THE BAR of NORTHERN IRELAND

Consultation on the Insolvency (Amendment) Bill

The Bar of Northern Ireland Response

1. The Bar of Northern Ireland is pleased to be responding to the consultation from the Committee for the Economy on the Insolvency (Amendment) Bill to inform its report to the Assembly as part of the legislative process.

2. The Bar is a profession of self-employed barristers in independent practice with a unique specialism and expertise in legal advocacy. Around 650 self-employed barristers operate independently from the Bar Library under the "cab rank" rule. This requires barristers to accept instructions in any field in which they are competent, regardless of their views of circumstances of the case. This submission incorporates the view of barristers practising in insolvency law.

3. We understand the Department aims to keep the legislation in Northern Ireland (NI) dealing with insolvency and director disqualification, as far as possible, in parity with that applying in England and Wales. Therefore, one of the key objectives of this legislation is to bring NI back in line with England and Wales, which has gone through some legislative changes.

4. The amendments made to England and Wales by the Enterprise and Regulatory Reform Act 2013, the Deregulation Act 2015, and the Small Business, Enterprise and Employment Act 2015 must be made to the relevant legislation in NI.

5. We are aware that the current rate of insolvency in June 2025 was the lowest monthly total since August 2024, with 14 company insolvencies registered, down 30% on the same month last year. [1]

6. Although we understand the ambition to bring NI in line with England and Wales, there are differences in the two jurisdictions which should be recognised and accounted for.

7. Firstly, there should be subtle differences to reflect the underlying substantive law in some areas, most notably, land law and the regime for the enforcement of judgements.

8. Additionally, there are differences in the statute and rules which reflect the small size of NI, with insolvency jurisdiction being confined to the High Court, rather than the County Court having insolvency jurisdiction. This can lead to unintended differences of

[1] Edward Tuersley, "Commentary – Company Insolvency Statistics July 2025" (19 August 2025) UK Government, the Insolvency Service Commentary - Company Insolvency Statistics July 2025 - GOV.UK

substance, for example, the question as to whether an order of a different division of the High Court can validate a post-petition transaction.

9. There are also differences which can arise in the interpretation of the legislation, like in the assessment of the rights to the family home of the non-bankrupt spouse.

10. In this context, some attention should be given to the question of assignment of rights to set aside transactions, particularly if that is to be a power exercise without sanction. The equivalent provision in England and Wales is used by insolvency officeholders who have a viable claim to set aside a transaction but no fighting fund to sell the claim to a litigation fund such as Manolete partners in return either for an absolute settlement or a share in the return.

11. The decision of Master Kelly in Re Best (2004) suggests that our courts would not approve such an approach.

12. Furthermore, if the Department intends to assimilate, as far as possible, NI insolvency law and practice with that of England and Wales, it should consider legislating to override Master's practice statement where she will only accept petitions brought by HMRC or judgement creditors.

13. In England and Wales any creditor can bring a petition if they have a liquidated debt which was payable immediately and was not disputed on substantial grounds. This was also the position in NI prior to Covid.

14. The Master has issued a guidance note under which the court will only entertain petitions brought by judgement creditors, though the existing legislation does not have that requirement.

15. The Assembly, therefore, may wish to consider amending the provisions of the 1989 Order defining who may petition for bankruptcy or the winding up of a company to include a proviso that there is no need for a creditor to have first obtained judgement.

16. As this Bill intends to assimilate NI with the law and practice in England and Wales, it is important at this juncture to note the concerns raised during the UK Governments review of the Rules in 2021.

17. The UK Government noted criticism from respondents on the clarity and consistency of the Rules, with many suggesting that guidance on navigating the Rules would be helpful. [2]

18. Furthermore, concerns were raised about the restrictions on physical meetings had gone "too far", and having the discretion to hold a physical meeting instead would be a useful addition.[3]

[2] "First Review of the Insolvency (England and Wales) Rules 2016" (5 April 2022) UK Government, the Insolvency Service First Review of the Insolvency (England and Wales) Rules 2016 - GOV.UK

[3] Ibid.

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7 November 2025

Dear Mr McCallion,

Re. Insolvency (Amendment) Bill: Committee Stage

Thank you again for the invitation to address the Committee for the Economy on 15 October 2025.

In reviewing the Hansard transcript, I see that I either misheard or misunderstood the question posed by Mr Honeyford MLA.

Mr Honeyford's question, I now see, went to the question as to whether there are costs or delay issues which might justify extending an insolvency jurisdiction to the County Court, as is the case in England and Wales.

In my oral evidence, I addressed the issues that had been raised by Ms McLaughlin MLA, rather than this slightly different question posed by Mr Honeyford MLA.

My answer to Mr Honeyford MLA's question is that I am happy enough with the current position, i.e. where insolvency jurisdiction is solely with the High Court in Northern Ireland. A centralised regime in the High Court allows for consistency and predictability of procedure, and deals with its case load in a reasonably expeditious fashion. Having a concurrent or partially concurrent jurisdiction in certain County Court venues is unlikely to lead to significant cost savings, and may well lead to a less efficient process, as workload would not be managed by a dedicated judicial officer and court staff team, but would be added to the already significant judicial burdens of County Court Judges and District Judges. Northern Ireland is, of course, a much smaller jurisdiction than England and Wales both in terms of geographical area and in terms of population size. So, while access to justice concerns require that certain insolvency matters can be dealt with in County Courts sitting in the major population centres in England and Wales (but not, as far as I am aware, in all County Court venues) the High Court in Belfast already offers sufficient access to justice for people throughout Northern Ireland.

I trust that this clarification is of assistance.

Yours sincerely,