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Phillip a chara

THE INSOLVENCY (AMENDMENT) BILL – LAW SOCIETY COMMENTS ON THE PROVISION OF A STATEMENT OF AFFAIRS

During the briefing provided to your Committee on 18 June 2025, officials had undertaken to continue to engage with the Law Society about concerns it had raised about the proposal to alter the requirement for the provision of a Statement of Affairs.

You will recall that at present, the legislation requires a bankrupt to submit a Statement of Affairs in all cases, except where the Official Receiver deems it unnecessary. It is proposed to amend the legislation to require a Statement of Affairs to be submitted only where the Official Receiver deems it necessary.

My Department received a detailed response from the Society on 7 July 2025. The Society noted that its feedback to the consultation was not a strong objection but was intended to highlight that there may be other implications for the Insolvency Service to consider before making the proposed changes. The Society noted that as failure to complete a Statement of Affairs would be treated as contempt of court, it questioned whether the incentive for bankrupts to complete a preliminary examination questionnaire was as strong.

Therefore, the Society considered that it was for the Insolvency Service to satisfy itself that there are appropriate measures and safeguards in place to ensure that full information is provided as required by legislation.

In addition, the Society wanted to draw attention to potential legal challenges regarding the preliminary examination questionnaire. These related to possible challenges relating to service and the basis on which requests to complete a preliminary examination questionnaire are made. The Society concluded its comments by stating:

"None of the comments involved in the response indicated that the proposed changes were problematic from the Society's perspective but were rather an objective look at some potential implications".

It is the opinion of my Department's Official Receiver that the proposed changes will have no negative impacts on his ability to discharge his duties. The planned change will not diminish his right to require bankrupts to complete and submit a Statement of Affairs where he feels it is merited. The change is instead intended to align the provision in legislation with what happens in practice which does not require the submission of a Statement of Affairs as a matter of course. Instead, reliance is placed on the completion by the bankrupt of a less formal preliminary examination questionnaire.

This has advantages for both the bankrupt and the Department. The completion of a preliminary examination questionnaire is a less formal procedure that avoids the trouble and expense of having it sworn by a solicitor. It is also in keeping with the move towards a more enlightened approach to dealing with bankruptcy.

If a statement of affairs was to be required, the bankrupt would have to be allowed a minimum of 21 days to have the document completed and sworn by a solicitor. The fact that no minimum period applies in the case of a questionnaire allows the Official Receiver to obtain the information he needs about the bankrupt's assets and liabilities much sooner than if he was to ask for a Statement of Affairs.

The Official Receiver has confirmed that no-one made bankrupt on a creditor's petition has ever been asked to swear a statement of affairs during his (12+ years) tenure and that he and his staff are comfortable in relying on the details as supplied in the preliminary examination questionnaire.

However, it is considered appropriate that the Official Receiver should retain the right to require a bankrupt to provide a Statement of Affairs where necessary. Therefore, the proposed change to legislation will result in the Official Receiver having a right, exercisable at any time before a bankrupt is discharged, to require the bankrupt to submit a Statement of Affairs. Failure to do so will be treated as contempt of court and will be liable to be punished accordingly.

The Law Society in its email sent on 7 July expressed concerns about possible problems arising from the use of preliminary examination questionnaires as it is not a statutory form. It is simply a form which is provided to bankrupts to facilitate their compliance with Article 264(4) of the Insolvency (NI) Order 1989 which obliges them to give the Official Receiver an inventory of their estate and such other information as he may reasonably require. Failure to complete a preliminary examination questionnaire is therefore failure to comply with Article 264.

The Official Receiver is also content that the measures which the Insolvency Service has in place to deal with failure to complete a preliminary examination questionnaire and thereby comply with Article 264(4) are satisfactory. These are that the Official Receiver will apply to the High Court under Article 253(3) of the 1989 Order for an order to prevent the bankrupt receiving their automatic discharge from bankruptcy unless and until he or she complete the questionnaire.

Finally, paragraph (6) of Article 264 provides for any failure to provide an inventory and information reasonably required by the Official Receiver is also contempt of court and liable to be punished accordingly. The penalty for failure to comply with Article 264 is therefore equally stringent to that for failure to provide a Statement of Affairs if required to do so under Article 261.

As things stand, I am content that the amendments to be made by paragraph 13 of Schedule 3 to the Bill would result in Article 261 being set out in a more logical and coherent fashion and aligning more closely with modern practice when administering bankruptcies.

My preliminary view is therefore that paragraph 13 of Schedule 3 should be allowed to remain in the Bill and that no alteration to it is required. However, I would welcome the Committee's views on the matter before I reach a final decision and I look forward to receiving these in due course.

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Our ref: CQ DfE 279/25

Your Ref: EC2025:494

Date: 23 10 2025

Dear Peter

Insolvency (Amendment) Bill – The Law Society of Northern Ireland

Further to your letter dated 10 October 2025, and with thanks for sight of the Law Society's response to your committee's call for evidence. Please see response below which has been cleared by Minister Archibald. This submission is not disclosable as it relates to the development of government policy.

The officials responsible for the Bill have considered the issues raised by the Law Society, and have commented as follows: -

The Society's comments, in paragraphs 3 to 7 of its response, relate to the amendments to be made to Article 261 of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") by paragraph 13 of Schedule 3 to the Bill.

An extract from the Keeling schedule for the Bill, showing how Article 261 currently reads and how it would read following the amendments to be made by the Bill, is reproduced at Appendix A to this letter.

The requirement under Article 261, as it stands for individuals made bankrupt to submit a statement of affairs, is not mandatory. It is qualified by a provision in the same Article, which gives the Official Receiver discretion to release the bankrupt from the requirement to provide a statement of affairs where it is deemed unnecessary.

The proposed amendments to Article 261 will retain this discretionary element, however, it will change how the discretion is to be applied. Rather than requiring a

statement of affairs to be provided in each case, unless the Official Receiver deems it necessary, the legislation will only require a statement of affairs where the Official Receiver deems in necessary.

The proposed amendment will not, therefore, have any negative impact on the Official Receiver's ability to require the submission of a statement of affairs, should he consider that this would be useful, or to effectively administer the bankruptcy process. The proposed amendments simply reflect current practices.

The Society has also mentioned, at paragraph 8 of its response, its desire to see safeguards in place to ensure that creditors who do not have digital assets can participate in processes being carried out by digital means.

Digital processes are dealt with in clauses 7 and 8 of the Bill, which are closely modelled on the corresponding provisions in the Insolvency Act 1986, applying in England and Wales.

There are detailed provisions relating to these processes in Part 15 of the Insolvency (England and Wales) Rules 2016, which it is intended will be replicated for this jurisdiction once the current Bill has been passed.

Officials are also aware of a review carried out by the GB Insolvency Service into the operation of the 2016 Rules. The published report into the review findings makes extensive reference to the use of digital communications in insolvency proceedings.

Officials have undertaken to examine the report findings in respect of this subject and will be carrying out an in-depth study of the interaction between the primary legislation and the Rules. They will advise the Committee if it is considered that any amendments should be made to the Bill.

Finally, officials have noted for action the need for guidance and education about the changes to be made by the Bill once it has been passed into law and will liaise with the regulatory bodies who are responsible for the oversight of insolvency practitioners on the matter.

Yours sincerely

[redacted]

Departmental Assembly Liaison Officer

261.— Statement of affairs

~~(1) Where a bankruptcy order has been made otherwise than on a debtor's petition, the bankrupt shall submit a statement of his affairs to the official receiver within 21 days from the commencement of the bankruptcy.~~

(1) Where a bankruptcy order has been made otherwise than on a debtor's petition, the official receiver may at any time before the discharge of the bankrupt require the bankrupt to submit to the official receiver a statement of affairs.

(2) The statement of affairs shall contain—

(a) such particulars of the bankrupt's creditors and of his debts and other liabilities and of his assets as may be prescribed, and

(b) such other information as may be prescribed.

(2A) Where a bankrupt is required under paragraph (1) to submit a statement of affairs to the official receiver, the bankrupt must do so (subject to paragraph (3)) before the end of the period of 21 days beginning with the day after the day on which the prescribed notice of the requirement is given to the bankrupt by the official receiver.

(3) The official receiver may, if he thinks fit—

~~(a) release the bankrupt from his duty under paragraph (1), or~~

~~(b) extend the period specified in paragraph (1);~~

(a) release a bankrupt from an obligation imposed on the bankrupt under paragraph (1), or

(b) either when giving the notice mentioned in paragraph (2A) or subsequently, extend the period mentioned in that paragraph,

and where the official receiver has refused to exercise a power conferred by this Article, the High Court, if it thinks fit, may exercise it.

(4) A bankrupt who—

(a) without reasonable excuse fails to comply with ~~the obligation imposed by~~ an obligation imposed under this Article,

or

(b) without reasonable excuse submits a statement of affairs that does not comply with the prescribed requirements,

is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

Northern Ireland
Assembly

Committee for the Economy

Departmental Assembly Liaison Officer
Department for the Economy
abu@economy-ni.gov.uk

Our Ref: **EC2025: 494**

10 October 2025

Dear DALO,

Insolvency (Amendment) Bill – The Law Society of Northern Ireland

At its meeting of 8 October 2025, the Committee considered a response (enclosed), from the Law Society of Northern Ireland, in respect of the call for evidence for the Insolvency (Amendment) Bill.

The Law Society makes reference to the creditor's statement of affairs which appears to have been addressed in recent Ministerial correspondence. However, in its submission it also mentions the need for safeguards for creditor inclusivity in digital processes where creditors who do not have digital assets are concerned. This appears to be a reference to those provisions which would alter the requirement for in-person creditor meetings and allow these to be undertaken virtually – as set out in Clause 7 of the Bill.

The Committee agreed to forward the response to the Department for comment.

A written response on or before 24 October 2025 would be greatly appreciated. The Committee would also greatly appreciate any related background policy information that the Department can provide.

If you require further information or clarification in respect of the above, please do not hesitate to contact me.

Yours sincerely,

Peter McCallion

Peter McCallion
Clerk to the Committee for the Economy
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Law Society of Northern Ireland

INTRODUCTION

1. The Law Society of Northern Ireland (the "Society") is the professional body for solicitors, regulating and representing all solicitors in Northern Ireland.

2. The Society represents c.3000 solicitors working throughout Northern Ireland in approximately 450 firms in the private sector, practitioners in the public sector, in business and in the community and voluntary sector. Members of the Society thus represent members of the public, small, medium, and large enterprises, government bodies and charities; making the Society uniquely placed to offer constructive comment on policy and law reform proposals across a broad range of topics.

CALL FOR EVIDENCE – INSOLVENCY (AMENDMENT) BILL

3. The Society submitted a response to the consultation regarding the Insolvency (Amendment) Bill in December 2024. The Society welcomes the objective to update insolvency legislation, including bringing parity with provisions in England and Wales and in this Call for Evidence, has no substantive further comments to add to its initial consultation response. The Society had raised one matter regarding Statements of Affairs. This was not an objection but rather noting a potential gap in changing the current statutory basis from mandatory in all cases to when requested by the Official Receiver.

4. In relation to the proposal to change Statements of Affairs provisions from being mandatory in all cases to when requested by the Official Receiver, the Insolvency Service contacted the Society to note that in practice, the Insolvency Service utilised the Preliminary Enquiries Questionnaire, a non-statutory form rather than the Statement of Affairs. In 2023-2024 the Insolvency Service did not request or use any Statements of Affairs when processing bankruptcy cases.

5. Under Article 261 of the Insolvency (Northern Ireland) Order 1989, a bankrupt is required to submit a Statement of Affairs within 21 days of bankruptcy commencing. A failure to do so is a contempt of court. Where the Preliminary Enquiries Questionnaire is concerned, providing false information would constitute an offence under Article 10 of the Perjury (Northern Ireland) Order 1979.

6. The Society notes that the Insolvency Service is satisfied with the use in practice of the Preliminary Enquiries Questionnaire. The consultation response from the Society noted potential legal arguments by a bankrupt on the basis of using a non-statutory Preliminary Enquiries Questionnaire rather than the statutory Statement of Affairs, the criminal offence occurring in the provision of false

information in the Questionnaire rather than a failure to return within the 21 days. Arguments could also be commenced based on a bankrupt making a claim that the request to provide a Preliminary Enquiries Questionnaire was not received.

7. It would be for the Insolvency Service to confirm that it is satisfied that there are sufficient mechanisms in place and appropriate statutory safeguards to ensure that full financial disclosure takes place to allow the bankruptcy process to complete without delay or added administrative burden to receive all required financial information.

8. In relation to other aspects of the proposed Bill, the Society would also support ensuring safeguards for creditor inclusivity in digital processes where creditors who do not have digital assets are concerned.

9. More generally, on passing this Bill, the Society would also strongly support practitioner education and support when implementing any changes to allow any changes to be bedded in successfully.

The Law Society of Northern Ireland
29 September 2025