and the Insolvency Service, as well as impacts on the justice system for considering any appeals relating to unresolved regulatory matters.

Summary of responses

Question 21: Are there any further impacts (including social impacts) that you think need inclusion or further consideration in the Impact Assessment?

There were 36 responses to question 21, the majority of which were from those within the insolvency profession and debt advice providers. The main issues that stakeholders raised were as follows:

- regulatory risks arising during any transition period from the announcement of the move to a single regulator

- concerns that costs of transition had been underestimated

- concerns over potential costs or time required for regulatory or compliance activity

- potential improvements to the framework, especially for consumers

- potential for increased regulatory burdens, especially for small firms

- potential for loss of expertise

- potential loss of confidence in the profession

- beneficial social impacts, such as improvements in mental and physical health, for those making use of well-regulated insolvency procedures to manage problem debt

Question 22: What are your views [on the above proposals] for funding of insolvency regulation? Do you have any other suggestions for self-funding of regulation?

There were 50 responses to question 22, with widespread support for the new regulator being cost-neutral and self-funding. Some creditor organisations were concerned that if there were increased costs, these would be passed on to creditors. There was some support from creditor organisations and the insolvency profession for additional monitoring charges and for the concept of fees being charged on a risk-based “polluter pays” principle. Respondents within the insolvency profession were largely supportive of fees being charged on a sliding scale, but cautioned against duplication of fees for Insolvency Practitioners and the firms for which they work.

One suggestion from a firm offering insolvency services was a fixed fee for all firms and increased fees for those who had unsatisfactory monitoring visits or upheld complaints. One RPB suggested that sources of funding be considered more widely, for example through financial services levies or the Companies House fee structure. There was considerable opposition amongst those responding to the charging of fees to appeal regulatory decisions. Overall, respondents highlighted the importance of any fee system being fair and proportionate.

Government Response

The government is grateful for the responses provided and the suggestions put forward by stakeholders. Fee structures are a key part of any regulatory model, and responses will help inform future consideration should it be necessary to make further changes to the current system of regulation and introduce a single regulator.

Part B – regulation of firms offering insolvency services

Regulation of firms – in general

The consultation sought views on the introduction of regulation for firms offering insolvency services. Under the current framework, only individual Insolvency Practitioners are subject to regulation. This means that, in some circumstances, an Insolvency Practitioner’s statutory and regulatory duties may conflict with their firm’s commercial interests. The consultation highlighted the concerns of a range of stakeholders over the regulatory gap that this creates, with the RPBs having limited power to target firm culture and practice, particularly in large or high-risk firms.

More generally, the framework has not kept pace with developments in the insolvency market, like the emergence and rapid expansion of the “volume provider” IVA firms which has damaged public trust in the overall way this part of the insolvency sector operates.

The consultation proposed a system of regulation to cover all firms offering the services of those acting as Insolvency Practitioners as set out in section 388 of the Insolvency Act 1986. It was envisaged that firms would need to meet certain minimum requirements in order to be authorised. For example, requirements as to financial resilience and solvency, holding sufficient insurance, employing and training sufficient qualified and non-qualified staff to effectively administer the number of appointments being taken by practitioners at the firm, and others.

Summary of responses

Question 12: In your opinion would the introduction of the statutory regulation of firms help to improve professional standards and stamp out abuses by making firms accountable, alongside insolvency practitioners?

There were 86 responses to question 12, although not all those responding answered every question. Stakeholder responses were overwhelmingly positive, with many in the insolvency profession and in the debt advice sector stating that firm regulation was long overdue.

“It has long been our view that firm regulation is needed. The commercial interests of a firm should in no way affect the judgement of an IP within that firm. We believe that this change would reduce complaints and improve public perception. In particular, firm regulation is likely to improve standards in the consumer IVA market.” – Mazars

“Through our work as successor practitioners, we have seen instances in smaller practices of individual insolvency practitioners within a practice being under different regulators and as a result regulatory issues with one individual not coming to the attention of the rest of the practice. Firm regulation would immediately remedy this." – Grant Thornton

"[…] regulating firms is absolutely critical to the success of the new system. Many of the risks consumers are exposed to are related to firms' practice, not that of individual practitioners alone […] Unless insolvency firms are regulated then confidence in the system and outcomes for consumers and creditors will remain at unacceptably low levels." – Equifax

Despite being in favour of the overall proposal, some respondents, including creditor organisations, professional bodies and insolvency professionals, raised concerns about the potential for a disproportionate regulatory burden on firms. This was felt to be a particular risk for those micro or small businesses with one or two Insolvency Practitioners, which make up approximately 80% of the profession. Some individual Insolvency Practitioners and firms offering insolvency services added that firm regulation would need to be carefully designed and implemented to avoid a negative effect on recruitment and retention in the profession.

"ICAS agrees that additional regulatory requirements and monitoring should be targeted at the firms which have the potential to cause the most damage to the insolvency market, particularly those operating in the volume consumer debt solution market […] but it is imperative that regulation is proportionate and avoids unnecessary burdens on low-risk businesses […]" – ICAS

"From a practical point of view, firms will need to adjust their business models and markets from time-to-time, possibly urgently to react to legal developments, or to take advantage of a market opportunity. It will be important that enough flexibility is built into the regulatory system to allow for this and to make any necessary approval of any changes as straightforward as possible." – Grant Thornton

While it welcomed the proposed introduction of regulation of firms, ICAEW's Regulatory Board stated that the proposals did not go far enough, and suggested that the insolvency regulatory framework should be overhauled to make the firm the primary target of regulation, rather than the individual Insolvency Practitioner as office-holder. It suggested that a similar framework to that in audit be introduced, with the firm having primary responsibility over the individual Insolvency Practitioners carrying out regulated work on its behalf. It was, however, acknowledged that this would require a radical overhaul of the entire insolvency framework and all associated legislation.

“Such a system would place the primary responsibility on the firms earning the financial rewards while maintaining the very important personal accountability of individual insolvency practitioners. This would also ensure that only suitably qualified and experienced competent individuals would be nominated by their firms for approval to take on appointments and would place equal responsibility on the firms to ensure that all of their nominated individuals are properly trained and supervised in their handling of insolvent estates.” – ICAEW Regulatory Board

In contrast to this, some other respondents, where they expressed a view, agreed with the consultation that regulation of firms should be introduced alongside that of individual Insolvency Practitioners.

“Our members feel that firms being held to account, alongside and in the same way as insolvency practitioners could help to improve standards and ensure they are consistent for both.” – Chartered Institute of Credit Management

“[Firm regulation] must make clear the responsibilities of the firm and those of the IP, and the matters for which each party may be held accountable. We believe this is deliverable by the existing RPBs if appropriate legislation is enacted to facilitate firm regulation but it must be supported by guidance issued by the Service to ensure consistency across all RPBs.” – Creditfix

“[…] any failure to introduce the regulation of firms alongside Insolvency Practitioners will cause the proposed improvements to the sector to fail. Currently, certain firms can hide behind the licenses of the Insolvency Practitioners they employ, knowing that there are no repercussions for them […] This has allowed far too many firms […] to focus on profits at the detriment of customer outcomes and their own IPs.” – individual Insolvency Practitioner

Government Response

The government has carefully considered these responses and will legislate to introduce the regulation of firms offering insolvency services when Parliamentary time allows. The future regulatory regime will encompass:

• a framework for the statutory authorisation and regulation of firms, to sit alongside the authorisation and regulation of individual Insolvency Practitioners

• this framework will include a basic set of qualifying principles for firms offering insolvency services

• the framework will apply to all firms (which will include all types of business form) offering insolvency services (other than individual Insolvency Practitioners or sole traders)

• insolvency services will include any activities carried out by a firm which lead to the appointment of an Insolvency Practitioner to carry out any role within section 388 of the Insolvency Act 1986, and the work carried out by the Insolvency Practitioner or the firm in relation to such appointment. Further consideration may be given as to whether any specific activities ought to be included or exempted from regulation

• firms will be prohibited from offering insolvency services without being authorised by and registered with the relevant regulatory body

• all firms offering insolvency services must appoint a senior responsible person, who will be registered as such with the firm's regulatory body

• the senior responsible person will not need to be an Insolvency Practitioner, but they must be suitably qualified and experienced to undertake the role of ensuring the firm's compliance with its regulatory requirements (explored further in the next section)

• the new firm regulation framework will include appropriate sanctions, and guidance will be provided on those sanctions

• the framework will allow for proportionate costs of regulation to be recovered from each firm

In the meantime, the government will work with the RPBs to explore options for introducing, on a non-legislative basis, a framework for regulating firms offering insolvency services.

The suggestion of making the firm the primary target of regulation would require a substantial re-writing of the Insolvency Act 1986, the Insolvency (England and Wales) Rules and Insolvency (Scotland) Rules, and associated legislation. This was not considered as part of the consultation, but the government keeps the framework under regular review and this proposed solution has been noted.

Regulation of firms – additional requirements regime and a senior responsible person

The consultation proposals suggested that all firms that offer insolvency services should fall within the ambit of regulation, but that there should be a system of additional regulatory requirements targeted at certain firms using a risk-based approach. It was intended that firms subject to additional requirements would face enhanced requirements for licensing. They would be required to nominate a senior responsible person for ensuring the firm's regulatory compliance, and would be subject to additional fees to cover the increased level of scrutiny.

Summary of responses

Question 13: The Government believes that all firms offering insolvency services should be authorised and meet certain minimum regulatory requirements, but that additional regulatory requirements should mainly be targeted at firms which have the potential to cause most damage to the insolvency market. What is your view?

Question 14: In your view should certain firms be subject to an additional requirements regime before they can offer insolvency services? If so, what sort of firms do you think should be subject to an additional requirements regime?

69 stakeholders responded to question 13, and 67 responded to question 14.

There was widespread support for additional requirements for some firms, with debt advice providers, credit unions and other creditor organisations highlighting problems with the volume IVA market in particular. There were differing views on how additional requirements should be applied. Many of those in the insolvency profession and some creditor organisations favoured an intelligence-led approach focused on potential harms rather than on fixed characteristics such as firm size. Some respondents, including ICAS and the Institute of Money Advisors, agreed that a proportionate, risk-based approach should be applied, with additional requirements being targeted at whichever firms have the potential to cause the most damage to the insolvency market. In opposition to this, some stakeholders, including professional bodies and those within the insolvency profession, expressed reservations over this test, suggesting that it may make some firms vulnerable to unnecessarily burdensome regulation.

“Although we support firm regulation, we do not support a multi-tier approach to such regulation. We consider that it is preferable that regulation (whether of firms or individuals) should be consistent across the industry, so that any person dealing with an IP is entitled to expect the same level of regulation […] Any approach that placed additional burdens on firms solely due to their size rather than their ability to manage risk would be arbitrary and unlikely to operate efficiently.” – The Law Society

“There should be equality of regulation…[and] monitoring should be targeted at firms ‘which have the potential to cause the most damage to the insolvency market.’ […] we believe it should be on an intelligence-led basis, not arbitrary figures or levels which could be ‘gamed’” – RSM UK Restructuring and Advisory LLP

Question 15: Do you think that regulation of firms should require a firm subject to an additional requirements regime to nominate a senior responsible person for ensuring that the firm meets the required standards for firm regulation?

Question 16: If so, would you envisage that the senior responsible person would be an Insolvency Practitioner? If not, please specify what requirements there should be for that role?

There were 70 stakeholder responses to this series of questions, though not all stakeholders answered both questions. Stakeholders were broadly in favour of the appointment of a senior responsible person, with many believing this would bring accountability at a senior level within the firm, and highlighting similarities with other regulatory regimes, such as those for audit, anti-money laundering and financial services.

The RPBs, in particular, were in favour of the requirement for a senior responsible person to be appointed in all firms, not just those subject to additional requirements. They drew comparisons with other regulatory regimes, such as audit, and suggested that it should not be too onerous for all firms to appoint a senior responsible person. However, some respondents from the insolvency profession questioned whether appointing a senior responsible person would actually assist with a firm's compliance, and were concerned about introducing a potentially disproportionate regulatory burden.

On the question of whether the senior responsible person should be an Insolvency Practitioner, most stakeholders felt that this need not be a requirement. Rather, stakeholders were more concerned that the senior responsible person should be a suitably-experienced professional who is sufficiently senior to be able to influence and guide the firm and its leadership at a strategic level. Many respondents, including creditor organisations, professional bodies and insolvency professionals, suggested that the requirements for a senior responsible person should not be too prescriptive given the variation in size of firms offering insolvency services and their ownership structures.

"It should not be a requirement for the SRP to be a Licensed IP although of course they could be and this might add to the confidence in the firm. However, the SRP should be a regulated individual (e.g. a lawyer or accountant) who is responsible for the firm's provision of insolvency services." – IPA

"A suitably qualified, experienced, individual ought to be able to perform this role. We would expect such an individual to have knowledge and experience of risk management, the applicable ethical codes, legislative, best practice and regulatory obligations." – RSM UK Restructuring Advisory LLP

Government Response

The government recognises that in order to take a proportionate approach to regulation, regulatory activity should be based on targeting the highest risk entities. The government therefore intends to establish a framework for an additional requirements regime through legislation when Parliamentary time allows. The government will work with the RPBs to develop a suitable framework to set out how this will be applied.

The government has carefully considered the views expressed about requiring firms to appoint a senior responsible person, in particular the comparisons with other regulatory regimes, the variations in firm size and structure, and the regulatory aims to tackle firm culture and practice. In light of the consultation responses, the government has decided to require all regulated firms to appoint a senior responsible person, and will legislate to implement this when Parliamentary time allows. The government considers that the senior responsible person should be an individual of sufficient seniority to drive meaningful change within a firm, and could, although need not necessarily, be an Insolvency Practitioner. The government intends that the eligibility requirements for senior responsible persons should be sufficiently flexible to remain appropriate for all regulated firms.

Public register of Insolvency Practitioners and firms offering insolvency services

The consultation sought views on its proposals for a single public register of Insolvency Practitioners and firms offering insolvency services. It proposed that inclusion on the register should be mandatory for all those individuals and firms wishing to offer insolvency services, and the registration process would replace the current licensing system. Legislation would set out the minimum requirements for inclusion on the register, such as qualifications and experience, relevant security and a “fit and proper” assessment. There would be an annual review of each firm and individual Insolvency Practitioner to ensure compliance with those requirements. It would be an offence for an individual or firm to offer insolvency services without being on the register. The register would include the individual or firm details, with links between the two where appropriate. It would also publish certain details of enforcement outcomes decided against individuals and firms.

Summary of responses

Question 17: Do you think that a single public register for Insolvency Practitioners and firms that offer insolvency services will provide greater transparency and confidence in the regulatory regime?

There were 76 responses to this question and it received strong support across almost all stakeholder groups that provided a response. It was generally agreed that a public register would increase transparency, although some stakeholders expressed concerns over which sanctions would be published and for how long. These responses included concerns that sharing low-level sanctions might give a disproportionately negative view of a particular practitioner or the profession in general, and that sanctions should only be shared for a limited amount of time to ensure the information is relevant. Both R3 and the Insolvency Lawyers Association (ILA) suggested that any published sanctions should include the reasoning and context behind them in order to empower those accessing the register to make informed choices.

“We support the introduction of a single public register for Insolvency Practitioners and firms. We believe this will provide greater transparency for those affected by insolvency proceedings, to identify whether Insolvency Practitioners and firms are authorised. Public registers seem to work well in other sectors, such as in the legal or financial services sectors. Assuming the public are aware of the existence of such a register, this should help reduce the number seeking assistance from “unlicensed” firms whose business practices may be non-compliant or cause detriment. We also support the publication of all sanctions which can be seen by any interested parties.” – PayPlan

“It will improve the quality and consistency of regulation. It will also help consumers identify regulated IPs though we encourage the government to work with the wider debt sector to improve consumers’ awareness of the register and how to use it.” – Equifax

“The FCA provides a public register for financial services and having one for the insolvency sector owned by the single regulator will help those who need insolvency services to identify legitimate Insolvency Practitioners and firms. There should also be a requirement to direct people to the public register in all marketing and advertising done by insolvency practitioners and firms, with the information prominently displayed. The consumer needing an Insolvency Practitioner can then make an informed decision based on the public information available in the register.” – Christians Against Poverty

“We support the proposal to develop a single public register for Insolvency Practitioners and this would provide greater transparency in the regulatory regime. The primary advantage of such a proposal is a single reference point for such information.” – Chartered Accountants Ireland

“We would support a single public register for insolvency practitioners and firms. This will make it easier for all involved to be confident they are dealing with an appropriately authorised individual and firm. If the register provides details of any adverse regulatory decisions/sanctions against that person or firm, as well as providing useful information to users of Insolvency Practitioners, this should also act as an additional deterrent against wrongdoing.” – UK Finance

The exception amongst stakeholder groups was that of individual Insolvency Practitioners. While a slim majority of those that responded were in favour, many felt that a register would add little in terms of transparency, and that the information to be recorded was already available elsewhere. Some noted that non-appointment-taking Insolvency Practitioners had not been discussed in the consultation and interpreted that this meant that they would somehow be outside of the regulatory regime. Concern was expressed over whether they would be included on the register, and hence permitted to call themselves Insolvency Practitioners. In addition to practitioners' concerns, one creditor organisation suggested that while the inclusion of sanctions would increase transparency, it could affect public confidence.

"A public register may provide greater transparency and confidence, but we are not clear as to how the Government's proposal is the best way of achieving this goal. We would like to have greater clarity on what information will be included, specifically around the length of time that details of any disciplinary action and sanction will be included. If an insolvency practitioner has satisfied their disciplinary sanction, we would like better to understand the purpose of listing it on a public register for an extended period of time. If the regulator views the insolvency practitioner as fit to practice, it is hard to see what benefit it would provide to, for example, creditors on an individual case if they knew the insolvency practitioner had previously been fined or sanctioned." – BDO LLP

"The Insolvency Service already maintains a publicly available directory of insolvency practitioners which can be searched by the insolvency practitioner's name, firm name, authorisation number, and area. This can be updated to reflect any additional information about firm regulation. The wheel does not need to be reinvented. This will maintain transparency and confidence but will only work if it is up-to-date and accessible. We note that details about sanctions are also already published." – Grant Thornton

Some stakeholders, particularly in the debt advice sector and in reference to the volume IVA market, suggested that the register should hold other details in addition to those proposed in the consultation. Examples included numbers and types of appointment and the outcomes of appointments.

"We would support even greater transparency beyond just disciplinary records. Customers should be able to compare IPs and firms on the termination rates of their IVAs so they can make a judgement about the quality of the advice provided by an IP as well as how well they support individuals to maintain their IVAs beyond the first two years. Current statistics releases do not break termination rates down to the firm level. This is vital information for both external oversight of the market as well as for consumers seeking to understand the historic conduct of providers." – StepChange

"IVA failure rates should also be included as a significant performance metric." – Citizens Advice

Government Response

The government will introduce legislation for a single public register of Insolvency Practitioners and firms offering insolvency services when Parliamentary time allows. Inclusion on the register will be mandatory for both appointment-taking and non-appointment-taking Insolvency Practitioners, and for firms authorised to offer insolvency services. The register will be accessible to the public and will contain information about each Insolvency Practitioner and firm offering insolvency services, including the links between them where appropriate. The register will also contain details of determined sanctions against each individual Insolvency Practitioner or firm, to remain on the register for a period of time proportionate to the severity of the sanction (to be determined in consultation with the RPBs).

Without a single regulator to supervise the register, the government does not intend to replace the licensing requirements for Insolvency Practitioners. Instead, Insolvency Practitioners will still be required to meet the current authorisation criteria, and their details will be entered on the register. The government will establish where the register should be hosted and who will hold responsibility for its upkeep.

The government notes the concerns expressed around the duration of published sanctions and will ensure that the information disclosed is done so proportionately and fairly. Additionally, the government has noted the concerns about non-appointment-taking Insolvency Practitioners and would like to reassure stakeholders that they remain an important part of the regime, and thus will be included on the register.

A system of compensation

The consultation sought initial views on the proposed regulator being given a power to direct an Insolvency Practitioner or firm to compensate or otherwise provide redress for adverse impacts caused by their acts or omissions. Stakeholders were also asked for their suggestions on how a compensation scheme might be funded, for example through the introduction of a levy.

Summary of responses

Question 18: What is your view on the regulator having a statutory power to direct an Insolvency Practitioner or firm to pay compensation or otherwise make good loss or damage due to their acts or omissions?

Question 19: What is your view on the amount of compensation that the regulator could direct an Insolvency Practitioner or firm to pay for financial loss?

Question 20: Which option or options do you consider would be most suitable to fund a compensation scheme for the insolvency profession? Alternatively, do you have a suggestion on how a compensation scheme for the insolvency profession might be funded?

There were 78 responses to this series of questions, although not all stakeholders providing a response answered every question. Some stakeholders, including debt advice providers and creditor organisations, agreed that there should be a power for the regulator to compel an Insolvency Practitioner to make good any loss. Concerns were raised by those in the insolvency profession and by professional and trade bodies over the potential for large numbers of claims that could quickly overwhelm and overstretch a new scheme, with such a scheme becoming a “complainants’ charter”. In particular, in the large retail or energy company cases seen in recent years, a compensation scheme could create tens of thousands of claims in just one case. They pointed out that routes for redress already exist: Insolvency Practitioners can choose to voluntarily reimburse estates, and some practitioners or firms hold professional indemnity insurance that they could claim against. Additionally, it was pointed out that ultimately creditors have recourse to the courts where an Insolvency Practitioner has breached their statutory obligations.

“We are aware that many debtors do not have the financial resources to take legal action against an Insolvency Practitioner or their firm, and need access to a cost-effective, swift process which has the power to pay compensation. However, it is important that the complainant has first given the Insolvency Practitioner or firm the opportunity to investigate and respond to the complaint. Many complaints relate to miscommunications or mis-understandings which can be resolved directly with the Insolvency Practitioner or firm.” - PayPlan

“We share the concerns expressed previously that such a scheme might encourage spurious or vexatious claims. The nature of insolvency means there will be insufficient resources to go round and introducing a compensation scheme might create a ‘claims culture’. The introduction of such a scheme may be appropriate in a consumer led market but we do not think it aligns with the objectives of an insolvency regime which, as acknowledged, is ‘unique’ and answers to creditors as a whole, not individuals.” – Insolvency Lawyers Association

Some respondents, including professional and trade bodies as well as those within the insolvency profession, suggested that a compensation scheme could result in claims management firms encouraging spurious claims.

“All IPs already have existing and costly PII for instances where their actions caused genuine financial loss. Overlaying this with ‘token gesture’ payments of £250 to be directed by an under resourced single regulator will increase vexatious complaints and serve to increase costs, with no added benefit of confidence in the insolvency regime.” – Chartered Accountants Ireland

Creditor organisations and insolvency professionals also argued that the introduction of a compensation scheme could result in Insolvency Practitioners being overly cautious in decision-making and reluctant to take contentious or particularly large cases, which could lead to an increase in high profile cases taken on by Official Receivers.

Government Response

The government is grateful for the detailed responses received and has carefully considered the views expressed. It is acknowledged that any system of compensation would need to take account of the unique position of insolvency office-holders and the potential for spurious or burdensome numbers of claims. Even so, the government believes that there is still a need for a scheme to recompense or restore the position of those affected by poor Insolvency Practitioner conduct. The government has therefore concluded that a scheme for compensation should be considered further as part of a modern regulatory regime that instils confidence. Detailed proposals will be presented to stakeholders as part of a future consultation.

Part C – Reform of bonding arrangements

Amendments to the existing framework for Insolvency Practitioner security

Before taking an appointment, an Insolvency Practitioner must have in place adequate security (or, in Scotland, caution), known as a bond. The bond is intended to cover losses where there is evidence of fraud or dishonesty, either by the Insolvency Practitioner or with their collusion. It is made up of two separate elements: a general penalty sum (GPS) which all Insolvency Practitioners must hold before taking appointments, and a specific penalty sum (SPS) to cover the asset value of a particular case. The consultation highlighted concerns that the existing framework has not been substantively updated since its introduction in 1986, and does not work as well as it could. The consultation proposals therefore outlined some minor amendments to the bonding regime. These included increases in the monetary limits of bonds, which have not been raised since 1986. The consultation also proposed amendments to the statutory minimum requirements of bonds to provide greater levels of certainty and improve protection for creditors.

Summary of responses: minor amendments to bonding regime

Responses to this section of the consultation were mainly from those within the insolvency profession and bond providers, as well as some trade and professional bodies, and creditor organisations. Not all respondents answered all questions.

Question 23: Should the current minimum statutory requirements of a bond be extended as proposed to include the following (if you disagree, please explain your answer including any alternative proposal or any additional factors to be included):

a) An allowance for reasonable associated costs of a bond claim

b) A period of run off cover that allows for claims to be submitted for a period after the Insolvency Practitioner has left office

c) Interest to be claimable against a bond to be calculated on the amount of the loss from the date it was incurred (if so, which interest rate benchmark should the rate be tied to?)

d) GPS cover to be available for all of an office-holder's appointments, including those where no SPS cover has been obtained

There were 47 responses to this question. A significant majority of respondents supported the proposals, with many explaining that they believed them to be sensible and fair. A small number of responses raised a concern that these changes could cause bond premiums to increase, which in turn would be detrimental to creditors.

Where views were expressed on which interest rate benchmark should be used in response to part c of the question, responses included the Bank of England base rate and the Sterling Overnight Index Average (SONIA), with a slim majority supporting SONIA.

"We agree with this proposal. All four points are valid and the costs of a bond claim are particularly pertinent. We would suggest interest should be calculated at a rate above the Bank of England's base rate." – The Board of the Pension Protection Fund

Question 24: Would extending the statutory minimum requirements of bonds remove the need for Secretary of State approval of bond wording? What would be the possible impacts of this change?

There were 34 responses to this question, and opinion was divided. Bond providers were almost entirely opposed to this proposal, believing oversight was necessary, either from the Secretary of State or another body. They felt this was needed to ensure a common interpretation of the minimum requirements, to confirm those requirements are always met, to maintain confidence that the bond would operate as intended and to prevent undue divergence in the bond market. Individual Insolvency Practitioners, where they expressed an opinion, were evenly split. Most RPBs suggested that they could take over the Secretary of State role in approving bond wording if necessary. R3 and a slim majority of firms offering insolvency services felt that Secretary of State approval was a safeguard that needed to be retained to ensure consistency, ensure the minimum requirements are met, and ultimately to protect creditors. Bond providers expressed concern at the potential for divergence in the market and stated that oversight was necessary, whether that was by the Secretary of State or the new regulator.

“Under the proposed amendment it would be each insolvency practitioner who would be the person who is deciding whether the bond wording meets the prescribed requirements, however if the bond does not meet the prescribed requirements it would be the creditors who would be detrimentally affected.” – Howden Insurance Brokers Limited

“We agree that extending the statutory minimum requirements of bonds would remove the need for wording of the bond to be approved by the Secretary of State (SoS) and would therefore help to streamline the process and avoid unnecessary delay and use of resources in dealing with the SoS.” – PricewaterhouseCoopers

“Even with the best intentions, legislation can be open to interpretation. Give [sic] the importance of the bond (or any replacement form of scheme) to stakeholders - who will already have suffered a loss due to the insolvent event, then a further loss due to the fraudulent or dishonest behaviour of an IP - it is, in our view, of fundamental importance that any bond or ‘scheme’ operates effectively, efficiently and consistently. We therefore consider it appropriate to retain the requirement for the Secretary of State to approve bond wording.” – RSM UK Restructuring Advisory LLP

Question 25: Should a minimum period of run-off cover be provided for in statute and should the period be 2 years? If not 2 years, what should it be? Do you see any disadvantages to applying a minimum period for run-off cover?

Run-off cover is where the cover provided by a bond extends for a period after which an Insolvency Practitioner has ceased to act. This may be necessary for a successor practitioner to deal with their cases or to investigate potential fraud or dishonesty that could give rise to a claim against the bond.

There were 40 responses to this question. Almost all respondents supported a minimum statutory period for run-off cover and, where they provided a view, most supported the proposal for this to be set at 2 years. A minority of respondents suggested other periods ranging between 1 and 6 years, predominantly citing concerns about the length of investigations in complex cases, although it was acknowledged that a longer run-off period could increase bond premiums.

“We agree that there should be a minimum period of run-off cover. We think that two years is appropriate.” – Ernst & Young LLP

“Bonds typically have a run-off cover period of two years after the IP has ceased to act, however, investigations to gather evidence sufficient to demonstrate dishonesty can take longer than that period. This is particularly so in situations where the subsequent removal of an IP’s licence prompts investigations by a successor IP into the conduct of all their cases, including recently closed cases. It is therefore arguable that the run-off period should be extended to six years […] An extended runoff period will increase the cost of cover by an amount that will only be determinable after experience of claims arising under such an extension has been gained.” – Insolvency Practitioners Association

Question 26: Where a maximum indemnity period is applied by a bond provider:

a) should the maximum period an insolvency estate is covered be at least 6 years from the date of appointment?

b) should the Insolvency Practitioner be able to extend cover past the maximum period if they are still appointed on the case, with agreements from the bond provider?

There were 41 responses to this question. Respondents highlighted the need for the bond to remain in place for as long as the case remains open; in most cases this will be no more than 6 years, but complex cases may remain open for longer. Many respondents suggested that there should be no maximum period and that bonds should automatically cover the length of the case without the Insolvency Practitioner needing to proactively extend it. Where respondents expressed a view on quantifying a duration, most agreed with the 6 years proposed in the consultation, however stakeholders strongly supported the ability to extend the bond should there be a maximum indemnity period.

“We do not believe there should be a maximum period. Whilst generally most cases are concluded within 6 years, some are not. Requiring IPs to actively extend cover after 6 years introduces an avoidable risk of the bond lapsing.” – Mazars

“[…] it is essential for continuity of the protection of creditors’ interests that insolvency practitioners can and are required to extend cover past the maximum period if they are still in office.” – Grant Thornton

“While few insolvency appointments last longer than 6 years, these nevertheless need to be covered for the entire period of the appointment. If extension were only possible with the agreement of the bond provider, it is not clear how an IP might continue to ensure cover if the provider does not so agree. Therefore, perhaps the maximum indemnity period should always be the length of the appointment.” – Insolvency Oracle

“Given some insolvency estates last longer than 6 years, we would strongly recommend that bonds are provided for the lifetime of the case (as we currently provide). This removes any risk that a bond is inadvertently not renewed, or the surety elects not to extend cover. This combined with the 2-year run-off period provides maximum protection for creditors.” – Aon

Question 27: Should cancellation of cover due to non-payment of premium only be allowed where application for payment has been made and reasonable notice has been given to the Insolvency Practitioner and their regulator?

Question 28: Where a regulator has been notified that cover may be revoked due to non-payment of a premium, should the regulator be responsible for ensuring creditors of affected insolvency estates remain protected?

There were 41 responses to question 27, and 39 responses to question 28.

The proposal to restrict cancellation for non-payment of premium without a set notice period was supported by a significant majority of stakeholders providing a response. The suggested period of notice ranged from 28 days (6 responses) to 6 months (2 responses), but a notice period of 60 days received the most support. This was suggested by 9 stakeholders, including RPBs, Insolvency Practitioners, and firms offering insolvency services.

“[…] we agree with this proposal. Reasonable notice should be 60 days. This would enable the regulator to investigate any issues.” - Mazars

There was less support for the proposal that the regulator should be responsible for ensuring that creditors were protected in the event of non-payment of premiums. Some bond providers, Insolvency Practitioners, and firms offering insolvency services questioned whether a bond could be cancelled once in place. Some respondents, including bond providers and firms offering insolvency services, suggested that bond premiums going unpaid were indicative of more serious regulatory failures on the part of an Insolvency Practitioner.

“Notification of continuing non-payment of bond premiums should act as a trigger for the regulator to take action where required, so that they can take appropriate steps to protect creditors’ interests.” – Marsh Restructuring and Recovery Practice

“We don’t believe it is legally possible to cancel an on-demand bond due to non-payment, so do not see how this situation could arise.” – Aon

Question 29: The Government proposes to increase GPS cover to £750,000. Is this sufficient? If not please explain why.

There were 42 responses to this question. Almost all respondents supported the proposal to increase GPS cover, with many citing that the current level of £250,000 is outdated. Where respondents provided a view on the level of increase, a significant majority supported the proposal of £750,000, although some expressed concern that this may not be high enough. Some respondents raised concerns about an increase in bond premiums as a result of increasing GPS cover. Others suggested that GPS cover should continue to increase at fixed intervals based on a suitable reference metric such as the Consumer Price Index or FTSE 100 index.

“This seems to be an appropriate adjustment; the rationale for the proposed increase seems sound.” – Chartered Institute of Credit Management

“We agree that the level of GPS cover is out of date and needs increasing. It seems reasonable to us to use the FTSE100 as an indicator of asset values to measure this increase. In reality, the sum of £750,000 is unlikely to be sufficient, albeit this is underpinned by the specific bonds that are required on each case. Further, there is a need to balance the increase, and the associated increase in premium, between ensuring adequate cover is provided and that the premium does not become prohibitively expensive for the sole, or smaller, insolvency practices. That said, it may be worthwhile undertake an exercise to review, with the bond providers, whether the level of GPS, combined with the SPS has proved sufficient in practice, based on historical claims, before enacting this proposal." – RSM UK Restructuring Advisory LLP

Question 30: The minimum insolvency estate specific cover is currently £5,000. Government proposes this should be increased to £20,000. Would this level provide sufficient cover for small insolvency cases?

There were 40 responses to this question. Whilst many respondents believed that the minimum SPS cover should increase from £5,000, this received less support from respondents than increasing GPS cover to £750,000, as outlined above. Where respondents provided a view on what level minimum SPS cover should be raised to, most agreed with the proposal of £20,000. Of those opposed to the proposal, most believed that there was no need to increase minimum SPS cover. Many respondents outlined concerns about increases to bond premiums should minimum SPS cover be increased, particularly for Insolvency Practitioners taking on smaller or more speculative cases. Some responses suggested that it could make some cases uneconomical.

"This proposal to increase the minimum specific cover from £5,000 to £20,000 should provide sufficient cover for small insolvency cases." – Chartered Accountants Ireland

"This would provide cover for most of our IVAs. However, we are concerned that this will result in an increase in bond premiums. Fees and expenses in IVAs are normally subject to an all-inclusive cap and consequently if there is an increase in bond premiums, it will reduce the fees that can be drawn on an IVA. This may make IVAs with low realisations uneconomic to supervise." – PayPlan

"We consider £20K to be too high, particularly for compulsory liquidations. IPs often take on appointments where there are no known assets, but creditors suspect there could be antecedent recoveries. Bonding costs are therefore funded by the IP. Raising the minimum could have the effect of dissuading IPs from taking on speculative cases, which would lead to less recoveries from delinquent directors." – Mazars

Question 38: Do you agree that the proposed changes to the current requirements for bonding should be made now pending more significant changes to the regulatory regime?

There were 39 responses to this question. A significant majority of respondents supported the proposal to update the current system until more significant changes to the bonding regime can be considered. Those in favour generally commented that positive changes should be made quickly where they are possible, and noted that more significant changes to the regulatory regime would take considerably longer. However, some respondents believed that changes should be considered on a holistic basis, that the proposals would benefit from further consultation, and noted risks with changing the bonding framework alongside implementing a single regulator.

"We strongly agree that the proposed changes should be made now – they do not particularly relate to regulation and the broader reforms that the Government is proposing. These broader reforms could take a significant amount of time to implement and it is important that the current issues which have been ongoing already for a number of years are addressed." – R3

"The proposed changes to the current requirements for bonding introduce a number of administrative burdens on the regulator. We believe that these changes should be considered in the context of the proposal for the government to undertake the role of the regulator and should not therefore be enacted in the interim." – RSM UK Restructuring Advisory LLP

"Given the potential for these changes to push small providers out of business and concentrate the consumer IVA market even further, we think they should be reconsidered. There may be ways to structure the changes to limit costs for smaller providers. However, we would prefer an ambition for making more significant changes on a fixed timeline rather than putting in place interim measures without a clear end date that could cause serious disruption to the market." – StepChange

Government Response

The government has carefully considered these responses and has decided that a package of minor amendments to the bonding regime should be implemented pending consideration of any more fundamental reforms. In reaching this conclusion, the government notes that most respondents who offered a view supported minor reforms of the bonding regime ahead of any more fundamental reforms, and that the risks of introducing these reforms alongside introducing a single regulator have now been removed.

The government will therefore implement the following reforms through secondary legislation when Parliamentary time allows:

• increasing General Penalty Sum cover from £250,000 to £750,000

• prescribing that where a maximum indemnity period is applied by a bond provider this must be at least 6 years from the date of appointment, with the ability to extend with the agreement of the bond provider

• prescribing that a bond may only be cancelled due to non-payment of the premium once application has been made to the Insolvency Practitioner and at least 60 days' notice has been provided to the Insolvency Practitioner and their regulator

• extending the current minimum requirements of a bond, to include:

o an allowance for reasonable associated costs of a bond claim

o a period of run-off cover for a minimum of 2 years after an Insolvency Practitioner has left office

o interest to be claimable against a bond to be calculated on the amount of the loss from the date it was incurred, with Sterling Overnight Index Average (SONIA) being the appropriate benchmarking rate

o General Penalty Sum cover to be available for all of an Insolvency Practitioner's appointments, including those where no Specific Penalty Sum cover has been obtained

In light of the views expressed by our stakeholders in response to question 30, the government has decided that it will not increase the minimum SPS cover at this time. The government will gather further evidence and engage with stakeholders to obtain additional evidence to inform future decisions.

In respect of stakeholder responses to question 24, a strong case has been made for retention of the Secretary of State approval role. The government has concluded that the need for Secretary of State approval of bond wording should be retained.

Finally, the government acknowledges the divergence of opinion on the proposal in question 28 concerning the possibility of cancelling bonds due to non-payment of premiums, and that there was little appetite amongst respondents for making the regulator responsible for ensuring cover was in place. Moreover, the government is of the opinion that adequate protection would be provided by implementing the period of reasonable notice prior to cancellation set out above. A period of 60 days would give sufficient time for a successor Insolvency Practitioner to be appointed. The proposal to make regulators responsible for ensuring cover remains in place where premiums have not been paid will therefore not be taken forward.

Potential future changes to Insolvency Practitioner security

Having highlighted some of the concerns around the existing bonding framework and proposed the minor amendments referred to above, the consultation also sought to explore whether more wide-ranging reforms could be implemented. These included:

• reforming the GPS element of the bond to cover the associated costs of the successor Insolvency Practitioner in making a claim

• amending the specific cover element of a bond to a higher level than the asset value in each estate to cover those associated costs

• introducing a Global Bond and removing the separate elements of GPS and SPS

• requiring Insolvency Practitioners to declare the level of cover in each estate to creditors

• replacing the bonding regime with a system of levies, which would cover a broader compensation scheme alongside losses caused by fraud or dishonesty

Summary of responses: more fundamental changes to bonding regime

There were between 37 and 44 responses to this series of questions, mainly from bond providers and those within the insolvency profession, with not all respondents answering all questions.

Question 31: Should the GPS be reformed to cover interest, investigation, parallel and bond claim costs of the successor Insolvency Practitioner?

There were 41 responses to this question, and there was strong support for increasing bond limits to cover interest, parallel costs, and the costs of investigation and making a claim. Some within the insolvency profession were concerned that this would result in additional expense for office holders.

“Careful thought would need to be given to how parallel work is defined. Whilst a successor insolvency practitioner will inevitably incur set-up costs upon handover of the cases and may need to duplicate some work undertaken by the previous office holder this could be limited if asset realisation work has already been completed. There needs to be caution as if there is an attempt to cover every angle of parallel work it could increase administrative expense and complexity in making the claim and the wider cover will inevitably increase bond premiums.” – Grant Thornton

Question 32: Should the specific cover obtained per insolvency estate be set at a higher level than the asset value to factor in interest, parallel and investigation costs and fees of a successor practitioner in bringing a claim? If so what percentage above the asset value is an appropriate amount, and why?

Question 33: Should the option of a Global Bond, where the distinction between GPS and insolvency estate specific cover (SPS) is removed, be provided for? If so, who would benefit from such a product and can you foresee any disadvantages?

There were 38 responses to question 32, and 39 responses to question 33. Firms offering insolvency services, creditor organisations, and the RPBs were in favour of increasing the GPS. Some firms offering insolvency services and individual Insolvency Practitioners favoured increasing the SPS, with the suggested uplift in cover varying from 5% to 50%. The bond providers did not support increasing the GPS, arguing that this would lead to significantly increased costs that would not be easily recovered from specific cases. Most bond providers felt that an increase in the SPS would be more effective, with the GPS used to cover any shortfall.

“We would note that whilst there are suggestions that [additional sums to cover investigation costs] should be included in the General Penalty Sum bond, this is an aggregate cover, meaning that the limit is shared by all cases and could therefore be exhausted if there were several bond claims attracting significant costs to investigate. By having a provision in the SPS for additional costs, this creates an allowance per case for costs reducing the risk that cover for investigatory costs would be exhausted.” – Aon

There was some support for the introduction of a Global Bond amongst the RPBs and firms offering insolvency services, who pointed to increased flexibility and the potential reduction in administration. However, a majority of creditor organisations, Insolvency Practitioners, and all bond providers were opposed. They argued that a global bond would increase costs and impact on returns to creditors, as well as introduce inconsistencies in cover.

“The current system of SPS allows for adequate surety for an IP irrespective of the volume of cases held. A Global bond may be inadequate for an IP with a high volume of cases yet over provide for an IP with a low value of cases.” – Howden Insurance Brokers Ltd

Question 34: Would adding a requirement for Insolvency Practitioners to declare the level of cover specific to that estate as part of the initial report to creditors be helpful information for creditors? If so, should any changes to the level of cover also be reported?

There were 43 responses to this question. Opinion was divided on whether creditors should be informed of the level of bond cover. Most Insolvency Practitioners and bond providers expressed doubt as to the benefit of this proposal to creditors, with a small majority of creditor organisations, RPBs, and firms offering insolvency services in favour. Those in favour noted that declaring the cover would aid transparency, though some questioned whether creditors would be interested.

“There seems little benefit in disclosing this. At present, creditors may assume that cover is adequate and monitoring by regulators; this disclosure is not likely to help creditors directly, and seems to be a way of passing responsibility to creditors, when regulators should be ensuring that bonds are at the appropriate level and that the system delivers real benefits for creditors when bonds are called upon.” – Chartered Institute of Credit Management

“Most creditors probably do not know about and have little interest in the operation of the bonding regime. However, the requirement for it to be reported in initial and subsequent progress reports has no downside. It will also be a useful “aide memoire” for office holders to review the level of cover when reports fall due. That should take place anyway as part of regular bonding and file reviews, but can easily be overlooked.” – The Board of the Pension Protection Fund

Question 35: Where a regulator takes action which may foreseeably result in revocation of an Insolvency Practitioner’s authorisation, should the regulator have a duty to ensure that the Insolvency Practitioner’s bond cover is maintained at a sufficient level, until such point as the action has concluded and either the practitioner is deemed fit to continue practising, their authorisation revoked and/or a successor practitioner appointed to their cases?

There were 42 responses to this question, which contained mixed views on whether the regulator should ensure sufficient cover was in place during any investigation that could foreseeably result in the loss of an Insolvency Practitioner’s licence. The majority of creditor organisations, firms offering insolvency services, and Insolvency Practitioners were in favour. They cited greater protection for creditors, although there were some concerns around how such a proposal could work in practice. Bond providers and the RPBs were largely opposed, stating that the responsibility for maintaining cover rested with the Insolvency Practitioner, and that sureties provided cover based on individual risk. There was accompanying concern that action by the regulator could undermine this.

“We think that the regulator should ensure that the appropriate bonding is in place as part of their overall regulatory responsibilities, but we do not think this should be a cost for the regulator if the appropriate bond is not maintained. The consultation notes that any amounts paid by the regulator would be paid as an expense of the estate, but whether these amounts are, in fact, paid are dependent on the facts of the case and may well be that there are insufficient amounts available.” – BDO LLP

Question 39: Considering the changes proposed to the bonding regime above, would the introduction of a single regulator present opportunities for more fundamental reform of the bonding regime? If so, please give reasons for your answers including any suggestions you may have on a proposed reform.

Question 40: Is the current balance in the UK between protection of creditors’ interests and cost to the insolvency profession the right one? If not, how might this be addressed?

Question 41: Do you think that a levy funded scheme should replace the existing bonding regime, and cover not only acts of fraud or dishonesty by an Insolvency Practitioner but also a broader compensation regime?

There were 43 responses to questions 39 and 41, and 39 responses to question 40. Respondents largely felt that the balance between the interests of creditors and the cost to the profession was right, although there were some concerns from Insolvency Practitioners and firms offering insolvency services around regulatory compliance costs for individual Insolvency Practitioners and smaller firms.

Only creditor organisations held a majority view that a single regulator could present an opportunity for more fundamental reform of the bonding regime. All RPBs and a large majority of Insolvency Practitioners and firms offering insolvency services disagreed. Some firms offering insolvency services suggested that a more consistent and streamlined approach to bonding could result, but most respondents felt that reforms were not dependent on the introduction of a single regulator.

"[…] we do not believe that the issues regarding bonding are linked to the structure of the regulatory framework – the former should be dealt with separately and should not depend on the introduction of the Government's broader reforms." – R3

Some respondents, including some RPBs and firms offering insolvency services, suggested that more radical reforms of the bonding regime could be considered, including:

• scrapping the bonding regime entirely

• more use of professional indemnity insurance

• removing RPBs as a party to the bond and making firms responsible for ensuring that estates were protected

"If firms were regulated and became responsible by statute for supervising movements on accounts, this would introduce higher degrees of monitoring in-house. This could perhaps also be enhanced by a requirement on each regulated firm to obtain an external assurance report every year to confirm the integrity of the movements on the insolvent estates it is administering." – ICAEW Regulatory Board

However, those respondents offering suggestions largely agreed that they should be explored in more detail and consulted on once the effectiveness of the minor amendments proposed earlier in the consultation had been assessed.

Question 41 on the replacement of the bonding regime with a levy fund was strongly opposed by all stakeholder groups other than creditor organisations. Cost to the profession was cited as the main concern, and the arguments against a system of compensation were reiterated. Some Insolvency Practitioners cited the unfairness of all practitioners paying for the fraud and dishonesty of a minority.

“A levy-based scheme will only increase costs for smaller practices and the industry as a whole would bear the costs for the dishonest acts of others.” – Watch Portfolio Management

“we do not consider that a levy-funded scheme should replace the bonding regime. There are significant concerns about the financial viability of such schemes as has been shown with for instance the Guarantee Fund within the legal profession. If the Government’s contention is that the insolvency profession is small, then the burden of this fund would fall on a small number of individuals or firms adding to the significant additional financial burden which can be anticipated from a single government regulator as proposed. We consider that there would be a serious cumulative risk of the profession becoming unsustainable.” – ICAS

Government Response

The government is grateful for the range of views and expertise shared by stakeholders, and is persuaded that more fundamental reforms of Insolvency Practitioner security should be carefully considered and further research undertaken. The government therefore proposes to undertake further work to develop detailed proposals to form part of a future consultation.

Security for Special Managers

The consultation sought views on whether the current arrangements for security to be provided by special managers, who are not always Insolvency Practitioners, are fit for purpose. Currently, special managers are required to provide security for the value of the business or property in respect of which they are appointed. There are no requirements or restrictions on this security set down in the Insolvency (England & Wales) Rules 2016 and the Insolvency (Scotland) (Receivership and Winding Up) Rules 2018, as there are for Insolvency Practitioners. It is for the court and office-holder (e.g. liquidator or trustee) to decide whether the security provided is sufficient.

Previous cases show that where an Insolvency Practitioner is appointed as special manager, the court will accept a bond as adequate security. The consultation highlighted concerns that in high-value cases, the £5 million limit on individual bonds may be insufficient. Stakeholders were asked whether they felt that current bond levels were sufficient for cases in which an Insolvency Practitioner was special manager. In addition, the consultation asked whether the Rules in respect of special managers were fit for purpose and, if not, whether any changes should be made.

Summary of responses: special managers

Question 36: Where an Insolvency Practitioner is appointed as special manager, does a surety bond provide sufficient security? If not, please explain why.

Question 37: Are the current rules requiring security for special managers fit for purpose (taking into account that they apply to all persons appointed special manager, including those who are not Insolvency Practitioners)? If not, what changes should be made?

There were 29 responses to question 36 and 26 responses to question 37, mainly from bond providers, RPBs, and those within the insolvency profession. In respect of question 36 (on bonds for Insolvency Practitioners as special managers) there was a clear majority across those who responded that bonds provide sufficient security. Many stakeholders, particularly those within the insolvency profession, saw no need for the provisions to differ. Bond providers stated that where a court decided that more security was needed, this could be requested by negotiation with the bond provider. Some firms highlighted that high-value special manager cases were so rare that it was a better approach for the court to deal with these on an individual, fact-specific basis rather than increase limits in legislation, which would affect all cases.

“Where an IP is appointed as special manager, it can be assumed this is because of their experience and expertise as an IP. We have not encountered any problems when dealing with these appointments and extending an IP’s existing bond to cover such an appointment. Where security above £5m is required by the Court, IPs do have the ability to request additional security from the surety.” – Marsh Restructuring & Recovery Practice

Most respondents felt that the current rules regarding special managers were fit for purpose, although a few firms and one RPB suggested potential amendments to the rules.

“All special managers should have in place an insurance product which adequately protects the creditors. It is up to the special manager and the IP to determine how the requirements in the Rules are covered. An IP’s insurance brokers would be able to recommend a suitable product.” – Mazars

“[…] we recommend that Special Managers are limited to Insolvency Practitioners given their experience as acting as Liquidators. There is an alternative for the Government. This is to fund the IPs directly to run the insolvency process rather than having the slightly cumbersome arrangements of two parties – the OR and the Special Manager. The IP would be able to act with greater independence and the OR could monitor through regular, statutory reporting under the Act or as separately agreed.” – Smith & Williamson

Government Response

The government is grateful for the views expressed, and acknowledges the general opinion that bonds provide sufficient security for special managers. Reform of special manager security will therefore not be explored further at this time.

Next steps

The government is grateful for the many detailed and thoughtful responses received. It will seek to introduce new legislation to implement measures in line with the government responses set out above as soon as Parliamentary time allows. In the meantime, the government will work closely with the RPBs on non-legislative measures to drive substantial improvements to the framework. In addition, the government will work with the devolved administrations to explore the potential scope for UK-wide reform. The government will also develop and consult on proposals for a compensation scheme and wider reform of the bonding regime in due course.

Annex A: List of consultation questions

Proposals for reform of insolvency regulation

Question 1. What are your views on the Government taking on the role of single regulator for the insolvency profession?

Question 2. Do you think this would achieve the objective of strengthening the insolvency regime and give those impacted by insolvency proceedings confidence in the regulatory regime?

Question 3. Do you consider the proposed objectives would provide a suitable overarching framework for the new government regulator or do you have any other suggestions? Please explain your answer.

Question 4. Do you consider these to be the correct functions for the regulator in respect of Insolvency Practitioners and in respect of firms offering insolvency services? Please explain your answer.

Question 5. Are there any other functions for which you consider the regulator would require powers? Please explain your answer.

Question 6. Do you agree that the single regulator should have responsibility for setting standards for the insolvency profession? Please explain your answer.

Question 7. Do you agree that it would help to improve consistency and increase public confidence if the function of investigation of complaints was carried out directly by the single regulator? Please explain your answer.

Question 8. What are your views of the proposed disciplinary and enforcement process and the scope to challenge the decision of the regulator? Please provide reasons to support your answer.

Question 9. Are there any other functions which you think should be carried out directly by the single regulator? Please explain your answer.

Question 10. In your view should the specified functions be capable of being delegated to other bodies to carry out on behalf of the single regulator? Please explain your answer.

Question 11. Are there any other functions that you think should be capable of being delegated to other bodies to carry out on behalf of the single regulator? Please explain your answer.

Question 12. In your opinion would the introduction of the statutory regulation of firms help to improve professional standards and stamp out abuses by making firms accountable, alongside insolvency practitioners? Please explain your answer.

Question 13. The Government believes that all firms offering insolvency services should be authorised and meet certain minimum regulatory requirements, but that additional regulatory requirements should mainly be targeted at firms which have the potential to cause most damage to the insolvency market. What is your view? Please explain your answer.

Question 14. In your view should certain firms be subject to an additional requirements regime before they can offer insolvency services? If so, what sort of firms do you think should be subject to an additional requirements regime? Please explain your answer.

Question 15. Do you think that regulation of firms should require a firm subject to an additional requirements regime to nominate a senior responsible person for ensuring that the firm meets the required standards for firm regulation? Please explain your answer.

Question 16. If so, would you envisage that the senior responsible person would be an Insolvency Practitioner? If not, please specify what requirements there should be for that role?

Question 17. Do you think that a single public register for Insolvency Practitioners and firms that offer insolvency services will provide greater transparency and confidence in the regulatory regime? Please explain your answer.

Question 18. What is your view on the regulator having a statutory power to direct an Insolvency Practitioner or firm to pay compensation or otherwise make good loss or damage due to their acts or omissions? Please explain your answer.

Question 19. What is your view on the amount of compensation that the regulator could direct an Insolvency Practitioner or firm to pay for financial loss? Please explain your answer.

Question 20. Which option or options do you consider would be most suitable to fund a compensation scheme for the insolvency profession? Alternatively, do you have a suggestion on how a compensation scheme for the insolvency profession might be funded? Please explain your answer.

Question 21. Are there any further impacts (including social impacts) that you think need inclusion or further consideration in the Impact Assessment?

Question 22. What are your views on the above proposals for funding of insolvency regulation? Do you have any other suggestions for self-funding of regulation?

Proposals for reform of the current bonding arrangements

Question 23. Should the current minimum statutory requirements of a bond be extended as proposed to include the following (if you disagree, please explain your answer including any alternative proposal or any additional factors to be included):

1. An allowance for reasonable associated costs of a bond claim:

2. A period of run off cover that allows for claims to be submitted for a period after the Insolvency Practitioner has left office;
3. Interest to be claimable against a bond to be calculated on the amount of the loss from the date it was incurred (if so, which interest rate benchmark should the rate be tied to?);
4. GPS cover to be available for all of an office-holder's appointments, including those where no SPS cover has been obtained.

Question 24. Would extending the statutory minimum requirements of bonds remove the need for Secretary of State approval of bond wording? What would be the possible impacts of this change?

Question 25. Should a minimum period of run-off cover be provided for in statute and should the period be 2 years? If not 2 years, what should it be? Do you see any disadvantages to applying a minimum period for run-off cover?

Question 26. Where a maximum indemnity period is applied by a bond provider:

1. should the maximum period an insolvency estate is covered be at least 6 years from the date of appointment?
2. should the Insolvency Practitioner be able to extend cover past the maximum period if they are still appointed on the case, with agreements from the bond provider?

Question 27. Should cancellation of cover due to non-payment of premium only be allowed where application for payment has been made and reasonable notice has been given to the Insolvency Practitioner and their regulator? If yes, what would be considered reasonable notice?

Question 28. Where a regulator has been notified that cover may be revoked due to non-payment of a premium, should the regulator be responsible for ensuring creditors of affected insolvency estates remain protected?

Question 29. The Government proposes to increase GPS cover to £750,000. Is this sufficient? If not please explain why.

Question 30. The minimum insolvency estate specific cover is currently £5,000. Government proposes this should be increased to £20,000. Would this level provide sufficient cover for small insolvency cases?

Question 31. Should the GPS be reformed to cover interest, investigation, parallel and bond claim costs of the successor Insolvency Practitioner?

Question 32. Should the specific cover obtained per insolvency estate be set at a higher level than the asset value to factor in interest, parallel and investigation costs and fees of a successor practitioner in bringing a claim? If so what percentage above the asset value is an appropriate amount, and why?

Question 33. Should the option of a Global Bond, where the distinction between GPS and insolvency estate specific cover (SPS) is removed, be provided for? If so, who would benefit from such a product and can you foresee any disadvantages?

Question 34. Would adding a requirement for Insolvency Practitioners to declare the level of cover specific to that estate as part of the initial report to creditors be helpful information for creditors? If so, should any changes to the level of cover also be reported?

Question 35. Where a regulator takes action which may foreseeably result in revocation of an Insolvency Practitioner's authorisation, should the regulator have a duty to ensure that the Insolvency Practitioner's bond cover is maintained at a sufficient level, until such point as the action has concluded and either the practitioner is deemed fit to continue practising, their authorisation revoked and/or a successor practitioner appointed to their cases?

Question 36. Where an Insolvency Practitioner is appointed as special manager, does a surety bond provide sufficient security? If not, please explain why.

Question 37. Are the current rules requiring security for special managers fit for purpose (taking into account that they apply to all persons appointed special manager, including those who are not Insolvency Practitioners)? If not, what changes should be made?

Question 38. Do you agree that the proposed changes to the current requirements for bonding should be made now pending more significant changes to the regulatory regime?

Question 39. Considering the changes proposed to the bonding regime above, would the introduction of a single regulator present opportunities for more fundamental reform of the bonding regime? If so, please give reasons for your answers including any suggestions you may have on a proposed reform.

Question 40. Is the current balance in the UK between protection of creditors' interests and cost to the insolvency profession the right one? If not, how might this be addressed?

Question 41. Do you think that a levy funded scheme should replace the existing bonding regime, and cover not only acts of fraud or dishonesty by an Insolvency Practitioner but also a broader compensation regime? Please explain your answer.

Annex B: List of respondents to the consultation

Regulatory bodies

Association of Chartered Certified Accountants (ACCA)

Chartered Accountants Ireland (CAI)

Insolvency Practitioners Association (IPA)

Institute of Chartered Accountants in England and Wales (ICAEW)*

Institute of Chartered Accountants of Scotland (ICAS)

*ICAEW submitted two responses, one from the ICAEW and one from its Regulatory Board

Accounting, advisory and insolvency firms

BDO LLP

Compliance on Call

Creditfix

Ernst & Young LLP

Grant Thornton UK LLP

Johnson Carmichael LLP

K2 Partners Ltd

Mazars

New South Law Ltd

PayPlan

PricewaterhouseCoopers LLP

RSM UK Restructuring Advisory LLP

Smith & Williamson

Creditor organisations

Association of British Credit Unions Limited

Capital Credit Union

Equifax

National Credit Union Forum

No. 1 Copper Pot Credit Union

Partners Credit Union Ltd

Scotwest Credit Union

Watch Portfolio Management

West Lothian Credit Union

Debt advice providers and charities

Arun & Chichester Citizens Advice

Christians Against Poverty (CAP)

Citizens Advice

Civil Court Users Association (CCUA)

Community Money Advice

MoneyPlus Advice

Scottish Association of Citizens Advice Bureaux

StepChange

Government and statutory bodies

Financial Services Consumer Panel

HM Revenue & Customs

Pension Protection Fund

Security and bond providers

Aon

Howden Insurance Brokers Ltd

Marsh Restructuring and Recovery Practice

Trade and professional bodies

British Property Federation

Building Societies Association

Chartered Institute of Credit Management (CICM)

City of London Law Society

Insolvency Lawyers' Association

Institute of Money Advisers

Joint Insolvency Committee (JIC)

Joint Insolvency Examination Board (JIEB)

The Law Society

R3

UK Finance

Other – political and lobbying

The All-Party Parliamentary Group on Fair Business Banking (APPG)

The Transparency Task Force

Insolvency practitioners responding as individuals*

Other individuals*

Other organisations*

*the names of individuals, including individual creditors and Insolvency Practitioners, have not been included. In addition, some respondents asked that their responses be treated in confidence, and they have therefore not been named in this list

Supporting the Northern Ireland Insolvency Amendment Bill

[redacted]

Licensed Insolvency Practitioner (NI & GB)

Introduction

I am pleased to provide this evidence in support of the Insolvency Amendment Bill. My perspective is gleaned from a long career as a licensed insolvency practitioner working across both Northern Ireland and Great Britain, giving me direct experience of the current legislative disparities.

This Bill is not just a technical update; it is a **critical** necessity that brings the Northern Ireland regime out of what can only be described as an ‘analogue state’ and into alignment with modern commercial standards, directly benefiting all stakeholders and upgrading the efficiency of insolvency practitioners.

The core of my support rests on three pillars:

- Streamlining Administration;
- Enhancing Creditor Return;
- Achieving Legislative Harmony;

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1. Streamlining and De-Bureaucratising Case Administration

The most immediate impact of this Bill is the reduction of unnecessary procedural hurdles, allowing practitioners to focus on solutions and outcomes rather than excessive time spent on *administrative* compliance.

A. Move to Digital and Remote Work

The current rules are often impractical, forcing unnecessary costs on the insolvent estate. The Bill rectifies this by explicitly confirming the validity of electronic communications and remote meetings:

- **Default Remote Engagement:** We are finally moving away from the costly default requirement for physical meetings which are required in various stages of insolvency procedures. The Bill ensures that **creditor engagement** can normally take place remotely via video or teleconference thereby eliminating venue hire costs and increasing the opportunity for meaningful creditor participation.
- **Website as Official Digital Noticeboard:** Allows the office-holders to fulfil statutory notice requirements by posting documentation on a dedicated website and is a major efficiency boost by drastically cutting the cost of printing and postage—those funds now being retained in the pool of potential assets for creditors.

- **Creditor Opt-Out:** The introduction of the right for creditors to opt out of routine, hard-copy communications also reduce administrative effort and unnecessary consumption of paper resources.

B. Efficiencies in both Corporate and Personal Cases

The Bill removes pointless steps from both corporate and personal insolvency cases:

- **Speed of Administration:** The new powers to extend an Administration appointment **by consent** for a full year is pragmatic. This removes the time, cost, and risk associated with applying to Court which was formerly required just to secure a short-term extension, which is rarely contentious.
- **Targeted Bankruptcy Requirements:** The change in personal insolvency to remove the requirement for a Statement of Affairs **("SOA")** in creditor petition bankruptcies unless the Official Receiver requests it is sound. In many non-co-operative or low-asset cases, preparing an SOA is futile, and removing this default step saves administrative time and the public funds which support those processes.
- **Removal of the need for Sanction:** Gives practitioners the ability to exercise certain powers, such as commencing legal action, without external sanction (from the Court or the Department) will accelerate the recovery process, which is often crucial when dealing with fast-moving circumstances affecting assets or litigation deadlines.

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2. Enhancing Recovery and Accountability for Creditors

The Bill provides essential tools to maximise funds available for distribution while ensuring directors are held accountable for misconduct, balanced against the need to encourage rescue and recovery.

- **Unlocking Litigation Potential:** The power to **assign rights of action** (e.g., fraudulent/wrongful trading claims) to third parties, such as litigation funders, is frankly a *game-changer*. This allows cases that are asset-poor and currently uneconomic for the office-holder to pursue to be monetised, leading to a recovery for creditors where none existed before.
- **Increased Access to the Prescribed Part:** The Bill streamlines the mechanism to pay unsecured creditors out of the "prescribed part" (the ring-fenced portion of funds from floating charge assets) without requiring a court application. This reduces the cost of distribution, speeds up the process, and ensures a greater net return for unsecured creditors.
- **Consistency in Director Accountability (Balanced):** The Bill ensures that Administrators have the same powers as Liquidators to pursue claims against directors for wrongful trading. This eliminates an illogical legislative gap and guarantees that the deterrent of accountability exists across all appropriate corporate procedures. Crucially, the provisions also confirm that a director who takes every step to minimise loss after they knew the company was facing insolvency

will have a defence, offering a balanced and responsible approach to director conduct during periods of distress.
- **Flexibility in Case Commencement:** Allowing private Insolvency Practitioners to be appointed as Interim Receivers ("IRs"), rather than this power resting solely with the Official Receiver, is a significant operational improvement. It will allow private sector expertise to be brought in at the earliest stages of bankruptcy cases, improving the efficiency of asset protection.

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3. Achieving Legislative Harmony

As a practitioner operating in both Northern Ireland and Great Britain, I can confirm that the lack of symmetry between the two insolvency frameworks creates avoidable complexity, operational risk, and increased costs. This Bill directly addresses this issue, making legislative harmony a critical pillar of support.

- **Risk Mitigation and Error Reduction:** Operating under two different sets of rules—especially regarding deadlines (like Administration extensions) and technical powers (like the power to assign claims)—introduces a constant risk of procedural error and non-compliance. By mirroring the GB framework, this Bill allows practitioners to apply a single, consistent approach to corporate cases, irrespective of the jurisdiction of registration, significantly mitigating operational risk.
- **Predictability for Stakeholders:** For large institutional creditors, banks, and cross-border businesses, alignment ensures predictability in the insolvency process. This certainty is vital for lending decisions and commercial planning, supporting the seamless functioning of the UK's single market.
- **Regulatory Efficiency:** Harmonisation simplifies the task for Recognised Professional Bodies **(RPBs)** such as the Insolvency Practitioner's Association in regulating practitioners across both jurisdictions. A shared legislative foundation ensures consistency in training, oversight, and compliance standards, reinforcing the integrity of the profession as a whole.
- **Competitive Advantage:** The modernised GB regime is seen as progressive. By adopting similar measures (such as the ability to monetise litigation rights), the NI regime ensures it remains globally competitive and attractive for investment and restructuring, rather than being viewed as technically outdated.

Closing this legislative gap is therefore essential, not just for insolvency practitioner convenience, but for building a robust, predictable, and resilient legal framework that underpins economic activity in Northern Ireland.

Conclusion

In summary, I believe all stakeholders would urge the Assembly to support and enact the Northern Ireland Insolvency Amendment Bill. It is a necessary, but also a logical step, that will modernise the insolvency profession's tool kit, reduce unnecessary costs to the insolvent estate, and ultimately enhance the confidence of individuals, businesses and creditors in the integrity and efficiency of the NI insolvency regime.

This legislation ensures that when insolvency occurs, the procedures are underpinned by the essential aspects of protection and accountability for all stakeholders and with the removal of outdated bureaucracy, insolvency practitioners can now act with the speed necessary to manage financial distress effectively and safeguard assets – these amendments will therefore impact public confidence in the insolvency regime we serve.

Finally, whilst welcoming the essential alignment with the GB framework, it should be underlined that the finalised legislation respects and retains specific Northern Ireland (local) provisions where they best serve this nation's unique economic and legal environment. This balanced approach ensures that while we gain in efficiency and clarity, the regime still accurately reflects Northern Ireland's own distinct identity.