Department for the Economy
An Roinn Geilleagair
www.economy-ni.gov.uk

Adelaide House
39-49 Adelaide Street
Belfast BT2 8FD
02890 529333
private.office@economy-ni.gov.uk

Peter McCallion
Clerk to the Committee for the Economy
peter.mccallion@niassembly.gov.uk
cc committee.economy@niassembly.gov.uk

Our ref: CQ DfE 298/25

Your Ref: EC2025:552

Date: 24 11 2025

Dear Peter

Insolvency (Amendment) Bill - Bankrupt's home

Further to your letter dated 14 November 2025, relating to how family homes are dealt with in the event that a person with an interest in the property becomes bankrupt. Please see response below which has been cleared by Minister Archibald. This information is restricted under Freedom of Information as it relates to the development of government policy.

How the family home is dealt with in bankruptcy is a complex issue and involves an interaction between bankruptcy law and land law. The way in which a bankrupt's home is dealt with has the potential to impact on three parties,

- the bankrupt,
- the bankrupt's spouse or partner, and any dependants they have, including children, and
- the creditors.

There is a need for the relevant legislation to strike an appropriate balance between the Trustee's right to treat the bankrupt's share in the ownership of the home as an asset, which is capable of being realised for the benefit of the creditors who are due debts which have not been paid, and the need for the spouse, dependants and the bankrupt themselves, to keep a roof over their heads.

In its response to the Committee's call for evidence and in the course of providing the Committee with oral evidence, the Bar raised issues around how spousal interests are treated. In particular, differences were highlighted on how the family

home was treated in bankruptcy proceedings in England and Wales compared to this jurisdiction.

On consideration of the evidence provided by the Bar, however, it appears that those concerns were not that spouses were being treated less favourably than they would be in England and Wales, but that more often the courts were more favourable to non-bankrupt spouses. In particular, the evidence provided highlighted that human rights law had been applied by the courts in the North of Ireland in such a way as to favour spouses to an extent that would not happen in England and Wales.

Officials interpretation of the Bar's position is, therefore, that its concern was that the more zealous application of human rights law in this jurisdiction had made it harder for trustees in bankruptcy, acting on behalf of the bankrupt's creditors, to gain possession of bankrupts' houses so that they could be sold to raise money for the benefit of the creditors.

At point 9 of its response, the Bar alluded to there being differences in the way in which legislation dealing with the assessment of the rights of non-bankrupt spouses to the family home is interpreted,

"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."

It is recorded in the Hansard report of the evidence provided by the Bar to the Committee on 15 October 2025 that in answer to a question put to him by Ms McLaughlin MLA, relating to differences between the two jurisdictions, the Bar representative stated,

"That was seen more historically, before the legislation came into effect in 2009 that provided that the trustee in bankruptcy had a period of three years to commence proceedings to realise the family home. The position in England and Wales is largely that, no matter the delay, the trustee in bankruptcy's claim proceeds. However, in Northern Ireland, the court concluded that, in most of those cases, the delay factor meant that the right of the non-bankrupt's spouse and family to their family home overrode the creditor's interests. In Northern Ireland, the courts weighed the factors that they needed to weigh under the Human Rights Act 1998 differently from those in England and Wales. There were no cases that anyone felt was worth taking to the Supreme Court to come to a conclusion on whether the courts were right to weigh those factors differently on the facts of those cases or whether the same approach should be taken in both jurisdictions. That issue is now almost entirely of historical relevance because of the three-year rule."

Two points are to be noted. The first is the greater weight attached by the courts in this jurisdiction to the factors which have to be taken into account under the Human Rights Act 1998, had resulted in the rights of the non-bankrupt spouse and their family being given priority over the interests of the bankrupt's creditors.

The second is that the Bar's view is that the issue is now of mainly historical interest. We interpret this last as meaning that the Bar sees the issue as no longer relevant and is not seeking to have any action taken on the matter.

The Committee has stated in its letter that an insolvent business owner in this jurisdiction is more likely to lose their home than in England and Wales. Based on the evidence provided by the Bar, it would appear that the converse is the case. In this jurisdiction it is less likely that an insolvent business owner, or indeed anyone who is bankrupt, will lose their home.

There are some differences of detail between the provisions in the 1989 Order which determine how the interests of a bankrupt, their spouse or civil partner and any dependants, in their home are to be dealt with and the corresponding provisions in the Insolvency Act 1986, applying in England and Wales.

However, these differences are inevitable, because England and Wales have the Trusts of Land and Appointment of Trustees Act 1996, to which there is no equivalent in this jurisdiction. The fact that there is no equivalent to this Act means that there cannot, for example, be a provision in the 1989 Order which corresponds directly to section 335A of the Insolvency Act 1986, as reproduced for the information of the Committee at Appendix A.

The provisions in the 1989 Order dealing with bankrupt's homes must instead refer to the legislation governing land law here.

These differences do not detract from the main point, outlined above, that the principles relating to the shared ownership of land, or governing the powers of trustees-in-bankruptcy and the courts in relation to assets of the bankrupt, or dealing with the protection of the rights which spouses and dependants of bankrupts have as regards their interests in the family home, are essentially the same in the North of Ireland as in England and Wales.

Therefore, officials consider that as the effect of the legislation is no different from that of the corresponding legislation applying in England and Wales, no amendment is required to bring it into line.

The Committee's letter appears to connect the issue of the bankrupt's family home (noting the word "Consequently…") with a different issue raised in the Bar's evidence about the availability of mechanisms to fund the taking by trustees in bankruptcy of certain proceedings.

Clause 3 of the Bill does introduce the possibility of an additional mechanism to fund the taking of certain proceedings to recover money from company directors whose misconduct had caused losses to company creditors. The additional mechanism would take the form of it being made possible for the insolvency office holder to sell the action to a specialist company in exchange for a payment which would then be available to benefit the creditors. The specialist company would then take forward the proceedings at its own risk and in the event of the action being successful and the directors having the means to pay, would be entitled to the proceeds of the claim. Clause 3, like many of the other provisions of the Bill, will bring the law in this jurisdiction into line with the law in England and Wales.

However, what is in clause 3 will have no impact whatsoever on how interests in bankrupts' homes are dealt with. This is because clause 3 deals solely with the

ability of administrators acting in administrations to take certain proceedings, as listed in the provision to be inserted into the 1989 Order by that clause. Administration is a procedure which can only be taken in the case of company insolvency; it can never be taken in any form of personal insolvency, including bankruptcy.

One final matter which the Department feels worthy of mention in this context is that the Insolvency Service in England and Wales issued a call for evidence about the operation of the personal insolvency regime in 2022.

They have, in the interim, been developing proposals that will seek to simplify and rationalise the personal insolvency regime (including bankruptcy, debt relief orders and individual voluntary arrangements) in that jurisdiction. This will include the need for greater clarity about how the family home is treated in bankruptcy, for a more lenient approach to dealing with the home to be considered and for a "simplification of the rules for establishing beneficial interest".

However, work to address these issues is still at an early stage and officials from this Department's Insolvency Service have been liaising with their counterparts in England and Wales on developments. If the work being carried out does result in fresh legislation in England and Wales relating to these issues, we will carefully consider if similar provisions should be adopted in this jurisdiction.

Yours sincerely

[redacted]
Departmental Assembly Liaison Officer

Appendix A

Section 335A of the Insolvency Act 1986

335A Rights under trusts of land.

(1) Any application by a trustee of a bankrupt's estate under section 14 of the Trusts of Land and Appointment of Trustees Act 1996 (powers of court in relation to trusts of land) for an order under that section for the sale of land shall be made to the court having jurisdiction in relation to the bankruptcy.

(2) On such an application the court shall make such order as it thinks just and reasonable having regard to—

(a) the interests of the bankrupt's creditors;

(b) where the application is made in respect of land which includes a dwelling house which is or has been the home of the bankrupt or the bankrupt's spouse or civil partner or former spouse or former civil partner—

(i)the conduct of the spouse, civil partner, former spouse or former civil partner, so far as contributing to the bankruptcy,

(ii)the needs and financial resources of the spouse, civil partner, former spouse or former civil partner, and

(iii) the needs of any children; and

(c) all the circumstances of the case other than the needs of the bankrupt.

(3) Where such an application is made after the end of the period of one year beginning with the first vesting under Chapter IV of this Part of the bankrupt's estate in a trustee, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

(4) The powers conferred on the court by this section are exercisable on an application whether it is made before or after the commencement of this section.

Northern Ireland
Assembly

Committee for the Economy

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

Our Ref: **EC2025: 552**

14 November 2025

Dear DALO,

Insolvency (Amendment) Bill - Bankrupt's home

Please accept the Committee's thanks for the oral and written evidence provided by Departmental officials at the Committee meeting of 12 November 2025, as part of the informal deliberations on the clauses and schedules of the Insolvency (Amendment) Bill.

During deliberations the Committee recorded concerns in respect of the prospect of a bankrupt's home being forfeit and the rights of the non-bankrupt spouse. The Committee noted the Department's evidence that in England and Wales there are mechanisms to fund relevant proceedings which are not available in this jurisdiction. Consequently, there is a higher likelihood of an insolvent business owner losing their home in Northern Ireland than in England and Wales. The Committee noted also the Department's assertion that a related amendment to bring Northern Ireland into line with England and Wales would be complex and would likely have unforeseeable consequences for other kinds of legal proceedings.

Notwithstanding the above, the Committee felt that it required assurance and clarity as to why measures cannot be adopted, which would serve to limit the prospects of a bankrupt's home being forfeit in Northern Ireland, in line with practices in England and Wales. The Committee therefore agreed to write to the Department in this regard.

It should be noted that in the event of the Department failing to provide adequate assurances, the Committee will likely bring forward amendments to the Bill which will bring Northern Ireland into line with England and Wales in this regard.

A written response at your earliest convenience setting out the assurances that are sought would be greatly appreciated.

Peter McCallion, Clerk to the Committee for the Economy, Northern Ireland Assembly
Room 349, Parliament Buildings, Ballymiscaw, Stormont, Belfast, BT4 3XX.
Email: committee.economy@niassembly.gov.uk **Tel. 028 9052 1821**

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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Our ref: CQ DfE 295/25
Your Ref: EC2025:554

Date: 24 11 2025

Dear Peter

Insolvency (Amendment) Bill – Virtual meetings

Further to your letter dated 14 November 2025, please see response below which has been cleared by Minister Archibald. This information is restricted under Freedom of Information as it relates to the development of government policy.

Officials understand that the Committee is keen to ensure that no creditor is denied the opportunity to take part in meetings which are being held virtually, due to not having the necessary equipment, or know-how, to be able to join online.

It is the Department's intention that the applicable legislative provisions will be structured in the same way as the corresponding provisions applying in England and Wales, on which they are modelled.

The new Articles to be inserted into the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") by clauses 7 and 8 of the Bill are intended to be high-level and are not intended to specify how decision-making procedures are to be conducted.

Instead, the intention is that these detailed procedural matters will be set out in subordinate legislation. It is the Department's intention, therefore, to produce a set of Rules that will correspond to Part 15 of the Insolvency (England and Wales) Rules 2016 ("the 2016 Rules) which deal with how these procedures in England and Wales are operated, once the Bill has been enacted.

A copy of the relevant Rules is attached at Appendix A for information.

The procedures which can be used to seek decisions are listed in Rule 15.3 of the 2016 Rules. They are correspondence, electronic voting, virtual meetings, physical meetings or "any other decision-making procedure which enables all creditors who are entitled to participate in the making of the decision to participate equally."

The use of physical meetings is, of course, subject to the caveat, laid down by the provisions to be inserted into primary legislation by clauses 7 and 8 of the Bill, that a physical meeting can only be held if a specified number or percentage of the creditors or contributories request it.

The two procedures listed in Rule 15.3 which may be problematic for people who do not have, or are unable to use, digital equipment are electronic voting and virtual meetings. The obvious practical solution to deal with this difficulty would be ensure that people in this position are able to join in the proceedings by dialling-in using a landline or mobile telephone. We agree that legislative provision needs to be in place to ensure that they can.

Therefore, it would appear that replicating Rules 15.4, 15.5, 15.8 and 15.36 of the 2016 Rules should be sufficient to ensure that people who are unable to take part in virtual meetings or electronic voting online are able to do so using a telephone.

Furthermore, paragraph (2) of Rule 15.8 places the person in charge of carrying out a decision-making procedure under a duty to issue a notice to every creditor who is entitled to be notified about the procedure. In the case of electronic voting, paragraph (a) of Rule 15.4 says that the notice has to give the creditors any

necessary information as to how to access the voting system. In the case of virtual meetings, paragraph (a) of Rule 15.5 says that the notice must give the creditors any necessary information as to how to access the meeting, including any telephone number required. Rule 15.36 sets out steps which have to be taken if someone is excluded from all or part of a virtual meeting.

However, when it comes to writing the Rules for the North of Ireland, we will be taking particular care to be certain that what is in these four rules is sufficient to ensure that individuals who are unable to take part electronically in virtual meetings or electronic voting are not excluded.

This may include drafting additional provision to be included in the Rules to apply in this jurisdiction, to ensure that everyone entitled to take part in decision-making procedures is able to do so, irrespective of whether they have electronic equipment and the knowledge required to use it or not.

Yours sincerely

[redacted]

Departmental Assembly Liaison Officer

Appendix A

Rules 15.4, 15.5, 15.8 and 15.36 of the Insolvency (England and Wales) Rules 2016

Rule 15.4 - Electronic voting

15.4. Where the decision procedure uses electronic voting—
(a) the notice delivered to creditors must give them any necessary information as to how to access the voting system including any password required;
(b) except where electronic voting is being used at a meeting, the voting system must be a system capable of enabling a creditor to vote at any time between the notice being delivered and the decision date; and
(c) in the course of a vote the voting system must not provide any creditor with information concerning the vote cast by any other creditor.

Rule 15.5 - Virtual meetings

15.5. Where the decision procedure uses a virtual meeting the notice delivered to creditors must contain—
(a) any necessary information as to how to access the virtual meeting including any telephone number, access code or password required; and
(b) a statement that the meeting may be suspended or adjourned by the chair of the meeting (and must be adjourned if it is so resolved at the meeting).

Rule 15.8 - Notices to creditors of decision procedure

15.8.
(1) This rule sets out the requirements for notices to creditors where a decision is sought by a decision procedure.

(2) The convener must deliver a notice to every creditor who is entitled to notice of the procedure.

(3) The notice must contain the following—
(a) identification details for the proceedings;
(b) details of the decision to be made or of any resolution on which a decision is sought;
(c) a description of the decision procedure which the convener is using, and arrangements, including the venue, for the decision procedure;
(d) a statement of the decision date;
(e) a statement of by when the creditor must have delivered a proof in respect of the creditor's claim in accordance with these Rules failing which a vote by the creditor will be disregarded;
(f) except in the case of a decision procedure in respect of a moratorium under Part A1 of the Act a statement that a creditor whose debt is treated as a small debt in accordance with rule 14.31(1) must still deliver a proof if that creditor wishes to vote;
(g) except in the case of a decision procedure in respect of a moratorium under Part A1 of the Act a statement that a creditor who has opted out from receiving notices may nevertheless vote if the creditor provides a proof in accordance with paragraph (e);
(h) in the case of a decision to remove a liquidator in a creditors' voluntary winding-up or a winding up by the court, a statement drawing the attention of creditors to

section 173(2), 174(2) or 174(4) (which relate to the release of the liquidator), as appropriate;
(i) in the case of a decision to remove a trustee in a bankruptcy, a statement drawing the attention of creditors to section 299(1) or 299(3) (which relates to the release of the trustee);
(j) in the case of a decision in relation to a proposed CVA or IVA, a statement of the effects of the relevant provisions of the following—
(i) rule 15.28 about creditors' voting rights,
(ii) rule 15.31 about the calculation of creditors' voting rights, and
(iii) rule 15.34 about the requisite majority of creditors for making decisions;
(k) except in the case of a physical meeting, a statement that creditors who meet the thresholds in sections 246ZE(7) or 379ZA(7) may, within five business days from the date of delivery of the notice, require a physical meeting to be held to consider the matter;
(l) in the case of a meeting, a statement that any proxy must be delivered to the convener or chair before it may be used at the meeting;
(m) in the case of a meeting, a statement that, where applicable, a complaint may be made in accordance with rule 15.38 and the period within which such a complaint may be made; and
(n) a statement that a creditor may appeal a decision in accordance with rule 15.35, and the relevant period under rule 15.35 within which such an appeal may be made.

(4) The notice must be authenticated and dated by the convener.

(5) Where the decision procedure is a meeting the notice must be accompanied by a blank proxy complying with rule 16.3.

(6) This rule does not apply if the court orders under rule 15.12 that notice of a decision procedure be given by advertisement only.

Rule 15.36 - Action where person excluded
15.36.—
(1) In this rule and rules 15.37 and 15.38, an “excluded person” means a person who has taken all steps necessary to attend a virtual meeting or has been permitted by the convener to attend a physical meeting remotely under the arrangements which—
(a) have been put in place by the convener of the meeting; but
(b) do not enable that person to attend the whole or part of that meeting.

(2) Where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may—
(a) continue the meeting;
(b) declare the meeting void and convene the meeting again; or
(c) declare the meeting valid up to the point where the person was excluded and adjourn the meeting.

(3) Where the chair continues the meeting, the meeting is valid unless—
(a) the chair decides in consequence of a complaint under rule 15.38 to declare the meeting void and hold the meeting again; or
(b) the court directs otherwise.

(4) Without prejudice to paragraph (2), where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may, at the chair's discretion and without an adjournment, declare the meeting suspended for any period up to 1 hour.

Northern Ireland
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Committee for the Economy

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

Our Ref: **EC2025:554**

14 November 2025

Dear DALO,

Insolvency (Amendment) Bill – Virtual meetings

Please accept the Committee's thanks for the oral and written evidence provided by Departmental officials at the Committee meeting of 12 November 2025, as part of the informal deliberations on the clauses and schedules of the Insolvency (Amendment) Bill.

The Committee recorded concerns in relation to Clause 7/8 etc. in respect of the use of non-physical or virtual creditor meetings. The Committee understood that the new measures were designed to reduce unnecessary costs and bureaucracy. The Committee also understood that the anticipated delegated legislation will specify, in rules, protections for creditors who have limited access to digital assets in line with the practice in England and Wales.

Notwithstanding the above, the Committee felt that it required assurance and clarity in respect of how creditors who lack digital assets – and who might be a little older or live in parts of Northern Ireland with limited or no internet access – will be included appropriately in insolvency deliberations. The Committee therefore agreed to write to the Department seeking clarification and assurances on the measures it is to adopt, whether in regulations or in rules, to ensure the inclusion of creditors in non-physical meetings who have limited or no access to digital assets.

It should be noted that in the event of the Department failing to provide adequate assurances, the Committee will likely bring forward amendments to the Bill which will compel the inclusion of creditors by insolvency professionals who have limited or no access to digital assets.

A written response at your earliest convenience setting out the assurances that are sought would be greatly appreciated.

Peter McCallion, Clerk to the Committee for the Economy, Northern Ireland Assembly
Room 349, Parliament Buildings, Ballymiscaw, Stormont, Belfast, BT4 3XX.
Email: committee.economy@niassembly.gov.uk **Tel. 028 9052 1821**

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

Yours sincerely,

Peter McCallion

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Clerk to the Committee for the Economy

Peter McCallion, Clerk to the Committee for the Economy, Northern Ireland Assembly
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Peter McCallion
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Our ref: CQ DfE 297/25
Your Ref: EC2025:553

Date: 24 11 2025

Dear Peter

Insolvency (Amendment) Bill – Miscellaneous Issues

Further to your letter dated 14 November 2025, please see response below which has been cleared by Minister Archibald. This information is restricted under Freedom of Information as it relates to the development of government policy.

Regarding the issue raised by the Bar during the Committee's call for evidence, concerning the practice direction issued by the High Court Master. This, officials understand, requires that any creditor, with the exception of HMRC and Land and Property Service, must obtain a High Court or County Court judgment before they can lodge a petition to have an individual made bankrupt.

The Bar highlighted that this has created a difference between the practice of the High Court in this jurisdiction and the courts in England and Wales.

Whilst this issue goes beyond the amendments to insolvency legislation set out in the Bill, officials note that the Committee is considering drafting an amendment to

address this difference which would have the effect of countermanding the Master's practice direction.

The Department was not a party to the development of the High Court practice direction, so it is not aware of the specific reasons for it being introduced. However, the practice direction does not have the status of law. As highlighted previously, it is an administrative tool used to regulate the administration of business within the High Court. Therefore, to legislate to countermand could, in the Department's view, be at odds with the convention on the separation of powers between the legislature, the executive and the judiciary. In addition, the Department would be unable to fully establish any wider impact or repercussions of such an amendment.

In particular, it may be viewed by the judiciary as an attempt to fetter how a Master controls or operates his or her court.

Yours sincerely

[redacted]

Departmental Assembly Liaison Officer

Northern Ireland
Assembly

Committee for the Economy

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

Our Ref: **EC2025:553**

14 November 2025

Dear DALO,

Insolvency (Amendment) Bill – Miscellaneous Issues

Please accept the Committee's thanks for the oral and written evidence provided by Departmental officials at the Committee meeting of 12 November 2025, as part of the informal deliberations on the clauses and schedules of the Insolvency (Amendment) Bill.

During deliberations the Committee recorded concerns in respect of the current practice in Northern Ireland, whereby a petition for insolvency will not be entertained unless the creditor has first obtained a judgement even if the creditor's claim is entirely unopposed. The Committee considered the Departmental assertion that this was the subject of a practice direction issued by a High Court Master designed to regulate court procedure and guide the day-to-day functioning of the court, ensuring consistency and efficiency and that it was therefore constitutionally inappropriate for the Department to legislate.

Notwithstanding this and in line with suggestions from the Bar of NI, the Committee agreed to give further consideration to the drafting of an amendment to address the difference between NI and England and Wales in the treatment of petitions for insolvency where the creditor has not first obtained a judgement.

The Committee also informally accepted a Departmental drafting amendment in respect of Clause 13 but deferred further consideration of Clause 13 pending a response on Clause 7/8 etc. on virtual meetings.

The Committee also accepted helpful Departmental clarification in respect of the court's general powers of administration and superintendence to appoint receivers and thus informally agreed that related amendments were unnecessary.

Peter McCallion, Clerk to the Committee for the Economy, Northern Ireland Assembly
Room 349, Parliament Buildings, Ballymiscaw, Stormont, Belfast, BT4 3XX.
Email: committee.economy@niassembly.gov.uk **Tel. 028 9052 1821**

The Committee noted that the Department had offered to bring forward an amendment which would ensure that Assembly scrutiny will apply to Westminster legislation applying in NI in respect of Clause 119.

The Committee also considered as part of its deliberations on Schedule 4, a suggestion that regulations associated with Article 23(4) should require Assembly procedure. However the Committee informally agreed to accept the Department's assurance that the provisions were narrowly drawn and the benefits of amendment were therefore limited.

The Committee expects to undertake formal clause by clause scrutiny at its meeting on 26 November 2025 at which time it will formally decide in respect of Departmental amendments to Clause 13 and Clause 119. The Committee will also likely decide to either accept Departmental assurances or adopt amendments to: Clause 7/8 etc.; Clause 85; and in respect of petitions without judgement.

Further to the above, the final text of any Departmental amendments should be provided at your earliest convenience.

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

Yours sincerely,

Peter McCallion

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Clerk to the Committee for the Economy

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