The Insolvency Service

Red Tape Challenge - changes to insolvency law to reduce unnecessary regulation and simplify procedures

Consultation

A BIS SERVICE

Contents

Part 2 - Changes to the law governing insolvency processes

Part 3 - **Proposals to change how IPs report director misconduct**

Executive Summary

1. The proposals contained in this consultation form part of the response to the **Government's 'Red Tape Challenge' agenda**, and relate to regulations affecting insolvency practitioners (IPs), the practice of insolvency and the reporting duties of IPs on the conduct of directors.

2. Three broad themes have been established, and each theme is dealt with separately in this consultation:

   - **Part 1 - Technical changes to regulations affecting IPs.**
   - **Part 2 - Changes to the law governing insolvency proceedings.**
   - **Part 3 – Proposals to change how IPs report director misconduct.**

3. The insolvency theme was in the 'spotlight' on the Red Tape Challenge website from 23 August to 27 September 2012. Along with publishing 106 regulations on the website, we issued an information paper which was available on the website, alerted our major stakeholders to the launch of the theme by email, and published articles in newsletters and magazines targeted at IPs and repeat creditors from the business community. We also alerted individuals, directors and creditors who received communications from our London Official Receiver office in September to the theme spotlight in order to generate ideas from people going through the insolvency process. Our sector champion, Philip King Chief Executive of the Institute of Credit Management who acted as a link between government and business, chaired a workshop with stakeholders at which a large number of useful ideas were put forward, many of which are in this consultation .

4. Responses to the Red Tape Challenge indicate that stakeholders believe that insolvency law broadly strikes the right balance between the interests of debtors and creditors. **Our insolvency system compares favourably with that in other countries,** and is consistently ranked highly by the World Bank for speed of resolution of corporate insolvencies and the amount of monies returned to creditors.

5. The proposals in this consultation are therefore of an incremental and technical nature. They have been developed following the consideration of responses received to the Red Tape Challenge and in the light of other discussions with creditor representatives, debt advisors, lawyers, IPs, and regulators.

6. The objective of the proposals is to identify **savings in the costs of administering insolvency proceedings** which **should result in more money being returned to creditors**, but without weakening the regulatory regime.

7. We are now seeking views from a wider range of stakeholders on the likely impact of the proposals, and requesting evidence of the possible costs and benefits. In total, we estimate that the whole package of **insolvency reforms will save around £36m per year**. We have provided indicative figures of the individual savings within the Impact Assessments contained in Annexes to Parts 1 – 3 of this consultation on which we would particularly welcome views.

8. If implemented the proposals will require changes to both primary and secondary legislation, and will be taken forward when Parliamentary time allows.

9. These proposals need to be viewed in the context of other measures published recently to help **improve corporate transparency and strengthen director disqualification laws.** The Transparency & Trust paper recently published by the Business Secretary, Vince Cable, introduces proposals to improve the transparency of corporate ownership structures in the UK and to increase trust in companies and those who run them by ensuring that we have adequate and robust sanctions in place when the rules are broken.

10. The Insolvency Service has also launched a **review into the use of pre-pack administrations,** after concerns were raised about their transparency and has recently published a report on the review of insolvency practitioners' fees by the independent reviewer, Emeritus Professor Elaine Kempson of Bristol University. The report found that where experienced, and usually secured, creditors are in control of proceedings, IP fees are successfully monitored. Where the creditors controlling the fees are unsecured and disparate, controls over fees are not working. The review outlines recommendations for steps to improve trust in the professionals who deal with businesses when they become insolvent, including providing greater information for unsecured creditors to assess fees and simplifying the oversight process by unsecured creditors. The Government will respond to the report later this year.

Scotland

11. Schedule 5 to the Scotland Act 1998 sets out "reserved" matters which are outwith the legislative competence of the Scottish Parliament. The Schedule largely reserves business associations as well as aspects of insolvency and winding up, although there are specific exceptions to these general reservations. The effect of the reservations and exceptions contained within the Schedule is that parts of insolvency law and practice are reserved to the UK Parliament, whilst other parts are within the legislative competence of the Scottish Parliament. Broadly speaking, the law relating to administration and company voluntary arrangements is reserved to the UK Parliament, as is the regulation of IPs and enforcement matters such as director disqualification. Receivership and all personal insolvency procedures are within the

legislative competence of the Scottish Parliament. Responsibility for the law relating to winding up is divided between the two Parliaments.

12. Since devolution, the practice of the UK Government has been to legislate for Scotland in line with England and Wales in those areas that are reserved to it, unless underlying Scottish law or practice differs. It is intended that this continue for the measures to be taken forward under the Red Tape Challenge.

Wales

13. Insolvency is reserved to the UK Parliament in Wales and therefore all of the proposals in this consultation document would apply to Welsh insolvencies.

Northern Ireland

14. Insolvency is fully devolved to the Northern Ireland Assembly and therefore none of the proposals in this consultation document would apply in Northern Ireland without the agreement of that legislature.

How to respond

15. When responding please state whether you are doing so as an individual or whether you are representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

16. This consultation was published on 18 July, and will close on the 10 October 2013.

17. Responses can be submitted by email or letter to:

Policy Unit
The Insolvency Service
4 Abbey Orchard Street
London
SW1P 2HT

Email: Policy.Unit@insolvency.gsi.gov.uk

18. This consultation may be of interest to:
- creditors
- business and consumer groups including debt advice bodies
- IPs
- the legal profession

Additional copies

19. This consultation can be found at: www.bis.gov.uk/insolvency/Consultations. You may make additional copies without seeking permission. Under Cabinet Office guidelines consultations are digital by default but if required printed copies of the consultation document can be obtained from:

BIS Publications Orderline
ADMAIL 528
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Minicom: 0845-015 0030
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Confidentiality and data protection

20. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you would like information, including personal data that you provide, to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidentiality.

21. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic disclaimer generated by your IT system, will not, of itself, be binding on The Insolvency Service.

Help with queries

22. Questions about the policy issues raised in the document can be addressed to The Insolvency Service (contact details as below):

    - Part 1 - Technical changes to regulations affecting IPs – Toby Watkinson Telephone: 020 7637 6566

- Part 2 - Changes to the law governing insolvency proceedings – Steven Chown Telephone: 020 7637 6501
- Part 3 – Changes to the law governing reporting director misconduct - Clare Quirk Telephone: 0151 625 2153

What happens next?

23. The Government will consider the responses received in deciding whether to implement the proposals. A response will be published on The Insolvency Service website at www.bis.gov.uk/insolvency/Consultations.

Annex 1: Consultation Principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.
http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf

Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

John Conway,
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET

Telephone John Conway on 020 7215 6402
or e-mail to: john.conway@bis.gsi.gov.uk

However if you wish to comment on the specific policy proposals you should contact the responsible policy team (see paragraph 22).

Part 1 – Technical changes to regulations affecting insolvency practitioners

Background

24. Part 1 of this consultation contains details of **four separate proposals which are deregulatory in nature**. If implemented, it is anticipated that savings will be made in the costs of administering insolvency proceedings which should result in more money being returned to creditors.

25. Each proposal is addressed separately, and where relevant indicative costs and benefits have been included within the Impact Assessment at Annex 3. For each proposal we are seeking views on the policy impact and on likely costs and benefits. A full list of consultation questions is contained at Annex 10.

Proposed changes

1. Removal of requirement to maintain separate case record

26. The measure would **repeal the need for IPs to keep a separate case record of information** for matters such as progress of case administration, bonding, remuneration and meetings. This proposal would repeal Regulations 13, 14 and the associated Schedule 3 of the Insolvency Practitioners Regulations 2005. Minor consequential amendment is proposed to Regulation 15.

27. As regulated professionals, it is expected that IPs would already maintain records of most of the matters specified within Schedule 3 wherever relevant as a means of ensuring cases are effectively managed and progressed, and as a part of the process by which information is reported to creditors. This would include the recording and justification of material decisions taken on cases.

28. Regulation 13(4) requires that each record maintained under Schedule 3 should be capable of being produced separately. IPs and the professional bodies which regulate them ("the regulators") advise that IPs tend to interpret this requirement narrowly such that they maintain duplicate records even where in practice this information is already held in, or should be evident from, their individual case records. For example, information about the details of the insolvent and the IP should be self evident, information relating to meetings and remuneration should be apparent from case records and reports to creditors; and information regarding bonding is subject to separate recording requirements set down by bond providers and regulators.

29. It is therefore proposed to repeal Regulation 13 as it appears to be imposing an unnecessary regulatory burden. A consequential repeal to regulation 14 which requires IPs to notify their regulators of the location of case records they maintain under Regulation 13, is also proposed.

30. It is also proposed to amend Regulation 15, which concerns the inspection of records by the regulators of IPs and the Secretary of State. In practice, the regulators are already be able to inspect the records which their authorised IPs maintain as a part of the rules of membership and through their power to undertake monitoring activities. As such, Regulation 15(1)(a) appears unnecessary and it is therefore proposed to repeal it.

31. In addition to professional bodies, IPs may be authorised and regulated by a competent authority. The only competent authority at present is the Secretary of State and there are proposals in the Deregulation Bill currently before Parliament for the Secretary of State to cease the direct authorisation of IPs. As such, it is therefore also proposed to repeal Regulation 15(1)(b).

32. We recommend that the legislation should **require IPs to maintain whatever records necessary to justify the actions and decisions they have taken on cases**. It is not expected that such a provision would impose a new requirement, but rather codify what is already expected of regulated professionals involved in insolvency case administration.

33. We estimate that the removal of these requirements will result in **savings of approximately £7.8m per annum**, as outlined in the Impact Assessment at Annex 3.

Q1. Do you agree that the requirement to maintain a separate case record should be removed?

Q2. Do you believe that the present requirements result in duplicate information being maintained? If so, can you provide an estimate of the amount of time taken to maintain this duplicate information?

Q.3 Do you agree that Regulations 15(1)(a) and 15(1)(b) should be repealed?

Q.4 Would it be necessary to introduce a new provision outlining in general terms what is expected in terms of case records and retention?

2. Allowing earlier destruction of books and papers

34. This proposal would **allow IPs acting as administrators and voluntary liquidators to dispose of a company's books and papers with the approval of the Secretary of State**. This will bring the provisions regarding the destruction of books and papers in administration and voluntary liquidation into line with those for compulsory liquidation and bankruptcy. It would involve amendment of Regulations 3A(1) and 16(2) of the Insolvency Regulations 1994.

35. Regulations 3A(1) and 16(2) currently allow administrators and voluntary liquidators to dispose of a company's books and papers at any time after the expiration of one year from the date of dissolution. Administrators and liquidators are unable to seek approval from the official receiver or Secretary of State for an earlier disposal. This imposes a burden in terms of storage costs when there are often no funds in the estate. In many cases, there may be no need for the books and papers to be retained resulting in costs being incurred for no useful purpose. It is also understood that, on occasion, administrators and voluntary liquidators seek to place companies into compulsory liquidation in order to avoid incurring such storage costs, as in such cases the books and papers may be disposed of by, or with the permission of, the official receiver.

36. We propose to amend Regulations 3A(1) and 16(2) so that administrators and voluntary liquidators may dispose of a company's books and papers at any time with the approval of the Secretary of State. This will enable **a process to be put in place whereby books and papers are retained only where it is deemed necessary**, but may otherwise be disposed of where incurring storage costs would serve no useful purpose.

37. In compulsory liquidation and bankruptcy approval to dispose of an insolvent company or individual's books and records may be obtained from the official receiver. However, in administration and voluntary liquidation the official receiver will not have held office or otherwise be involved in the case administration. In these instances we consider that approval would need to be sought from the Secretary of State. Furthermore, in many instances it may be that the retention of books and papers would solely be for the benefit of taxation authorities. We therefore propose to seek permission from HMRC as a part of the process by which the Secretary of State will grant approval for the disposal of books and papers.

38. We estimate that the removal of this requirement will result in **savings of approximately £1.1m per annum**, as outlined in the Impact Assessment at Annex 3.

Q5. Do you agree that administrators and voluntary liquidators should be allowed to dispose of books and papers at any time with the

approval of the Secretary of State?

Q6. Can you provide an estimate of the proportion of administrations and voluntary liquidations where it is necessary to retain books and papers until one year after dissolution and the associated costs?

Q.7. Are you aware of instances where companies are being placed into compulsory liquidation because of the present requirements to retain books and papers in administration and voluntary liquidation?

3. Removal of requirement to seek permission for certain actions in liquidation and bankruptcy

39. This proposal would **remove the requirement for liquidators and trustees to obtain "sanction" (a form of permission) to exercise certain powers**, e.g. in a bankruptcy, to bring, institute or defend any action or legal proceedings relating to the property comprised in the estate. The proposal would enable all the powers contained within Schedules 4 and 5 of the Insolvency Act 1986 to be exercised without sanction. Whilst the changes would also affect the official receiver, in practice actions taken to protect or recover assets would in the vast majority of cases impact upon IPs acting as liquidator or trustee.

40. The requirement to obtain "sanction" to undertake certain actions exists to protect the insolvent estate, largely by restricting the exercise of certain powers that have a risk of resulting in a negative financial impact. This could for example include the commencement of certain legal proceedings, where an unsuccessful outcome may result in a reduced return to creditors. Sanction for these actions is currently required from the creditors' committee, or where there is none, from the Secretary of State.

41. The vast majority of sanction applications are made to the Secretary of State in the absence of a creditors' committee. They are largely routine in nature and are unlikely to require the exercise of significant discretion. As regulated professionals, IPs acting as liquidator or trustee are expected to act in the interests of creditors and should not undertake actions that are likely to have a negative financial impact on the estate. Such conduct may give rise to disciplinary concerns which may be addressed through the regulatory system, which did not exist when the requirement to obtain sanction was introduced.

42. **Sanction is not required in administration where the value of the assets can often be expected to be greater than in liquidation or bankruptcy**, although general permission to commence certain actions may be obtained from creditors through the approval of the administrator's proposals. No concerns have been raised about the ability of administrators to exercise all powers available to them either

without sanction or where permission has been obtained through approval of the administrator's proposals. Consequently, it is considered that the current requirement to obtain sanction in liquidation and bankruptcy is outdated and imposes a burdensome requirement that adds no practical value to the case administration.

43. The proposal builds on incremental changes made in 2010 which removed the requirement to obtain sanction for a limited number of actions, and will bring the regime for liquidation and bankruptcy into line with administration and administrative receivership, where no sanction at all is required. The proposal would affect both IPs and the official receiver when acting as liquidator or trustee.

44. Amendments would be required to a number of provisions in the Insolvency Act 1986, specifically sections 165, 166, 167, 314, and Schedules 4 and 5. Further amendments would need to be made to the Insolvency Regulations 1994.

45. We also propose to remove the requirement contained within the Insolvency Regulations 1994 for liquidators and trustees in compulsory winding up and bankruptcy to obtain authorisation from the Secretary of State to operate a local bank account in place of banking with the Insolvency Services Account.

46. We estimate that the removal of these requirements will result in **savings of approximately £0.8m per annum**, as outlined in the Impact Assessment at Annex 3.

Q8.	**Do you agree that the requirement to obtain sanction to exercise certain powers within Schedules 4 and 5 of the Insolvency Act 1986 should be removed?**
Q9.	**Do you agree that the requirement for liquidators and trustees in compulsory winding up and bankruptcy to obtain authorisation from the Secretary of State to operate a local bank account in place of banking with the Insolvency Services Account should be removed?**
Q10.	**Can you provide an estimate of the approximate cost of obtaining sanction in liquidation and bankruptcy?**

4. Removal of requirement to keep time records where remuneration is not on a time cost basis

47. This proposal would **remove the automatic requirement for IPs to maintain time records in all cases and restrict that requirement to those cases where the IP is seeking to be remunerated on a time cost basis.** This reflects changes made in 2010 whereby remuneration may be agreed on either a fixed fee, percentage of realisations or time

cost basis – or any combination of the three. It is proposed that the requirement to maintain time records be retained where any part of the remuneration sought is on a time cost basis.

48. The current requirement to maintain time records in all cases is contained within Schedule 3 to the Insolvency Practitioner Regulations 2005. As outlined in paragraph 26 above, a repeal of this Schedule is already being proposed as a part of the removal of the requirement to maintain a separate case record. A separate requirement contained within Regulation 36A of the Insolvency Regulations 1994 exists to enable creditors to request information about time spent on a case by IPs and their staff. Further information provision requirements are contained within Rules 1.55 and 5.66 of the Insolvency Rules 1986.

49. In circumstances where remuneration is sought on a fixed fee or percentage realisation basis, it is expected that IPs will record and provide sufficient information to creditors in order for them to make an informed decision about the appropriateness of the remuneration sought. If remuneration is not being sought on a time cost basis, the automatic requirement to maintain time records in all cases is an unnecessary regulatory burden which adds no practical value to the case administration. This is particularly the case in individual voluntary arrangements, where remuneration is often agreed with creditors on a fixed or percentage realisation basis.

50. The proposal would therefore amend the Insolvency Rules and Insolvency Regulations 1994 to require that time records only be maintained where any part of the remuneration sought is on a time cost basis.

51. We estimate that the removal of this requirement will result in **savings of approximately £1.2m per annum**, as outlined in the Impact Assessment at Annex 3.

Q11. Do you agree that the requirement to maintain time records where remuneration sought is not on a time cost basis should be removed?

Q12. Can you provide an estimate of the proportion of cases where remuneration is sought on a non-time cost basis?

Q13. Can you provide an estimate of the average cost of maintaining time records in an individual case?

Q14. Can you provide an estimate of the approximate proportion of cases where insolvency practitioners would dispense with maintaining time records if able to do so?

Annex 2: Part 1 – Table showing average hourly rates used in Impact Assessments for insolvency practitioners and their staff

Staff member	Average hourly rate
Insolvency practitioner	£375/hour
Manager	£250/hour
Administrator	£150/hour

Annex 3: Part 1 - Technical changes to regulations affecting insolvency practitioners

Impact Assessment

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Title:
Technical changes to regulations affecting insolvency practitioners

IA No:

Lead department or agency:
Insolvency Service (Exec Agency of BIS)
Other departments or agencies:

Impact Assessment (IA)

Date: 08/05/2013

Stage: Consultation

Source of intervention: Domestic

Type of measure: Primary legislation

Contact for enquiries:
Toby.Watkinson@insolvency.gsi.gov.uk

Summary: Intervention and Options

RPC Opinion: **Awaiting Scrutiny**

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
93.8m	TBC	0	Yes	**Out**

What is the problem under consideration? Why is government intervention necessary?

Red Tape Challenge has identified a number of regulations affecting the practice of insolvency practitioners that impose unnecessary regulatory burdens. These regulations are imposed by a combination of primary and secondary legislation and consequently can only be removed by Government intervention.

What are the policy objectives and the intended effects?

The objective is to implement savings in the cost of administering insolvency proceedings which should result in more money being returned to creditors.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Four proposals have been identified and assessed against the base cost of 'no change'. The preferred solution is to implement all proposals together, although they may each be implemented separately, or not at all. All proposals are deregulatory in nature and can only be implemented by legislative amendment.

Proposal 1 – Removal of requirement to maintain separate case record

Proposal 2 – Allowing earlier destruction of books and papers

Proposal 3 – Removal of requirement to seek sanction (a form of permission) for certain actions in liquidation and bankruptcy

Proposal 4 – Removal of requirement to keep time records where remuneration is not on a time cost basis.

Will the policy be reviewed? **If applicable, set review date:**

Does implementation go beyond minimum EU requirements?			**No**		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 **Yes**	Small Yes	Medium Yes	Large Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: ..... **Date:** .....

Summary: Analysis & Evidence Proposal 1

Description: Removal of requirement to maintain separate case record

FULL ECONOMIC ASSESSMENT

Price Base Year **2013**	PV Base Year **2013**	Time Period Years **10**	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 67.1

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low				
High				
Best Estimate	**0**			0

Description and scale of key monetised costs by 'main affected groups'

N/A.

Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low				
High				
Best Estimate	**0**		**7.8**	**67.1**

Description and scale of key monetised benefits by 'main affected groups'

The monetised benefit relates to the time cost savings resulting from the removal of the requirement to maintain a separate case record. This has been calculated at £7.8m pa (see evidence base)

Other key non-monetised benefits by 'main affected groups'

N/A

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

The saving has been attributed to 80% of insolvency cases in which insolvency practitioners are appointed. The task has been allocated a notional time cost of 1hr at a charge out rate of £150.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			**In scope of OIOO?**	**Measure qualifies as**
Costs:	**Benefits:** 6.5	**Net:** 6.5	Yes	**Out**

Summary: Analysis & Evidence Proposal 2

Description: Allowing earlier destruction of books and papers

FULL ECONOMIC ASSESSMENT

Price Base Year **2013**	PV Base Year **2013**	Time Period Years **10**	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 9.5

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low				
High				
Best Estimate	**0**			0

Description and scale of key monetised costs by 'main affected groups'

N/A.

Other key non-monetised costs by 'main affected groups'

There will be minor costs associated with obtaining approval from the SoS to dispose of books and papers at an earlier stage. These costs would fall mainly on the public sector and are expected to be negligible in proportion to the benefits, and have therefore not been quantified at this stage.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low				
High				
Best Estimate	**0**		**1.1**	**9.5**

Description and scale of key monetised benefits by 'main affected groups'

The monetised benefit relates to the storage cost savings resulting from the ability to dispose of books and papers earlier where permission has been obtained from the SoS. This has been calculated at £1.1m pa (see evidence base)

Other key non-monetised benefits by 'main affected groups'

N/A

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

The saving has been estimated at £100 per case on average.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			**In scope of OIOO?**	**Measure qualifies as**
Costs:	**Benefits:** 0.9	**Net:** 0.9	Yes	**Out**

Summary: Analysis & Evidence Proposal 3

Description: Removal of requirement to seek permission for certain actions in liquidation and bankruptcy

FULL ECONOMIC ASSESSMENT

Price Base Year **2013**	PV Base Year **2013**	Time Period Years **10**	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 6.9

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low				
High				
Best Estimate	**0**			0

Description and scale of key monetised costs by 'main affected groups'

N/A.

Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low				
High				
Best Estimate	**0**		**0.8**	**6.9**

Description and scale of key monetised benefits by 'main affected groups'

The monetised benefit relates to the removal of the requirement to obtain sanction from the Secretary of State to exercise certain powers. The savings represent the time costs directly associated with making sanction applications. These are estimated at £0.8m pa (see evidence base).

Other key non-monetised benefits by 'main affected groups'

There will be administrative savings for the official receiver in a small number of cases where applications for sanction will no longer be required, and administrative savings for Government in no longer having to process sanction applications from insolvency practitioners. Since these savings accrue to the public sector and are negligible in proportion to the savings attributable to insolvency practitioners they have not been quantified in this assessment.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

That sanction applications take 1 hour at £250 per hour.
That applications to operate a local bank account take 0.5 hours at £150 per hour

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			**In scope of OIOO?**	**Measure qualifies as**
Costs:	**Benefits:** 0.7	**Net:** 0.7	Yes	**Out**

Summary: Analysis & Evidence Proposal 4

Description: Removal of requirement to keep time records where remuneration is not on a time cost basis

FULL ECONOMIC ASSESSMENT

Price Base Year **2013**	PV Base Year **2013**	Time Period Years **10**	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 10.3

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low				
High				
Best Estimate	**0**			0

Description and scale of key monetised costs by 'main affected groups'

N/A.

Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low				
High				
Best Estimate	**0**		**1.2**	**10.3**

Description and scale of key monetised benefits by 'main affected groups'

The monetised benefit relates to the removal of the requirement for insolvency practitioners to maintain time records in cases where remuneration is agreed on a basis other than time cost. This saving is estimated at £1.2m pa (see evidence base).

Other key non-monetised benefits by 'main affected groups'

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

That savings will accrue largely in the individual voluntary arrangement (IVA) procedure.
That a saving of £50 per case will accrue by no longer having to maintain time records.

BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			**In scope of OIOO?**	**Measure qualifies as**
Costs:	**Benefits:** 1.0	**Net:** 1.0	Yes	**Out**

Evidence Base (for summary sheets)

Scope of impact assessment

1. This Impact Assessment (IA) considers the likely costs and benefits of the four proposals. It is hoped that stakeholders will be able to provide further evidence to help quantify these further.

2. The purpose of this IA is to seek views and evidence from stakeholders on the likely costs and benefits of all the proposals to help inform the decision making process.

Affected Groups

3. The main affected groups will be:
   - Insolvency professionals and their staff;
   - Government in respect of internal administrative processes;
   - Government, in respect of any consequential amendments required to UK legislation;
   - Businesses and individuals who are creditors of entities and individuals subject to insolvency proceedings.

Costs and benefits

Proposal 1 – Removal of requirement to maintain separate case record

4. This proposal removes the requirement for insolvency practitioners to keep a separate case record of information pertaining to a number of matters including case administration, progress, bonding, remuneration and meetings. The following assessment has been made of the present costs of complying with this requirement, based upon internal estimates and information provided by a regulator.

5. The requirement to maintain a separate case record applies across all insolvency procedures where an insolvency practitioner is appointed. Based upon discussions with a regulator, it has been assumed that in 80% of those cases duplicate information is created and held by the insolvency practitioner as this is perceived necessary to comply with the requirement. Based upon those discussions and in light of the extent of the requirements it is further assumed that 1 hour per case is spent undertaking this task. A notional rate of £150 per hour has been applied, which reflects the charge-out rate of a relatively junior member of staff undertaking insolvency case administration.

6. It is expected that following removal of the requirement, insolvency practitioners will immediately cease creation and maintenance of a separate case record that duplicates information already held. The saving will result from the cessation of the perceived need to maintain a ‘duplicate’ record of information in a separately identifiable format. There are consequently not expected to be any transitional costs as once insolvency practitioners are aware that the requirement has been removed compliance will no longer be necessary.

7. The following table outlines the potential annual savings attributed across all insolvency procedures:

Procedure	CVL	Para 83 CVL	Admin	CWU IP	Bkcy IP	CVA	IVA
No. of cases (80% of total[1])	9,120	800	1,840	480	2,320	640	36880
Saving per case (1hr)	£150	£150	£150	£150	£150	£150	£150
Saving	£1,368,000	£120,000	£276,000	£72,000	£348,000	£96,000	£5,532,000
Total	**£7,812,000**						

Proposal 2 - Allowing earlier destruction of books and papers

8. This proposal will allow insolvency practitioners acting as administrators and voluntary liquidators to dispose of a company's books and papers with the approval of the Secretary of State. The following assessment has been made of the possible savings associated with this proposal, based upon internal estimates.

9. The savings will result from a reduction in unnecessary storage costs as books and papers will only be retained where it is deemed necessary. A notional cost of £100 has been attributed to each case as an average saving and is net of any cost associated with obtaining approval for disposal of books and papers, which is expected to be negligible. In some cases the saving may be much greater where the books and papers are bulky, and in other cases they may be no saving at all if it is deemed necessary to retain books and papers. This figure therefore represents an average saving taking into account that in some cases no savings will be made, but in others savings may be more significant.

10. The following table outlines the potential annual savings attributed across the administration and liquidation procedures:

Procedure	CVL	Para 83 CVL	Admin
Total no. of cases FY12/13	11,400	1,000	2,300
Cases with books and papers[2]	9,120	1,000	1,200
Saving per case	£100	£100	£100
Saving	£912,000	£100,000	£120,000
Total	**£1,132,000**		

[1] Based upon insolvency statistics for FY2012/13: http://www.insolvencydirect.bis.gov.uk/otherinformation/statistics/insolvency-statistics.htm

[2] 80% of CVLs assumed to have books and papers; all Para 83 CVLs assumed to have books and papers; Administration figure reduced to reflect exits by Para 83 CVL and a notional 100 companies rescued where books and papers returned

Proposal 3 - Removal of requirement to seek sanction for certain actions in liquidation and bankruptcy

11. This proposal removes the requirement for liquidators and trustees to obtain sanction to exercise certain powers, enabling them to exercise all powers contained within the Insolvency Act 1986 without sanction. Liquidators and trustees will also be able to operate a local bank account instead of banking with the Insolvency Services Account without the need to obtain sanction. The following assessment has been made of the possible savings associated with this proposal, based upon internal estimates of the number and type of sanction applications received.

12. Sanction applications made pursuant to the provisions in the Insolvency Act 1986 are generally made in respect of the commencement of legal proceedings, for example in relation to recovery actions against former directors or in relation to the recovery or realisation of property. It is therefore assumed that this task would be undertaken at a mid-range insolvency case administration level, at a notional charge out rate of £250 per hour. Based upon the Insolvency Service's experience of determining sanction applications on behalf of the Secretary of State, it is assumed that the process of making an application will take 1 hour per case. This cost only represents that of directly making an application to the Secretary of State, as it is expected that any legal or other consideration given as to whether to commence any particular action would need to be undertaken in any event.

13. In relation to sanction required to operate a local bank account, a lower charge out rate of £150 has been assumed as the majority of these applications are routine in nature. Such applications have been assumed to take 0.5 hours per case.

14. The following table outlines the potential annual savings attributed across the bankruptcy and liquidation procedures:

Procedure	**CWU and Bkcy (IP sanction requests)**	**CVL**	**CWU and Bkcy (IP local bank account sanction)**	**Bkcy (OR)**	**CWU (OR)**
No. of sanction requests	2,200	1,000	50	18	2
Cost per request	£250	£250	£75	0	0
Saving	£550,000	£250,000	£3,750	0	0
Total	**£803,750**				

15. Whilst the table indicates that there may be some minor administrative savings for the official receiver since these accrue to the public sector and are negligible in proportion to the savings attributable to insolvency practitioners they have not been quantified in this assessment. Savings which accrue to Government through the removal of the requirement to process sanction applications have also not been quantified but are expected to be negligible.

Proposal 4– Removal of requirement to keep time records where remuneration is not on a time cost basis

16. This proposal removes the automatic requirement for insolvency practitioners to maintain time records in all cases, and will restrict that requirement to those cases where the insolvency practitioner is seeking to be remunerated on a time cost basis.

17. No data is available on the proportion of insolvency cases where remuneration is agreed on either a fixed fee or percentage of realisations as opposed to a time cost basis. In practice, the procedure in which it is most likely that remuneration is agreed on a fixed fee or percentage of realisations basis is the individual voluntary arrangement (IVA). Many IVAs are agreed on the basis of an industry protocol that governs how matters within the arrangement, including remuneration, are dealt with. Remuneration in such protocol compliant IVAs is not agreed on a time cost basis, and it is therefore these cases in where the majority of savings resulting from the removal of the requirement to keep time records is expected to accrue.

18. Information obtained from industry experts indicates that 71% of IVAs are protocol compliant. As remuneration in these cases is not agreed on a time cost basis there would no longer be a need to maintain time records in those cases. Insolvency statistics[3] indicate that in 2012/13, there were approximately 46,100 IVAs. Accordingly, 32,731 (71%) of these are assumed to have been protocol compliant. It is further assumed that the cost of maintaining time records in each case is £50, representing around 20mins of time charged at the most junior level. This is a relatively modest estimate on the basis that the majority of such cases are relatively straightforward in nature, and may involve the input/recording of time data by relatively junior staff. Discussions with insolvency practitioners indicate that the majority would cease to maintain such records in IVAs if no longer required to do so, although it is expected that some insolvency practitioners would in any event continue to do so. It is therefore further assumed that in 75% of protocol complaint cases, insolvency practitioners would cease to maintain time records, resulting in a saving of £50 per case. The estimated total saving is therefore **£1,227,413** (32,731 x 75% x £50).

19. No estimate has been made in respect of other insolvency procedures where remuneration is not agreed on a time cost basis, as the proportion of such cases is likely to be relatively small in relation to the potential savings identified above.

[3] http://www.insolvencydirect.bis.gov.uk/otherinformation/statistics/historicdata/IndividualInsolvencies.xls

Part 2 – Changes to the law governing insolvency processes

Background

52. The UK's insolvency law framework as we understand it today was established in the second half of the 19th Century. Despite major revisions in 1986 and again in 2002, some of the processes in insolvency procedures are essentially unchanged from these Victorian beginnings. Commerce, communications and credit have all changed greatly over this period - some parts of this insolvency framework, while important and relevant when first formulated, may no longer be relevant for today's insolvency market.

53. This document proposes a number of changes to how insolvency proceedings operate, in three broad themes;

    - meetings of creditors;
    - communication and creditor engagement; and
    - improving insolvency processes.

54. The main proposals under each heading - those which have the greatest impact - are outlined below. There are a number of smaller proposals under each heading and these are outlined in each theme's Annex.

55. Each proposal is addressed separately and, where relevant, indicative costs and benefits have been included within the Impact Assessment at Annex 7. For each proposal we are seeking views on the policy impact and on likely costs and benefits. A full list of consultation questions is contained at Annex 10.

A. Part 2 - Proposed changes – Meetings of Creditors

1. Removal of meetings of creditors as the default position in insolvency proceedings

56. Calling a meeting of creditors is the default position to ascertain creditors' wishes in all insolvency procedures. Even where meetings can be dispensed with this is depicted as an exception to the default position that there must be a meeting. For example, in an administration the administrator must call a meeting *unless* he/she does not think that there will be funds available for unsecured creditors.

57. This defaulting to meetings dates back to the Victorian beginnings of modern insolvency law. Meetings, as a way of seeking the views or sanction of creditors and members, were a feature of nineteenth century insolvency legislation.

58. A physical gathering of interested parties, in order to reach a majority view on future progress, was logical when financial failure was a local matter and where there were no modern forms of communication Controlling the insolvency through physical gatherings of creditors was the only sensible (and viable) option.

59. As insolvency law developed throughout the 20th century, these features were retained. Where new insolvency procedures were developed - such as administration, company

voluntary arrangements and individual voluntary arrangements – they too incorporated meetings within their structure, modelled on those procedures that had gone before them.

60. In the 21st Century, creditor bases are likely to be national or even international and the debtor/creditor relationship itself is likely to be less personal. Attempting to call a physical gathering of interested parties is anachronous in many cases.

61. There are now a number of ways in which information can be passed between parties interactively. Changes to the law in 2010 for the first time enabled meetings to be held via non physical means but the central requirement to have a meeting (or make an informed decision not to have one) still remained.

62. Government is considering whether this need to have a meeting is necessary in all those cases where they currently take place. The option for insolvency office-holders to call a meeting - identical to those held now - where they think that such a meeting is of value to the procedure, **will continue**. But where the meeting is thought of no value or likely to simply be a paper exercise, we would expect the office-holder not to call one.

63. We propose that in future the default position will be that there will be **no** meeting, unless the office-holder believes that it would have value, or creditors want one.

64. We envisage that, with some exceptions, in those cases where there is thought no value to a meeting, the office-holder will issue documents to the creditors informing them of an event (as happens now) and that the contents of these documents are approved (if approval is required for that document/event) **unless 10% or more by value or by number of creditors object in writing[4].** This objection would be to the office-holder, not to the court. We refer to this process as one of "deemed consent" in the rest of this Part of the consultation.

65. Measuring creditors' claims by volume in addition to by value is a departure from the norm in UK insolvency law. It is being used here to ensure that smaller creditors do not become disenfranchised by the new deemed consent process and, should they want their say on proposals - or to question the insolvency office-holder - that they have a simple avenue to follow in order to do so. **Any resolution at a meeting would still require a simple majority by value of claims (or, for a voluntary arrangement, 75% or more by value).**

66. Creditors would not need to organise among themselves in order to reach the 10% threshold before approaching the office-holder (as they do now, if requisitioning a meeting from an office-holder). Individual creditors would raise their objections to the insolvency office-holder and he or she would collate them and calculate if the 10% threshold has been reached. Should the office-holder call a meeting as a result of these objections, this cost would not be borne by the objecting creditors – it would be an insolvency expense.

67. This proposal would mean, in practice:

- Creditors meetings in voluntary liquidations (also known as 'section 98 meetings') would not necessarily be required in every case. The liquidator appointed by the company would inform creditors of his/her appointment and, unless sufficient numbers objected, that liquidator would stay in place
- Administrators' proposals would be accepted unless sufficient creditors informed the administrator that they objected, at which point a meeting could be called
- Where he/she thought appropriate, the official receiver would write to creditors seeking nominations as trustee/liquidator, with such nominations handled via correspondence.

[4] Following changes to the law in 2010, 'in writing' would include an objection made in an electronic form, such as an email.

68. The office-holder would have to provide creditors with clear, simple and easy to achieve methods in which they could raise objections. The office-holder would also have to explain fully the effect that not raising an objection would have.

69. We envisage that there would be some limited exceptions to deemed consent:

- The setting of the basis of an insolvency office-holder's remuneration is excluded from this proposal – the active consent of creditors would continue to be required for this.
- In a company or individual voluntary arrangement, **the nominee would still require the approval of 75% or more responding creditors** but it would be for the nominee to decide whether a meeting be called or whether this agreement could be sought by correspondence.

70. Deemed consent is not a measure to free an IP or an official receiver from properly engaging with the creditors, nor is it a measure that will abolish all meetings from taking place in all procedures. We expect that the overall **quality of engagement** will improve, as meetings will only be held when the office-holder thinks that it is the best way of achieving engagement with creditors or where the creditors want a meeting. Meetings that are, essentially, only paper exercises that exist only to meet a (potentially costly) statutory requirement will no longer need to be held.

71. The existing provision whereby creditors can requisition a meeting at any time during the procedure (at their cost) will be unaffected by this proposal. Similarly, the power of the insolvency office-holder to call a general meeting of creditors at any time will be unchanged.

72. It is estimated that the removal of this requirement will result in a reduction of about 30% in the volume of meetings held **saving approximately £2.1m per annum**, as outlined in the Impact Assessment at Annex 7.

Q15. Do you think that meetings always serve a purpose where held?

Q16. Do you agree that meetings of creditors should no longer be the default position of gauging creditor opinion?

Q17. Do you think some groups' interests will be unfairly harmed by such an approach with meetings of creditors? If so, do you think such harm could be avoided by incorporating statutory protections?

Q18. Are there decisions (other than those relating to the approval of voluntary arrangements or an office-holder's remuneration) that you think should only be considered at a meeting of creditors?

Q19. Do you think that 10% is a reasonable threshold for objecting creditors? If not, what do you think it should be?

2. Abolition of all final meetings of creditors in liquidation and bankruptcy

73. A final meeting of creditors is required in all voluntary liquidations and in all compulsory liquidations and bankruptcies where an IP is liquidator or trustee. No final meeting is

required in an administration, administrative receivership, and voluntary arrangement or where the official receiver is office-holder in a compulsory liquidation or bankruptcy.

74. Liquidations and bankruptcies can take a number of years to complete, depending on the nature of assets that the office-holder has to deal with. Final meetings in such cases are poorly attended, if attended at all, being held so long after commencement. Little, if any, value is added by such meetings but they create an additional cost to the procedure.

75. It is proposed that the need to have a final meeting is abolished in **all** cases where they are now required. Information on the case will still be provided to the creditors, who have rights to ask for further information if they wish. These existing rights will be unaffected.

76. Should, rarely, there be matters that the office-holder did want to meet with creditors about towards the end of a case, the office-holder's right to call a general meeting of creditors at any time (which is not being amended) could be used.

77. We estimate that the removal of these requirements will result in **savings of approximately £6.98m per annum**, as outlined in the Impact Assessment at Annex 7.

Q20. Do you find final meetings to be poorly attended?

Q21. Do you agree that all final meetings should be abolished?

3. Minor Changes to Meetings of Creditors

78. The abolition of final meetings excepted, it is not intended (or anticipated) that the proposals relating to meetings will eliminate all meetings of creditors. In many cases, the office-holder will consider that a meeting of creditors **is** the best way of engaging with creditors and such meetings will continue.

79. Some parts of the existing statutory framework that regulate the holding of meetings of creditors and how creditors can vote or be represented at them are unnecessarily bureaucratic. Where meetings are held, Government wishes for them to be flexible for all parties and free from unnecessary administrative burdens.

80. It is proposed to make a number of minor and technical amendments to the law governing the procedure of meetings. These are detailed in Annex 4.

81. We estimate that the removal of this requirement will result in **savings of approximately £1.59m per annum**, as outlined in the impact assessment at Annex 7.

Q22. Do you have any comments on any of the minor proposals on meetings of creditors included in Annex 4?

B. Part 2 - Proposed changes – Communication and Creditor Engagement

82. Insolvency proceedings are carried out in creditors' interests. However, some statutory interactions between creditors and an office-holder can be bureaucratic and of little use to either party. Government wants to increase the **quality** and **ease of communication** between the two parties, while reducing overly burdensome, inflexible and unnecessary contact.

1. Opting out of further correspondence

83. To ensure creditors are kept well-informed of developments, insolvency legislation requires office-holders to send a variety of documents to creditors throughout the course of an insolvency. For example, in an administration, the documents that an administrator has to send to creditors include;

- Notice of his/her appointment at the commencement of a case;
- Proposals for achieving the objective of the administration within 8 weeks of the commencement;
- The result of a meeting of creditors or that the proposals have been deemed approved without a meeting;
- A progress report after 6 months (and every 6 months thereafter);
- Notice of any extension to the period of administration granted by the court or with consent of creditors;
- Notice that there is to be a dividend or that there is to be no dividend and, where appropriate, to subsequently distribute that dividend;
- A final progress report at the end of a case.

This information has to be forwarded regardless of any continuing interest that a creditor has in a case, which may be small if told at the outset that the chances of a distribution are slim.

84. Since 2010, this information has been permitted to be sent by electronic means (with the written consent of the creditor), or to be held on a website (with notice of this fact given to creditors).

85. What has never been permitted is for a creditor to inform the office-holder that they no longer wish to receive **any** further information on a case. This means that, in practice, office-holders have to produce and dispatch correspondence to creditors, many of whom have no continuing interest in a case having already written off their debt. In effect, office-holders are printing and posting documents to some creditors that are destined to be thrown away, unread. This is inefficient, and wasteful.

86. In future, a creditor would be able to notify the office-holder that they do not want to receive any further correspondence on a case and the office-holder will be required to omit them from future mailings, thereby easing the administrative burden on the procedure.

87. As asset-related matters may prove fluid over time, notices in relation to **distributions** will be excluded from this provision (other than any notice required stating that there will be no distribution or no further distribution).

88. This proposal is intended as a **flexible tool**, to remove the burden from creditors of receiving unwanted, sometimes quite lengthy, correspondence. Reducing the number of such documents posted to creditors will also lower the cost of the insolvency itself. Creditors who are content to continue to receive information will not have to inform the office-holder – receipt of documents will continue to be the default position.

89. It is estimated that the implementation of this proposal will result in **savings of approximately £5.1m per annum**, as outlined in the Impact Assessment at Annex 7.

90. There is an alternative to this proposal upon which we are also seeking comments. In this alternative, rather than a creditor informing the insolvency office-holder that it would like to opt out of further correspondence, there would instead be **trigger points** at which further information would **automatically** cease to be issued. The insolvency office-holder would inform the creditors when a trigger point had been reached and what this would mean for their class of creditors.

91. These trigger points would be set at points where creditors were thought by the insolvency office-holder to have no further economic interest in a case (i.e. no further funds would be distributed to them). This could be further broken down by class creditor. For example, preferential creditors might continue to receive information on a case but unsecured non-preferential creditors would not, if it was thought that there would only be a distribution to preferential creditors.

92. If there was an unexpected 'windfall' in the insolvency after such a trigger point (one which increased the prospects of a return), the office-holder could re-open correspondence with creditors, informing them of this fact.

93. Should a creditor wish to continue receiving information after a trigger point was applied to them, they could do so, if they informed the office-holder in writing.

Q23. Do you agree that creditors should be able to opt out of receiving correspondence sent by the insolvency office-holder?

Q24. Do you think that creditors should stop receiving documents <u>automatically</u> at the point they cease to have an economic interest in an insolvency? If so, should individual creditors be able to request that the insolvency office-holder continue to send them documents after this point?

2. Increased use of websites in insolvency proceedings

94. In 2010 changes to the law permitted, for the first time, office-holders to upload statutory insolvency documents to a website, instead of sending hard copies to all creditors. Where the provision is utilised, the office-holder must send notice to creditors, giving the relevant web address, each time fresh documents are made available. Where sending such notices is thought disproportionate to their benefit, the office-holder can apply to court for an order that the office-holder send one notice to creditors that **all** future documents be placed on a website.

95. Government wishes to encourage the use of websites in insolvency proceedings, to increase flexibility and reduce costs. We believe that the existing need to apply to court

acts as an unnecessary economic barrier to greater electronic distribution of information. Where the office-holder considers that uploading statutory insolvency documents to a website, instead of sending hard copies, will not unfairly disadvantage creditors, we propose that **the requirement for a court order** that all future documents are placed on a website **be scrapped**.

96. As is the case now, a creditor will be able to ask for hard copies at no charge after the document is placed on the website and these must be sent within 5 business days of the request.

97. It would be open for an office-holder, as it is now where websites are used, to implement an automatic email notification system when new documents are uploaded to a website.

98. This will be a flexible tool for office-holders to use in appropriate cases. In some cases, office-holders may only want one document published on a website – a set of proposals in administration, for example – and would not want to commit to all notices relating to the insolvency being on a website. Accordingly, this new provision will sit alongside the existing provision that single documents can be displayed on a website, with notices on how to access sent to creditors at that time.

99. The 2010 changes to the law to allow, with the court's permission, upload of all statutory insolvency documents on a case to a website with only an initial notice to creditors has not been evaluated, but we think that the take up has been low. Consequently we have not been able to estimate the savings from the implementation of this measure but are seeking evidence as part of this consultation.

Q25. Do you know how often the existing (post-2010) provisions regarding use of websites in insolvency proceedings are used? Do you think that this measure will increase their usage, and if so by how much?

Q26. Do you agree with the proposal to remove the role of the court where the office-holder intends to place all documents on a website, with only one initial notice to creditors of this fact?

3. Reduction in Unnecessary Contact

100. Amendments to the insolvency legislation are also proposed to reduce unnecessary contact between the office-holder and creditor, by use of websites. This will complement the preceding proposal.

101. For example, currently an administrator has to notify creditors if there is to be a meeting of creditors and must then notify them again to inform them of the result of that meeting. These two contacts may be under three weeks apart.

102. Important information is being passed – to attend a meeting, to know of its outcome – which we would not want dissipated. However, the close proximity of the two events (and the notifications required for each) is wasteful.

103. We propose that, wherever two such close contacts are required, that the first notice may also state that the second notification (for example, the outcome of a meeting of creditors) will be available on a website (and when it will become available).

104. This would not be a mandatory requirement – it would be for the office-holder to decide whether it would be in the overall interest of creditors to use this procedure. If the office-holder felt that individual notice was required of two events in close proximity with each other, this would still be possible.

105. In the example used at paragraph 98, a notice of an administration meeting would state when the meeting would be held but also when the outcome of the meeting would be available on a website. No further notice of this outcome would be given.

106. This is a separate proposal to that listed in section 2 above on increasing the use of websites. It is anticipated it could be used in cases where it was not the office-holder's wish for all documents to be placed on a website.

107. The use of this proposal by office-holders is dependent on the take up of the preceding one (on which we were unable to estimate savings without further data). Consequently we have not been able to estimate the savings from the implementation of this measure but are seeking evidence as part of this consultation.

Q27. Do you agree that facilitating greater use of websites as described here could reduce unnecessary contact between the office-holder and the creditors? Or do you think that individual notice is always required?

4. Liquidation and Creditors' Committees

108. In administration, administrative receivership, liquidation and bankruptcy, the creditors can form a committee (of between 3 and 5 members) to assist the office-holder in discharging his/her duties. This is a structure that dates back to Victorian insolvency legislation and its 'committees of inspection'.

109. The level of creditor engagement is a long-standing issue in insolvency matters – how can creditors be encouraged to devote time and energy to assist and oversee an insolvency office-holder? Creditors will already have lost out as a result of the failure. It is understandable that they may be unwilling to devote their time and energy to the administration of their debtor's failure. It is thought that there are committees formed in only around 3% of insolvency procedures.

110. Consideration was given as part of the Red Tape Challenge to changing committees but it was felt that, where they *are* formed, they are a useful tool to progress the insolvency, to assist the office-holder and to give a degree of control on the part of the creditors.

111. On 15 July 2013, Professor Elaine Kempson's review of insolvency practitioner fees was published (http://www.bis.gov.uk/assets/insolvency/docs/insolvency%20profession/ip-fees-review-july-2013.doc). Professor Kempson highlighted the lack of unsecured creditor engagement in insolvencies and the low level of formation of committees by creditors.

112. Government is, however, interested to hear stakeholders' views on committees and on engagement generally, in the light of both the Red Tape Challenge and of the Kempson Review.

Q28. Do creditors'/liquidation committees continue to play a worthwhile role

where they are formed? Could more be done, through the committee structure or otherwise, to increase creditor engagement in insolvency procedures?

5. Minor Changes to Communication and Creditor Engagement

113. It is proposed to make a number of minor and technical amendments to the law governing communication and creditor engagement. These are detailed in Annex 5.

Q29. Do you have any comments on any of the minor proposals on communication and creditor engagement included in Annex 5?

C. Part 2 - Proposed changes - Improving insolvency processes

114. In the final section of this Part of the consultation, there are a number of proposals that aim to improve and streamline all insolvency processes.

1. Administration extensions

115. Under current legislation, administrations automatically end after 12 months. They can be extended beyond this time;
    - With the consent of creditors (once only, for 6 months and not following an extension by the court); or
    - Otherwise as permitted by the court.

116. Administration is intended as a **dynamic** rescue procedure and, other than in exceptional cases, should not take a lengthy period of time to conclude.

117. IPs who responded to the Red Tape Challenge initiative asked that this limit be removed, as it resulted in costly applications to court in many cases.

118. Between its inception in 1986 and changes to the law in 2003, administration had no upper time limit. The inclusion of a time limit in the revamped, streamlined administration procedure introduced by the Enterprise Act 2002 was to ensure that the process became rapid and efficient. Removing the current time limit could endanger this.

119. It is appreciated that court applications can be costly, costs that are ultimately borne by creditors in reduced returns. However, completely removing the time limit could also be costly to creditors– the longer a case goes on for, the higher the costs can be expected to be.

120. Research indicates that between 40-45% of administrations end within a year, with around 80% being completed within 18 months. Fewer than 8% of administration last for over two years.

121. To ease the burden on administration costs, while still encouraging a swift resolution to the procedure, we propose to allow creditors to extend the length of administration from the current 6 months to 12 months (a 6-month only extension would remain an option).

122. This will balance reducing costs - by limiting the need for applications to court - with not unnecessarily loosening the control of creditors over the length of the procedure.

123. It is estimated that this measure will result in **savings of approximately £0.98m per annum**, as outlined in the Impact Assessment at Annex 7.

Q30. Do you agree that creditors should be able to extend administrations for 6 or 12 months, rather than only 6?

Q31. Do you think that creditors should be able to extend administrations beyond 12 months? If so, what should the maximum period of an extension be?

2. Fraudulent and Wrongful Trading

124. The fraudulent and wrongful trading provisions in the Insolvency Act allow a liquidator to take action against directors where the company has, with their knowledge;

- Carried on the business with the intent to defraud creditors or for any fraudulent purpose (**fraudulent trading**);or
- Continued to trade the company when the director knew, or ought to have known, that there was no way that it would avoid insolvent liquidation (**wrongful trading**).

125. In both instances, a successful case presented by the liquidator can lead to the responsible directors being ordered to make a contribution to the insolvent company's assets.

126. Neither provision is a sanction available to administrators. If an administrator considered that wrongful or fraudulent trading had taken place in a company over which he/she was appointed and the administrator was unable to rescue the company, the administrator would have to put the company into liquidation to pursue such an action. This is an unnecessary move, which increases the costs (and so reduces the assets available for creditors) of the insolvency.

127. If the administration is not yet ready to be concluded and so liquidation cannot be commenced, proceedings against the relevant directors are delayed.

128. The Government proposes extending the powers available to a liquidator to take action against directors for wrongful or fraudulent trading to an administrator. This proposal is separate from – and complementary to – the section on 'Improving financial redress for creditors' in the 'Transparency and Trust' discussion paper launched by the Secretary of State, the Rt. Hon Vince Cable MP, on 15 July.

https://www.gov.uk/government/consultations/company-ownership-transparency-and-trust-discussion-paper

Q32. Do you agree with the extension of wrongful and fraudulent trading provisions to administration?

Q33. Could you estimate the financial benefit of this proposal? Are there cases you are aware of in the past, where the current law has hampered recovery action?

3. Payment of Dividends

Claims for small debts

129. To receive a payment in an insolvency, a creditor must first submit a claim to the office-holder, which must contain certain statutory information. The office-holder may ask for further evidence from the creditor if thought necessary. Such claims must be scrutinised by the office-holder prior to distribution.

130. This process creates a burden on both the creditor, in having to complete the claim form and on the insolvency itself, in the office-holder spending time verifying the claim. It is possible that, for smaller claims in cases where a comparatively small distribution is expected, this burden may itself deter creditors from making claims.

131. It is proposed that, for debts valued at under £1,000, an office-holder will not need to require a claim form from the creditor and will instead be able to pay a dividend based on the debt as listed in the insolvent's statement of affairs, or in its accounting records. This will save time for the creditor and lower the cost of the insolvency. NB: The £1,000 proposed relates to the level of the creditor's **debt,** not the expected dividend.

132. Where the creditor disputes the amount shown in the insolvent's statement of affairs or accounting records, they will still be able to submit a claim and provide documentary evidence in support of it. Where the insolvency office-holder is unclear on the amount owed, or has other doubts regarding the claim – if it is to a connected party, for example - he or she may still require a claim form and/or ask for documentary evidence from the creditor.

133. We estimate that this measure will result in **savings of approximately £2.73m per annum**, as outlined in the Impact Assessment at Annex 7.

Scrap the requirement to pay small dividends

134. Dividends paid by an insolvency office-holder may have a very low monetary value, potentially less than the expense of raising the payment and/or the cost borne by the creditor in processing it once received.

135. There is currently no statutory facility whereby an insolvency office-holder can decide not to make a payment of distributable funds. Neither is there a provision whereby a creditor can opt out of receiving a small value claim, even if the amount is less than the cost of banking it.

136. Creditors can, understandably, be confused or even annoyed when sent a cheque for a value of less than the cost of the postage that it required to send it. Anecdotally, we are aware of cases where large volumes of correspondence from creditors – telephone calls, letters and emails – arise from the issue of low value dividends. Dealing with this correspondence itself increases the cost of a procedure, in addition to the costs associated with raising the dividend itself.

137. We propose that, where a payment to a creditor would be less than a certain sum, the insolvency office-holder not make the payment. The funds not distributed as a result of this change would not be retained by the insolvency office-holder. We did consider whether such funds should be made available for distribution to creditors expected to receive a sum greater than the minimum dividend, but that would entail a further calculation which would add additional cost. We propose that the funds be used for insolvency investigation and enforcement purposes (e.g. director disqualification) or be paid to HM Treasury.

138. This will reduce a burden on creditors, limit the costs of the insolvency and, if the funds are used for investigation and enforcement purposes, benefit the wider interests of the creditor community.

139. We are interested in hearing opinions on the value that a dividend would have to fall below in order to be treated in this way. Government considers a payment of less than £5 or possibly £10 may be a suitable level for this treatment.

<u>Abolish the right for creditors to be able to claim their unredeemed dividends in perpetuity</u>

140. To participate in a distribution from an insolvency, the creditor must first submit details of their claim to the office-holder, who must scrutinise it before he/she can approve it for payment. Once a claim has been approved, the creditor will receive all future dividends in respect of their debt (though in future this may be curtailed by the preceding proposal).

141. Dividend cheques, as with all cheques, are only able to be cashed within 6 months of issue. However, the right of a creditor whose cheque has lapsed to receive that money from the insolvency does not expire along with that cheque. Rather, creditors may claim such dividends from the office-holder or, where the payment has been passed to the Secretary of State (as the law provides may happen after a certain period), from him.

142. There is no upper limit after which a creditor can no longer claim such sums, and claims can be made years after the original payment has been issued. This places a record-keeping burden on the office-holder or the Secretary of State.

143. It is proposed that the right of a creditor to claim money that has been distributed but where the payment has not been cashed be limited to 6 years after the relevant distribution. Such sums would be used for the same purpose as the small dividend payments discussed in the preceding proposal.

Q34. Do you agree that low value dividends should not be distributed? If you do, is £5 or £10 an appropriate minimum dividend level? If not, what level would you suggest?

Q35. Do you think that there are any circumstances where a payment of less than the minimum dividend level should be paid?

Q36. Do you think that the minimum dividend level should reflect the <u>total</u> of all dividends that a creditor might receive in a case in respect of its debt (i.e. any interim dividends together with the

final dividend)? Or should the minimum level be applied to each dividend payment for each distribution?

Q37. What savings do you think would be achieved in the costs of administering insolvencies were the insolvency office-holder not to make the payments of dividends less than £5 or £10 (or alternative limit if one suggested in your response to Q 34)?

Q38. Do you think that funds not distributed should be used for insolvency investigation and enforcement purposes, or should they be paid to HM Treasury?

Q39. Do you agree that a creditor's right to unclaimed dividends should lapse over time? If you do, do you think that 6 years after the payment is initially made is a suitable length of time to allow for a creditor to claim dividends owed to them? If not, what length of time do you suggest?

4. Crystallisation of floating charges in a Scottish administration

144. A payment to a floating chargeholder can only be made once the charge has attached or crystallised over the assets covered by the charge. In England and Wales, this 'crystallisation trigger' can be contractual but in Scotland the trigger points are provided for in statute, and it is not competent for parties to provide by contract for a floating charge to attach.

145. Paragraph 115 of Schedule B1 to the Insolvency Act 1986 provides that in Scotland a floating charge attaches to the property which is subject to the charge at the point when an administrator files a notice at Companies House stating that the company has insufficient property to make a payment to unsecured creditors, thereby crystallising the charge.

146. This works well in cases where only payments to the holder of a floating charge are expected. However, it does not work in cases where there are also likely to be payments to unsecured creditors.

147. This is because the order of priority in insolvency proceedings requires that holders of floating charges be paid in full before any funds are returned to non-preferential unsecured creditors[5]. However, as stated above, for payments to floating chargeholders to be made in Scottish administrations, the charge must have first attached to the assets. This attachment cannot happen in cases where the administrator wishes to distribute to unsecured creditors, as the statutory trigger is the filing of a notice by the administrator stating that there is insufficient property held by the company for such payments to be made.

148. In such cases, it is necessary for the administrator to put the company into liquidation (which is another statutory route to crystallising the charge), before distributing the funds to floating chargeholders and unsecured creditors.

149. The Scottish insolvency profession has stated that these unnecessary liquidations create additional costs, which are ultimately borne by the unsecured creditors.

[5] Other than via what is known as the 'prescribed part' of the company's charged property, which is made available solely to unsecured creditors.

150. It is therefore proposed to create a further statutory trigger for floating charges, for use by the administrator where there *are* sufficient funds to distribute to unsecured creditors.

151. As the law relating to floating charges is not wholly reserved to the UK Parliament, the co-operation of the Scottish Government will be required to implement this change.

Q40. Do you agree that the insertion of a crystallisation trigger where an administrator wishes to distribute funds to unsecured creditors in a Scottish administration is required?

Q41. Where do you think that a crystallisation trigger, attaching the charge to the company's assets, should be placed?

Q42. How widespread is this problem in Scottish administrations? How much do you estimate is 'wasted' from an administrator having to initiate an 'unnecessary' liquidation in an average case (where this issue applies) as a result of the current statutory framework?

5. Streamlining procedure where uncontested creditor's winding-up or bankruptcy petition served

152. Where a creditor's winding-up petition is served upon a company, or a creditor's bankruptcy petition on an individual, even though the insolvent may not object to the making of an insolvency order, a court hearing is required. This seems to be an unnecessary and costly process.

153. We propose that, where the debtor served with the petition does not contest the debt and therefore the making of an insolvency order is highly likely to be a formality, that the debtor may file a notice at court to that effect, which would then negate the need to have a hearing in that case. This will deliver a saving for the petitioning creditor(s), as they would no longer need representation at a winding-up or bankruptcy hearing when such a notice has been sent to the court by the debtor.

154. A consequence of the proposal is that where the petition has been advertised (e.g. in all winding-up petitions), a creditor who wishes to object to the making of an insolvency order may not become aware of the making of the order, until after it is made.

155. It is estimated that the implantation of this measure will result in **savings of approximately £0.22m per annum**, as outlined in the Impact Assessment at Annex 7.

Q43. Do you agree with the proposal to enable debtors to consent to a winding-up order / bankruptcy order where a petition has been served by a creditor?

Q44. Do you think there will be any circumstances where, despite consent being received by the court from the debtor that they do not object to an insolvency order being made, that a hearing will still be necessary?

6. Company 'debtor's petition'

156. Under existing insolvency law, a winding-up petition can be filed at the court by the company, its directors, by a creditor or, in certain cases, by the Secretary of State. The procedure to be followed is the same, subject to any modifications made by the court, regardless of the identity of the petitioner.

157. The Government thinks that where the petitioner is the company it is onerous for it to follow the same procedure as, for instance, a creditor would. Where the company is petitioning itself, there will be no dispute for the court to rule upon.

158. We therefore propose to streamline the procedure for such petitions and to model them on the proposed new process in bankruptcy, whereby bankruptcy orders on the petition of debtors are made by the Adjudicator[6] under an administrative process, freeing court resources to determine issues where parties are in dispute.

Q45. Do you agree that a winding-up petition presented by the company itself need not follow the same procedure as a petition filed by another party?

Q46. Can you think of any drawbacks with having a streamlined process in these cases? Are there any parts of the winding-up petition procedure that you would like to see retained in this streamlined process?

Q47. Do you agree with there being a role for an Adjudicator in this streamlined process?

7 Official receiver

Discretionary duty to investigate

159. The official receiver is a statutory office-holder appointed by the Secretary of State. Official receivers and their staff form part of the Insolvency Service, in a network of offices across England and Wales.

160. In nearly all compulsory liquidations, the court will appoint an official receiver attached to the court as liquidator. A private sector IP may subsequently replace the official receiver as liquidator. In all bankruptcy cases, the court will appoint an official receiver as receiver and a manager of the bankrupt's estate, pending the appointment of a trustee. A trustee may be a private sector IP, or may be the official receiver.

161. The official receiver has a statutory duty to investigate the cause of failure of a company in compulsory liquidation and a discretionary duty to investigate the cause of failure of a bankrupt. These duties remain the case, even where the official receiver is not liquidator or trustee. It is proposed that compulsory liquidation be brought in line with bankruptcy and that the official receiver's duty to investigate the cause of the company's failure be made discretionary.

[6] The Enterprise and Regulatory Reform Act 2013 created a power for the Secretary of State to appoint adjudicators, who can determine debtors' bankruptcy applications, negating the need for the court's involvement. Further details can be found here – http://www.legislation.gov.uk/ukpga/2013/24/section/71/enacted

162. The official receiver will still be under a duty to comply with his/her reporting duties under section 7(3) of the Company Directors Disqualification Act 1986. The proposals will enable official receivers to focus their investigations where they are required – in companies where indications are that their directors have brought about the failure by reckless or dishonest behaviour.

Provide for the official receiver to become trustee on the making of a bankruptcy order

163. In 2010, a consultation was held on making the official receiver trustee upon the making of a bankruptcy order, where currently he/she is the receiver and manager of the bankrupt's estate pending the appointment of a trustee.

164. This consultation found that the receiver and manager role was unnecessary and that the official receiver should be appointed trustee upon the making of a bankruptcy order, in the same way as he/she is appointed liquidator on the making of a winding-up order in a compulsory liquidation.

165. In 2010, the government's response to the consultation stated that any amendment to bring this change into effect would have to await a suitable statutory vehicle. It is now proposed that this amendment will be included as part of the Red Tape Challenge amendments. The consultation may be viewed here - http://www.insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/con_doc_register/ORTrusteemarch10/ORtrusteeConsultationDoc.pdf and the formal response here - http://webarchive.nationalarchives.gov.uk/+/http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/ORTrusteeResponses/Summary%20of%20Responses%20-%20Trustee%20and%20No%20Meeting%20Notice%20-%20October%202010.doc

Abolish Fast-track voluntary arrangements

166. Fast-track voluntary arrangements (FTVA) are a streamlined individual voluntary arrangement (IVA) procedure for cases where a debtor has already been made bankrupt. They were first introduced in April 2004, along with other changes to personal insolvency included within the Enterprise Act 2002.

167. In a FTVA the official receiver acts as nominee and supervisor. One of the requirements of an FTVA is that the debtor is an undischarged bankrupt at the time the proposal is made. There is no private sector IP involvement in FTVAs.

168. FTVAs have been little used since they were enacted, and in the last 4 years there have only been 4 FTVAs approved. These figures indicate that they do not meet a need in the insolvency market, and it is proposed that FTVAs be abolished. Individuals who are undischarged bankrupts who wish to propose an IVA will still be able to do so, but an IP will act as nominee and supervisor, not the official receiver.

Q48. Do you agree that the official receiver's duty to investigate the cause of failure of a company in liquidation should be discretionary, as it is in bankruptcy?

Q49. Do you agree that the position of receiver and manager in a bankruptcy should be scrapped and instead the official receiver will become trustee upon the making of the order?

Q50. Do you agree that FTVAs should be abolished?

8. Minor Changes that improve insolvency processes

169. We propose to make a number of minor and technical amendments that will improve insolvency processes. These are detailed in Annex 6.

Q51. Do you have any comments on any of the minor proposals that seek to improve insolvency processes included in Annex 6? Please indicate which of the minor proposals is being referred to in any reply on this question.

Annex 4: Part 2 - Minor Proposals relating to Meetings of Creditors

a) Scrap the requirement for the office-holder to seek the court's permission to give notice of a meeting by advertisement only, where they think that this is the appropriate medium to give notice. Whether this was exercised would depend on the circumstances of the case.

b) Remove the requirement that the liquidator himself/herself be present at a creditors' meeting (also known as a section 98 meeting) in a voluntary liquidation (with respect to the proposal to reduce the number of meetings in Part A above, where such a meeting is held). Replace it with the same legal requirement as for other meetings of creditors – that it may be the liquidator, or another IP or an employee of the liquidator who is experienced in insolvency matters.

c) Provide flexibility on the use of proxies where there is a meeting, by allowing a creditor to create a blanket proxy that could be used in a number of cases, rather than just one (the creditor would have to forward a copy of this blanket proxy for each meeting where it was to be used). This general proxy could be countermanded in a specific case, should the creditor wish it.

d) Scrap the requirement that a creditor must specify the order in which alternates are to be authorised to use a proxy – this is unnecessary regulation.

e) Scrap the requirement that the proxy must be authenticated. Authentication does not confer legitimacy and scrapping the need for authentication will not affect security.

f) Scrap the requirement for proxies to be received the day before a meeting (where one is held). Proxies will need to be produced at the meeting itself. This is already the practice in voluntary arrangements and may increase creditor engagement.

g) Scrap the requirement to retain proxies with the records of the procedure indefinitely. Change to retention for 28 days, or until any appeal has been concluded, whichever is the later.

h) Scrap the requirement for the appointment of a chair (when not the convener) to be in writing.

i) Scrap the requirement to call a meeting where no valid vote has been received where meeting had been initially held by correspondence.

j) Where a meeting has been requisitioned by creditors and is required to be advertised, remove the requirement that the advertisement identify the requisitioning creditors. The existing requirement may discourage creditors from exercising their rights and ultimately the identity of the requisitioners is irrelevant.

k) Scrap the requirement for the administrator to notify creditors of the expense of a requisitioned meeting within 21 days – this is unnecessary regulation.

l) Scrap the regulation on who else – other than the creditors/contributories, debtor/director – can attend a meeting of creditors. Give the chair discretion as to who may attend. Those who may presently attend by right will be unaffected.

m) Scrap the restriction on the use of new proofs and proxies in adjourned meetings as having to be received by noon the day before the adjourned meeting. Allow the chair to accept later receipt where they think it is practical.

n) Scrap the restriction on suspensions of a meeting to only be for up to one hour. Allow the chair to exercise his/her professional judgement.

o) Modify the rule regarding acceptance of late proofs. Currently, the chair can only accept (for voting purposes) a submission of a proof received later than the deadline given in the notice of meeting if it was 'due to circumstances beyond the creditor's control'. Widen this to allow the chair discretion to accept late proofs irrespective of the reason for late delivery.

p) Scrap the restriction on requiring votes for meetings to be received no later than noon on a specified date. Postal delivery times may vary depending on location – allow the office-holder flexibility to specify a time of day in his/her notice.

q) Simplify the rules on how a chair scrutinises the value of a connected creditor's vote when considering resolutions at a meeting, and amend liquidation and bankruptcy rules to mirror connected creditor provisions in CVA, administration and IVA. This will protect unconnected creditors' votes from being 'swamped' by those of connected creditors.

Annex 5: Part 2 – Minor proposals relating to Communication and Creditor Engagement

a) Amend the rules to allow the office-holder to include a notice of no, or no further, dividend (if appropriate) within the final progress report, removing the need for a separate notice.

b) In cases where employees are owed money by the insolvent, or where a large number of customers are private individuals – for example, people who have paid a deposit for goods that were never received – allow the directors to aggregate claims on the statement of affairs sent to all creditors. The specific names and addresses of the individual employees etc. would then not need to be on the statement of affairs sent to creditors and filed on the public record at Companies House.

c) Remove the need for the administrator, in his/her notice declaring a dividend, to indicate the amounts raised from the sale of particular assets.

d) Scrap the notice of the end of administration (however ended), to be sent to all those who received notice of the original appointment. Require that this information be included in the final progress report, which is sent to the same constituency.

e) Where a liquidator or trustee has been appointed by the Secretary of State in a compulsory liquidation or bankruptcy, allow the liquidator or trustee to give notice of this fact by Gazette notice, rather than individual notice to creditors. This would align practice with what happens after a liquidator or trustee has been appointed at a meeting of creditors.

f) Where a company officer or bankrupt in a compulsory liquidation or bankruptcy is to be publicly examined, scrap the requirement that the official receiver give notice to creditors (though allow the official receiver the discretion to ask the court that this be done). In practice, in the vast majority of examinations, the official receiver asks for this requirement to be waived and so the change will model existing practice.

Annex 6: Part 2 - Minor Proposals for the improvement of insolvency processes

a) Clarify that where ‘creditors’ is mentioned in insolvency legislation, only those creditors whose debts remain outstanding are being referred to. Currently, if a creditor has received payment in full, they would still be classed as a creditor in the insolvency (as they would have been a creditor at the commencement of the procedure, which fixes the use of that term legally). As the legislation refers to actions that can be carried out by or with the consent of creditors, engaging with those ‘creditors’ who have already received full payment (and may not consider themselves creditors any longer) can be difficult and clarifying this point will avoid such difficulties.

b) Conversion of debts in foreign currency – any debt payable in a foreign debt must be converted into sterling to claim from the insolvency. The rules provide that this should be done using an ‘official exchange rate’ yet this no longer exists. We propose that the IP should agree a reasonable rate with creditors. This would be one rate for each currency for use throughout the insolvency.

c) Create a presumption in the Insolvency Rules that dividends be paid by bank transfer, rather than by cheque. The existing discretion in the Rules that allows the office-holder and the creditor to arrange the payment to their own liking would be retained.

d) In a compulsory liquidation, the expenses of a failed company voluntary arrangement are paid in priority to those of the compulsory liquidation. This is not the case in a voluntary liquidation. It is proposed that the rules be amended to align voluntary liquidation with compulsory liquidation - that such expenses have priority as there is no reason for different treatment between the two.

e) Clarify that an administrator need not seek the court’s permission under paragraph 65(3) Schedule B1 Insolvency Act 1986 when distributing the prescribed part of a company’s property to unsecured non-preferential creditors.

f) Consider the efficiency of the process by which administration can exit into dissolution or creditors’ voluntary liquidation and clarify them, if necessary.

g) Provide that the official receiver no longer send a copy of a winding-up order to Companies House to facilitate electronic delivery (a notice that such an order had been made would still be required).

Annex 7: Part 2 Changes to the law governing insolvency proceedings Impact Assessment

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Title:
Proposed changes to the law governing insolvency proceedings

IA No:

Lead department or agency:
Insolvency Service (Exec Agency of BIS)
Other departments or agencies:

Impact Assessment (IA)

Date: 27/6/2013

Stage: Consultation

Source of intervention: Domestic

Type of measure: Primary legislation

Contact for enquiries:
Steven.Chown@insolvency.gsi.gov.uk

Summary: Intervention and Options

RPC Opinion: **Awaiting Scrutiny**

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
168.77m	168.77m	-16.24m	Yes	**Out**

What is the problem under consideration? Why is government intervention necessary?

Red Tape Challenge has identified a number of regulations that affect the efficient working of insolvency proceedings by imposing unnecessary regulatory burdens. These regulations are imposed by a combination of primary and secondary legislation and consequently can only be removed by Government intervention.

What are the policy objectives and the intended effects?

The objective is to implement savings to the cost of administering insolvency proceedings. As all insolvency costs must be paid before any money can be returned to any class of creditors, this should result increased returns to creditors.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Four proposals have been identified and assessed against the base cost of 'no change'. The preferred solution is to implement all proposals together, although they may each be implemented separately, or not at all. All proposals are deregulatory in nature and can only be implemented by legislative amendment.

Proposal 1 – Meetings of creditors (all measures in Part A of the consultation)

Proposal 2 – Communication and Creditor Engagement (all measures in Part B of the consultation)

Proposal 3 – Improving insolvency processes (all measures in Part C of the consultation)

.

Will the policy be reviewed?			**If applicable, set review date:**		
Does implementation go beyond minimum EU requirements?			**No**		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 **Yes**	Small Yes	Medium Yes	Large Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: ..... **Date:** .....

Summary: Analysis & Evidence Proposal 2

Description: Meetings of creditors (all measures in Part A of the consultation)

FULL ECONOMIC ASSESSMENT

Price Base Year **2009**	PV Base Year **2013**	Time Period Years **10**	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 89.89

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low				
High				
Best Estimate	**1.4**			1.4

Description and scale of key monetised costs by 'main affected groups'

Of the measures associated with this proposal outlined in the evidence sheets, most will have nugatory costs associated with them. However two measures – the end to meetings of creditors as the default option of creditor engagement and the changes to the rules on proxies, will have transitional costs for insolvency practitioners. It is anticipated that the familiarisation costs of each of these measures will be around £500 per insolvency practitioner, of which there are 1,352 (who take appointments) in GB.

Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low				
High				
Best Estimate	**0**		**10.6**	**91.2**

Description and scale of key monetised benefits by 'main affected groups'

The monetised benefit relates to the reductions in the administrative cost of insolvency from changes to how (and if) meetings of creditors are held. These savings relate to physical cost – e.g. room hire – and all parties' time costs. This has been calculated at £10.6m pa (see evidence base).

Other key non-monetised benefits by 'main affected groups'

N/A

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

See evidence base

BUSINESS ASSESSMENT (Option 5)

Direct impact on business (Equivalent Annual) £m:			**In scope of OIOO?**	**Measure qualifies as**
Costs: 0.1	**Benefits: 8.8**	**Net: 8.6**	Yes	**Out**

Summary: Analysis & Evidence Proposal 2

Description: Communication and Creditor Engagement (all measures in Part B of the consultation)

FULL ECONOMIC ASSESSMENT

Price Base Year **2009**	PV Base Year **2013**	Time Period Years **10**	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 43.22

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low				
High				
Best Estimate	**0.7**			0.7

Description and scale of key monetised costs by 'main affected groups'

A transitional familiarisation cost to appointment-taking insolvency practitioners (1,352in GB) will be associated with creditors being given the power to opt out of receiving further correspondence from the insolvency office-holder. It is anticipated that the familiarisation costs of this measures will be around £500 per insolvency practitioner.

Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low				
High				
Best Estimate	**0**		**5.1**	**43.9**

Description and scale of key monetised benefits by 'main affected groups'

The monetised benefit relates to the reduction in the costs of communicating information to creditors. This has been calculated at £5.1m pa (see evidence base)

Other key non-monetised benefits by 'main affected groups'

N/A

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

See evidence base

BUSINESS ASSESSMENT (Option 6)

Direct impact on business (Equivalent Annual) £m:			**In scope of OIOO?**	**Measure qualifies as**
Costs: 0.1	**Benefits: 4.2**	**Net: 4.1**	Yes	**Out**

Summary: Analysis & Evidence Proposal 3

Description: Improving Insolvency Processes (all measures in Part B of the consultation)

FULL ECONOMIC ASSESSMENT

Price Base Year **2009**	PV Base Year **2013**	Time Period Years **10**	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 35.66

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low				
High				
Best Estimate	**1.4**			1.4

Description and scale of key monetised costs by 'main affected groups'

Of the measures associated with this proposal outlined in the evidence sheets, most will have nugatory costs associated with them. However two measures – on dividends and on the valuing of debts in a foreign currency, will have transitional costs for insolvency practitioners as they familiarise themselves with them. It is anticipated that the familiarisation costs of each of these measures will be around £500 per insolvency practitioner, of which there are 1,352 (who take appointments) in GB. As every insolvency case has the potential of having foreign currency debts, no reduction has been made to the total number of insolvency practitioners affected.

Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low				
High				
Best Estimate	**0**		**4.3**	**37**

Description and scale of key monetised benefits by 'main affected groups'

The monetised benefit relates to a package of measures designed to improve the efficient working of all insolvency procedures. These are estimated at £ 4.3m pa (see evidence base).

Other key non-monetised benefits by 'main affected groups'

N/A

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

See evidence base

BUSINESS ASSESSMENT (Option 7)

Direct impact on business (Equivalent Annual) £m:			**In scope of OIOO?**	**Measure qualifies as**
Costs: 0.1	**Benefits:** 3.6	**Net:** 3.4	Yes	**Out**

Evidence Base (for summary sheets)

1. Scope of Impact Assessment

2. This Impact Assessment (IA) considers the likely costs and benefits of the three groups of proposals outlined in the attached consultation – Part A Meetings of Creditors; Part B Communication and Creditor Engagement and Part C Improving Insolvency Processes. It is hoped that stakeholders will be able to provide further evidence to help quantify these further.

3. **Affected Groups**

4. The main affected groups will be:

    - Insolvency professionals, their staff and their advisers;
    - Government in respect of internal administrative processes;
    - Government, in respect of any consequential amendments required to UK legislation; and
    - Businesses and individuals who are creditors of entities and individuals subject to insolvency proceedings.

Costs and benefits

Proposal 1 – Meetings of creditors (Part A of the consultation)

5. This package of measures will alter how – and how often – meetings of creditors are held.

Removing meetings of creditors as the default position in insolvencies.

6. This measure will result in a reduction in the number of meetings of creditors that will be held. We have taken as an assumption that there will be a 30% reduction in meetings of creditors. It is possible that some procedures will have a greater than 30% reduction but 30% was seen as prudent, given this will be 'new ground' for office-holders.

7. The types of meetings that will be most affected by these proposals are all of a type that would be held in the early stages of the procedure (the latest would fall no more than 14 weeks after commencement of the procedure, other than as permitted by the court) and so the savings will be realised early in the life of the case.

8. The meetings considered (and savings calculated on below) are: creditors' meeting in a creditors' voluntary liquidation (also known as a 'section 98 meeting'); first meetings in a compulsory winding up or bankruptcy; a meeting to consider the administrator's proposals; a creditors' meeting to consider a proposal for a company voluntary arrangement or an individual voluntary arrangement.

9. Where a physical meeting does not take place, the insolvency office-holder will still be required to share information with creditors. For example, while an administrator might choose not to call a meeting of creditors to consider his/her

proposals based on the circumstances of the case, he/she would still be expected to draft those proposals and communicate them to creditors. Accordingly, there is no saving on the time spent on preparing documents that might otherwise have been discussed at a meeting, as such documents will still need to be produced. The saving from this proposal instead relates to the physical cost of the meeting – i.e. room hire – and on the time cost of the office-holder and his/her staff in holding it.

10. In 2010, the law changed to allow meetings of creditors to be held by non-physical means. Research has indicated that around 8% of meetings are held by non-physical means (including by correspondence) No reduction has been calculated for initial meetings in creditors' voluntary liquidation, compulsory winding up or bankruptcy, as the nature of these procedures' initial meetings makes non-physical meetings very unlikely.

11. Input figures are based on actual published statistics for financial year 2012/13, rounded to the nearest 100. As no official projections are calculated, an assumption has been made that levels will remain the same.

12. The cost of the meeting varies between procedures, based on the time required to conduct the meeting. Different procedures have different requirements of a meeting (and so the length of time taken to conduct it) hence the varying values. The time/cost rates used throughout this impact assessment are £150/hr administrative time; £250/hr manager time and £375/hr partner time, with varying periods of time expended by each. These are realistic charge-out rates in insolvency proceedings.

13. Room hire of £64 is added to the time-cost to make the final cost figure for a meeting. This reflects the data on administrative burdens gathered by PricewaterhouseCoopers in 2005, commissioned by government. The 2005 figure (£54) has been adjusted for inflation to the midpoint in the 2012/13 financial year, using the Treasury GDP Deflator tables.

14. The first meetings in compulsory winding up and bankruptcy are conducted by the official receiver (a statutory office-holder) and his/her staff (civil servants). Statutory charge-out rates apply to the official receiver/staff and have been used here, with no room hire costs.

	CVL	Administration	CWU	CVA	Bkcy	IVA
Number of cases	11400	2300	4100	800	29300	46100
No of meetings less non-physical meeting (8% where applicable)	11400	1291	49	721	469	4241
assumed reduction (30%) in meetings	3420	387	15	216	142	1272
Cost of meeting	£339	£464	£81	£464	£81	£464
saving	£1,159,380	£179,568	£1,215	£100,224	£11,502	£590,208

15. Abbreviations – CVL – creditors' voluntary liquidation; admin - administration; CWU – compulsory winding up; Bkcy – bankruptcy ; CVA – company voluntary arrangement; IVA – individual voluntary arrangement.

16. **Total Saving from this measure £2,042,097**

Abolition of final meetings

17. This proposal scraps all final meetings of creditors where they occur – creditors' voluntary liquidation, compulsory liquidation where someone other than the official receiver is liquidator, bankruptcy where someone other than the official receiver is trustee. Final meetings of members (shareholders) in members' voluntary liquidations will also be scrapped.

18. Liquidations and bankruptcies by their nature may last for a number of years (equally, for straightforward cases, they may end within months). Accordingly, while all new cases will receive the saving at some point in their life, the point at which the saving is realised cannot be predicted accurately.

19. Even where a final meeting does not take place, the insolvency office-holder will still be required to share information with creditors, as now. Accordingly, there is no saving on the time spent on preparing information that might otherwise have been discussed at a meeting. The saving from this proposal relates to the physical cost of the meeting – room hire – and on the time cost of the office-holder and his/her staff in holding it.

20. The cost of the meeting is based on 1 hour of administrative time, charged at £150/hr and 30 minutes of manager time, charged at £250/hr. Such meetings are poorly attended, if attended at all (hence the low time cost allocated here) but the existing law requires that provision for such meetings be made, which will incur a time cost (and that this will be constant across different procedures). These are realistic charge out rates in insolvency proceedings. Room hire of £64 is added to make the final cost figure. This reflects the data on administrative burdens gathered by PricewaterhouseCoopers in 2005 for work commissioned by government. The 2005 figure (£54) has been adjusted for inflation to the midpoint in the 2012/13 financial year, using the Treasury GDP Deflator tables.

21. Input figures are based on actual published statistics for financial year 2012/13, rounded to the nearest 100. As no official projections are calculated, an assumption has been made that levels will remain the same.

Abolition of all final meetings of creditors/members					
	CVL	Para 83 CVL	MVL	CWU	Bkcy
Number	11400	1000	4700	600	2900
Cost of meeting	£339	£339	£339	£339	£339
Saving	£3,864,600	£339,000	£1,593,300	£203,400	£983,100

22. Abbreviations – as per paragraph 15. 'Para 83 CVL' refers to a creditors' voluntary liquidation that was immediately preceded by an administration. Such cases have a streamlined entry process and are recorded separately on published statistics.

23. **Total Saving from this measure - £6,983,400**

Removal of requirement for liquidator to be present at a 'section 98' meeting of creditors in creditors' voluntary liquidation

24. A creditors' voluntary liquidation ('CVL') commences when a company, at a general meeting, passes a resolution that it be wound up. The company will also appoint a liquidator to wind up the company's affairs at this meeting.

25. Where the company is insolvent (i.e. its liabilities are in excess of its assets), it must call a meeting of the company's creditors, to be held within 14 days of the day of the company's meeting. At this meeting, the creditors can choose their own liquidator. If they do, their choice replaces that of the company; if they do not, the company's choice of liquidator continues. These meetings take place in all CVLs, other than those immediately preceded by an administration.

26. The law requires that the liquidator be present at this meeting of creditors. This is the only meetings provision throughout English insolvency legislation that requires the office-holder him or herself to attend. All liquidators must be licensed insolvency practitioners ('IPs') and their charge out rate can be high (£900/hr for an IP partner working in a large firm is not uncommon although the average is thought to be about £375, a figure used throughout this Impact Assessment) and the meeting could last for an hour, or more.

27. It is expected that in most cases (for what is generally a straightforward meeting) the insolvency practitioner will not attend following this measure. However, a 10% allowance has been made for those cases where the liquidator feels that his/her presence is necessary.

28. Input figures are based on actual published statistics for financial year 2012/13, rounded to the nearest 100. As no official projections are published, an assumption has been made that levels will remain the same.

29. It is assumed that, where such a nomination takes place, the liquidator would nominate a manager to be at the meeting and that the meeting would take an hour. We have taken charge out rates of £375/hr for the IP and £250/hr for the manager. These are realistic charge-out rates in insolvency proceedings.

	CVLs
	11400
After assumed take-up of reduction in meetings provision (30%)	7980
Assume change is actioned in 90% of cases	7182
One hour of IP time (£375) less 1 hour of manager time (£250)	£125
Saving	**£897,750**

30. **Total Saving from this measure - £897,750**

Proxies

31. A creditor can authorise someone to attend a meeting in its place and vote on proposals put to it. This person is known as the creditor's 'proxy' and, authorisation is given by the completion of what is known as a 'proxy form'. Proxyholders are often given to the chair of a meeting or to representatives of firms of insolvency practitioners.

32. A proxy form must be completed by a creditor in every meeting case at which it wants to vote. However, larger companies may be a creditor in many different cases in a given year and may always issue a proxy in the name of the same people (possibly on a regional basis). In each of these cases, a fresh proxy must be provided.

33. We propose that creditors be able to produce one original proxy to give to the proxyholder, for use in every case that the creditor wishes the proxy to cover. This will be as flexible as possible – a creditor might want it only to cover a certain insolvency procedure, or a certain geographic area and both would be acceptable. A copy of the form would have to be given to the chair of each meeting at which the proxy was to be used. It could also be countermanded by the creditor for a specific meeting or vote.

34. In 2005, PricewaterhouseCoopers carried out some work for government on administrative burdens arising from legislation. Data gathered for this work identified the average number of creditors per case and this has been copied here. There is no later data on this point than this work.

35. Assumptions have been made as to how many proxies are submitted for a meeting (30%, rounded to the nearest whole creditor) and how many would take up the flexibility given by this proposal (25%).

36. An assumption has been made that it costs a creditor £10 to complete a proxy form.

37. Input figures for both proxy measures are based on actual published statistics for financial year 2012/13, rounded to the nearest 100. As no official projections are published an assumption has been made that levels will remain the same.

38.

	CVL	Admin	CWU	Bkcy	CVA	IVA
Number of meetings (net, to nearest whole meeting))	7980	904	34	327	505	2969
Engaged creditors per meeting	10	16	7	4	9	4
Assumed take up of option (25%), to nearest whole number	3	4	2	1	2	1
Proxy cost	£10	£10	£10	£10	£10	£10
Saving	£239,400	£36,160	£680	£3,268	£10,100	£29,690

39. Abbreviations as per paragraph 15

40. The proxy form that creditors have to use is detailed and overly-prescriptive. It is proposed that the information required be streamlined and unnecessary burdens lifted. One of the aspects of the form that will be changed is in the ordering of the proxyholders.

41. The creditor can have several proxyholders but, where there is more than one, the creditor must state the order in which they are allowed to exercise their proxy. In practice, these are likely to be staff from the same insolvency practitioner firm and any ranking of them by the creditor is unnecessary (but for the statutory requirement to do so).

42. A creditor may, as well as named individuals, give a proxy to the chair of the meeting. It is proposed that this power continue but that if a named proxyholder attends the meeting, they will have priority over the chair. In effect, the chair will be the proxyholder of last resort.

43. An assumption has been made that the time cost to a creditor of completing a proxy form is £10 and that a quarter of this time is spent ordering the proxyholders.

44. In 2005, PricewaterhouseCoopers carried out some work for government on administrative burdens arising from legislation. Data gathered for this work identified the average number of creditors per case and this has been used to calculate the saving from this proposal. There is no later data on this point than this work.

45. The number of completed proxies is calculated net of those that wish to take up the ‘blanket proxy’ proposal.

46. An assumption has been made that 30% of creditors of creditors will complete a proxy form. This calculation is net of those creditors who attend in person, for which an assumption has been made of one creditor attending in person for compulsory winding up, creditors’ voluntary liquidation and bankruptcy and individual voluntary arrangement meetings and two for administration and company voluntary arrangement meetings.

47.

	CVL	Admin	CWU	Bkcy	CVA	IVA
No. of meetings (net)	7980	904	34	327	505	2969
Proxies (net of previous proposal)	7	12	5	3	7	3
time saved/proxy	£2.50	£2.50	£2.50	£2.50	£2.50	£2.50
Saving	£139,650	£57,720	£425	£2,451	£8,838	£22,268

48. Abbreviations as in paragraph 15

49. **Total savings for two proxy measures - £550,650**

Chair at a meeting of creditors

50. All meetings of creditors in insolvency proceedings are presided over by a chair. Insolvency law provides that the chair be the convener of the meeting who, in most circumstances, will be the insolvency office-holder.

51. The law permits the convener to nominate another party, in writing, to be chair in their place. Where the official receiver convened the meeting, this would likely be another official receiver, a deputy official receiver or a member of his/her staff. For an insolvency practitioner, it would be another insolvency practitioner or a member of the insolvency practitioner's staff with experience of insolvency matters.

52. In many cases, the convener authorises another party to be chair. This proposal would scrap the requirement for this nomination to be in writing.

53. A conservative estimate of 50% has been made of meetings where the convener is not the chair. In some procedures, such as compulsory winding up or bankruptcy, this is likely to be higher.

54. The meetings considered in this analysis are: meetings to consider an administrator's or nominee's proposals, and first meetings of creditors in a compulsory winding up or bankruptcy. This proposal would also apply to any general meeting of creditors in any procedure but there is no data available as to how often they are called (though anecdotally they are thought to be infrequent) and so no calculation of a saving can be made. Voluntary liquidation meetings are not considered, as the meeting is called by the company, not the office-holder.

55. The time spent preparing the letter is valued at 15 minutes of £250/hour time, which is reflective of time-cost rates charged in the industry. Although the convener is likely to be charged out at a higher rate, we think that the letter itself will be drafted by a lower grade with the convener only authenticating the final version at no additional cost.

56. Official receiver's time is charged at a statutory rate. 15 minutes' time has again been used.

	Admin	CWU	Bkcy	CVA	IVA
Number of meetings (net, to nearest whole meeting))	904	34	327	505	2969
Assumed cases where convener not chair (50% of cases)	452	17	164	253	1485
Time saving per case	62.5	17.25	17.25	62.5	62.5
Saving	£28,250	£293	£2,829	£15,813	£92,813

57.

	Admin	CWU	Bkcy	CVA	IVA
Number of meetings (net, to nearest whole meeting))	904	34	327	505	2969
Assumed cases where convener not chair (50% of cases)	452	17	164	253	1485
Time saving per case	62.5	17.25	17.25	62.5	62.5
Saving	£28,250	£293	£2,829	£15,813	£92,813

58. Abbreviations as per paragraph 15

59. **Total savings for this measure - £139,998**

60. **Total Savings from Proposal 1 (Part A of the consultation – Meetings of creditors) - £10,613,895**

61. Savings will also be gained from the minor proposals regarding meetings of creditors set out in Annex 4 of the consultation which are not dealt with in this Impact Assessment, which increase flexibility and remove unnecessary regulation but these will be smaller than those listed above and may not necessarily occur in every case. Accordingly, these are not calculated for the purposes of this Impact Assessment. They will not confer a cost on business, other than insignificant familiarisation costs.

62. **Key assumptions for Proposal 1:**

a. that there will be a 30% reduction in meetings.

b. that indicative chargeout rates in insolvency proceedings are £150/hr administrative time; £250/hr manager time and £375/hr partner time.

c. that in 90% of creditors' voluntary liquidation cases, the liquidator will choose not to attend the initial meeting of creditors ('section 98 meeting')

d. that case levels remain the same as in 2012/13.

e. that it costs the creditor £10 to complete a proxy for a meeting of creditors and that a quarter of this cost arises from the ordering the priority of proxyholders.

f. that it costs the insolvency office-holder £10 (time cost) to scrutinise each creditor's proxy.

g. that 30% of creditors submit proxies and that 25% would take up the 'blanket proxy' option.

h. that 50% of meetings of creditors are chaired by someone other than the convener.

i. that transitional costs of £500 per appointment-taking insolvency practitioner will be incurred.

Proposal 2 – Communication and Engagement with Creditors (Part B of the consultation)

<u>Opting out of further correspondence</u>

63. This proposal allows creditors to opt out of receiving further correspondence (other than that related to dividends). This will reduce unnecessary paperwork from being produced and issued by the insolvency office-holder and being disposed of, unread, by the creditor. It will apply across all insolvency proceedings.

64. An assumption of 20% take-up from creditors of opting out has been used in valuing this saving. We believe that this is a conservative estimate taking into account the initial unfamiliarity with creditors of being able to opt out of receiving documents. In practice, the level of opting out is likely to vary depending on the possibility of the creditor receiving a return. For example, in an administration there is unlikely to be a return to unsecured creditors in between 40%-50% of cases and take up of opting out may be higher in those cases.

65. A table, breaking down the savings by procedure is included on page 64. **Total savings of £5.1m per annum have been identified from the measure.**

66. The saving arising from this proposal is related to the physical cost of the documents that would otherwise have been produced – postage, paper, ink, envelopes. In 2010, the law changed to allow electronic communication between the office-holder and creditors (with the latter's consent). This has yet to be evaluated but that proposal's Impact Assessment assumed;

- a 30% take-up for electronic communication in administrations, company voluntary arrangements, and individual voluntary arrangements;
- a 10% take-up in creditors' and members' voluntary liquidation, and compulsory liquidation and bankruptcy where an insolvency practitioner is office-holder; and
- no take-up where the official receiver was office-holder The figures below assume that these assumptions were correct and, as there is no physical saving in such cases from the current proposal, total cases has been reduced by the aforesaid percentages in calculating the benefit of this proposal.

67. In 2005, PricewaterhouseCoopers carried out some work for government on administrative burdens arising from legislation. Data gathered for this work

identified the average number of creditors per case and this has been copied here. There is no later data on this point than this work.

68. PwC's work identified the average cost of a notice in different procedures, including both the physical cost and the professional (time) cost of its drafting. Not all of the cost of the notice will be saved by this proposal – the document itself will still have to be drafted for those that still receive it (even if all but one creditor opts out) and that will bear a time cost for the procedure (unaffected by opting out). We have assumed that 75% of the cost of each individual notice is the physical cost. The 2005 figures have been adjusted for inflation to the midpoint in the 2012/13 financial year, using the Treasury GDP Deflator tables.

69. The legislation requires certain contact in all cases. The calculations make an allowance for 'allowable contact', that is contact that would still take place even where the creditor had opted out (or before that point). This would be the first contact (at which point a creditor could make their wish not to receive future correspondence known) and dividend-related correspondence (as otherwise a creditor might not submit a claim or receive a payment).

70. Input figures are based on actual published statistics for financial year 2012/13, rounded to the nearest 100. As no official projections are published, an assumption has been made that levels will remain the same.

Opting out of further correspondence

	CVL (a)	Para 83 CVL	MVL	CWU (OR)	CWU (IP)	Admin	CVA	Bkcy (OR)	Bkcy (IP)	IVA	DRO
Number	11400	1000	4700	3500	600	2300	800	26400	2900	46100	30500
Net of existing e-comms	10260	700	4230	3500	540	1610	560	26400	2900	32270	30000
Creds(members)/case	35	60	60	25	25	60	35	15	15	15	15
Assumption	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%
Times written to	8	7	5	3	8	5	7	3	8	8	5
less allowable contact	2	1	2	2	2	1	1	2	2	1	1
£cost/notice	2.62	2.62	3.50	0.87	2.62	3.50	3.50	1.17	2.62	3.50	0.87
Saving	£1,129,010	£132,048	£532,980	£15,225	£42,444	£270,480	£82,320	£92,664	£136,764	£2,371,845	£313,200
Total Saving											**£5,118,980**

Abbreviations – as per paragraphs 15 and ‘IVA’ individual voluntary arrangement; Bkcy (OR) CWU (OR) bankruptcies and compulsory windings up with the official receiver as trustee/liquidator respectively. DRO – debt relief order

71. **Total savings from Proposal 2 (Part B of the consultation - Communication and Creditor Engagement) - £5,118,980**

72. Savings will also be gained from the minor proposals relating to communication and creditor engagement. These increase flexibility and remove unnecessary regulation but the savings will be smaller than those detailed above and will not occur in every case. Accordingly, these are not calculated for the purposes of this Impact Assessment. They will not confer a cost on business.

73. Key assumptions for Proposal 2:

a. case numbers remain constant from 2012/13.

b. that there is a 20% take-up from creditors of opting out.

c. that the assumptions on e-communications made in the 2010 Impact Assessment were correct.

d. that 75% of the cost of a notice is the physical cost.

e. that transitional costs of £500 per appointment-taking insolvency practitioner will be incurred.

Proposal 3 – Improving insolvency processes

Administration extensions

74. Unlike other insolvency procedures, administration is only permitted for 12 months, though this can be extended by creditors (6 months only) or the court. This proposal will increase the length of time that creditors can extend an administration for up to 12 months. This will avoid unnecessary court applications.

75. Analysis of a sample of administrations from Companies House records indicates that around 80% of administration end within 18 months (i.e. within the period that the court need not be asked for an extension). 11.6% of administrations lasted for between 18 months and 24 months, meaning that in each of those cases the administrator would have been required to make an application to court to approve the extension. Under this measure, applications in those cases would not have been required.

76. We have estimated that the cost of the court application is £3,000 and that the sample referred to above is indicative of the numbers of administration cases that fall between 18 and 24 months in length.

77. There is no additional cost caused by engaging with creditors for an extension. Such engagement already takes place for 6 month extensions – this measure is increasing the length of the extension that can be requested and so does not confer an additional cost.

78. The input figure is based on actual published statistics for financial year 2012/13, rounded to the nearest 100. As no official projections are published, an assumption has been made that the level of administrations will remain the same.

79.

	administrations
total	2300
Between 18 - 24 months (11.6%)	325
cost of application	£3,000

80. **Total saving from this measure - £975,000**

Streamlining procedure where uncontested winding-up or bankruptcy petition served

81. This proposal will remove the need for a court hearing where the debtor has consented to the order. This will provide a saving for the petitioning creditor, who will not need to be present or represented at a hearing.

82. We have assumed that 10% of debtors will take up this option and that creditors bear a cost of £250 per case for their representation. These are conservative estimates, the first reflecting that many debtors do not engage at all with the petition process and the second reflecting the fact that most hearings will be uncontested and relatively short.

83. Input figures are based on actual published statistics for financial year 2012/13, rounded to the nearest 100. As no official projections are calculated, an assumption has been made that levels will remain the same.

	Bkcy (creditor's petition)	CWU
cases	7,100	4,100
Estimated consent (10%)	710	410
Saving per case	£250	£250
Saving	£142,000	£82,000

84. Abbreviations as per paragraph 15

85. **Total saving from this measure - £224,000**

Payment of Dividends

86. These measures will streamline the process of distributing funds from an insolvent estate by reducing the cost on the creditor of claiming money and on the insolvency office-holder in verifying claims and of the distribution itself.

87. By scrapping the requirement that a creditor need submit a claim for debts of <£1,000 but instead permit the insolvency office-holder to rely upon the insolvent party's own records, a burden is lifted from both the procedure and from the creditor.

88. There is a cost on the creditor of completing this claim and then a cost to the insolvency of the insolvency office-holder scrutinising the claim. We have allowed a nominal cost of £10 each for both parties for these actions. These are thought conservative estimates. A lower sum is given for insolvency office-holders as it was thought that they will be more familiar with the insolvency legislation than a creditor and will be highly experienced in processing claims.

89. In 2005, PricewaterhouseCoopers carried out some work for government on administrative burdens arising from legislation. Data gathered for this work identified the average number of creditors per case and this has been copied here. There is no later data on this point than this work. An assumption has been made that 10% of such claims are <£1,000.

90. Input figures are based on actual published statistics for financial year 2012/13, rounded to the nearest 100. As no official projections are calculated, an assumption has been made that levels will remain the same.

91.

	CVL	Para 83 CVL	CWU (OR)	CWU (IP)	Admin	Bkcy (OR)	Bkcy (IP)
Number	11400	1000	3500	600	2300	26400	2900
Creditors/case	35	60	25	25	60	15	15
10% <£1000	4	6	3	3	6	2	2
IP time saving per proof	£10	£10	£10	£10	£10	£10	£10
Creditor time saving per proof	£10	£10	£10	£10	£10	£10	£10
Saving	£912,000	£120,000	£210,000	£36,000	£276,000	£1,056,000	£116,000

92. Abbreviations as per paragraphs 15

93. **Total Savings from this measure - £2,726,000**

Valuation of debts in a foreign currency

94. In insolvency proceedings, all claims must be valued in sterling. This ensures that all claims are treated equally within their class (a central principle in UK insolvency law known as 'pari passu'). Where claims had been valued in a currency other than sterling in the normal course of the insolvent's business or operations, the claim must be converted into sterling as at the date of the insolvency.

95. Insolvency law dictates that conversion must be at what it terms the 'official exchange rate'. In the absence of any such published rate, an application must be made to court. However, what the law defines as this official rate no longer exist (and nothing has replaced it) and so the court is the only option available for such claims.

96. This proposal will allow the insolvency office-holder to set a reasonable conversion rate with the creditors for these transactions, as at the date of the insolvency. Only one rate for each currency would be permitted, to ensure that the pari passu principal is maintained.

97. This will reduce the number of court applications, the cost for which is an insolvency expense and so borne, ultimately, by the whole body of creditors

98. We have only valued this saving for creditors' voluntary liquidations that immediately follow an administration (a paragraph 83 CVL) and administration. For a paragraph 83 CVL to even be an option, the administrator must think that there will be a distribution to creditors. We have been conservative and assumed

that, for reasons unforeseen by the former administrator; such distributions only take place in 90% of such liquidations.

99. Research indicates that around 20% of administrations result in a distribution.

100. An assumption has been made that in 10% of cases, an application to court is required and that this costs £3,000 per application.

101. There are distributions in other types of liquidation and in bankruptcy. However, no data is available on the proportion that receives a distribution and so these cases are ignored for the purpose of this proposal.

102. Input figures are based on actual published statistics for financial year 2012/13, rounded to the nearest 100. As no official projections are published, an assumption has been made that levels will remain the same.

103.

	Para 83 CVL	admin
total cases	1000	2300
of which distributions	900	460
Cases where applications required to court (10%)	90	46
estimate court costs	£3,000	£3,000
Saving	£270,000	£138,000

104. abbreviations as at paragraphs 15.

105. **Total** saving **from this measure - £408,000**

106. **Total savings from Proposal 3 (Part C of the consultation - Improving Insolvency Processes) - £4,333,000**

107. Savings will also be gained from the minor proposals regarding improving insolvency proceedings, which increase flexibility and remove unnecessary regulation but these will be smaller than those listed above and may not necessarily occur in every case. Accordingly, these are not calculated for the purposes of this impact assessment. They will not confer a cost on business.

108. Key assumptions for this proposal:

a. case numbers remain constant from 2012/13.

b. a court application to extend administration or to fix the conversion rate for foreign currency into sterling costs £3,000.

c. that 10% of creditors' debts are <£1,000.

d. that there is a time cost of £10/proof per creditor in completing an insolvency claim form and that there is a £10/proof cost to the insolvency office-holder in scrutiny the claim once received.

e. that 10% of debtors served with winding-up or bankruptcy petitions will consent to the making of the order and that this will save £250 per case for the petitioner.

f. 10% of administration or paragraph 83 creditors' voluntary liquidation cases require an application to court regarding the conversion of foreign currencies into sterling.

g. that transitional costs of £500 per appointment-taking insolvency practitioner will be incurred.

Part 3 - Proposals to change how IPs report director misconduct

Background

170. These proposals would **streamline the way that insolvency practitioners (IPs) report on a director's conduct in insolvent companies**. This should lead to more efficient investigation of miscreant directors and a reduced burden on IPs.

171. The details of the proposals are outlined below and indicative costs and benefits have been included within the Impact Assessment at Annex 8. For each element of the proposal we are seeking views on the policy impact and on likely costs and benefits. A full list of consultation questions is contained at Annex 10.

172. The Company Directors Disqualification Act 1986 (CDDA) provides powers to the courts to make disqualification orders on the application of the Secretary of State, or accept disqualification undertakings from company directors (and in some circumstances other persons). Those who become directors of companies should:

- Carry out their duties responsibly; and
- Exercise adequate skill and care with proper regard to the interests of the company's creditors and employees.

173. The majority of directors do this effectively, but **the CDDA is a powerful tool against those who abuse the privilege of limited liability**. The objective of the legislation is to protect business and consumers from directors who are either incompetent or whose conduct, whether falling short of dishonesty or actually dishonest, makes them unfit to act as a director of another company for a period of time. It is easy to form companies in the UK and there is no formal qualification for individuals who wish to become directors. This is an important feature of an environment which encourages enterprise, growth and free and open markets. However, the integrity of the business environment needs protection to ensure that it is not abused; otherwise it may affect the willingness of banks and suppliers to provide unsecured credit and prove a danger to consumers. The disqualification regime provides a check against such abuse.

174. Businesses, investors, employees and consumers must have confidence that companies are acting fairly and that those who don't will be identified and appropriately sanctioned. Businesses and individuals who behave honestly and responsibly should not be placed at a disadvantage by those who do not play by the rules. **Having an effective and trusted system for identifying and dealing with poor business behaviour gives reassurance that we operate an even playing field**, and creates an environment in which honest entrepreneurs are willing to invest in activities promoting growth and employment.

175. Disqualification is a civil, not criminal, matter. Around 2% of directors involved in insolvent companies are disqualified each year. Unfit directors are disqualified following an insolvency for between 2 and 15 years: the average period is 5.9 years. Where possible, defendants are offered the opportunity to provide undertakings before court proceedings are instigated.

176. We believe the current regime to be a proportionate response to addressing director misconduct, although we do think that the process by which IPs report misconduct could be streamlined.

How it works

177. When a company has entered into formal insolvency proceedings[7], IPs as office holders have a statutory duty to report on the conduct of all directors who were in office during the last three years of the company's trading. The **Secretary of State is responsible for carrying out investigations** and makes the decision as to whether it is in the public interest to seek a disqualification order.

178. The CDDA and associated Rules (see Annex 9) lay out the matters for determining unfitness, other cases for disqualification, reporting and application provisions and procedures plus consequences of contravention of reporting requirements.

Structure of disqualification legislation

179. The CDDA came into force on 29 December 1986. All sections of the CDDA apply to England, Wales and Scotland, but not to Northern Ireland (although equivalent legislation has been in force since 1986). The Act applies to "companies" which includes any company which may be wound up under the Insolvency Act 1986. It also applies to foreign companies registered in the UK, building societies, incorporated friendly societies, NHS foundation trusts, open-ended investment companies[8] and charitable incorporated organisations.

180. Disqualification undertakings were introduced in April 2001. These are the administrative alternative to a disqualification order where a director can offer a disqualification undertaking to the Secretary of State. A disqualification undertaking has the same effect as a court order, but does not involve court proceedings and their consequent costs.

181. The CDDA provides that the court shall disqualify directors of insolvent companies where it is satisfied that a directors' conduct makes them unfit to be concerned in the management of a company. The Act provides that if it appears to the IP that the conditions for making a disqualification order are satisfied as respects a person who is or has been a director of the insolvent company, they shall immediately report the matter to the Secretary of State. In practice, reports are made to the Insolvency Service, which exercises the powers of the Secretary of State in relation to insolvent disqualifications.

182. The Act provides that the Secretary of State or the official receiver may require the office-holder to produce such information with respect to any person's conduct as a director of the company, and produce and permit inspection of such books, papers and other records relevant as the Secretary of State or official receiver may reasonably require.

183. There are separate proposals to amend the CDDA to enable the Secretary of State or the official receiver to request information relevant to a person's conduct as a director of a company that has been insolvent, directly from any person, including from officers of the company themselves. The proposed changes would reduce the administrative burden on IPs who are currently asked to provide a signed authority to enable The Service to obtain information from third parties. This would reduce bureaucracy and delays in obtaining information.

[7] Excluding voluntary arrangements
[8] With modifications

184. The accompanying Rules to the CDDA (The Insolvent Companies (Reports on Conduct of Directors) Rules 1996) (as amended) and The Insolvent Companies (Reports on Conduct of Directors) (Scotland) Rules (as amended)) provide statutory forms for use by the office-holder. The 'D1' report is used to report misconduct. The D2 return is used where no misconduct has been found or as an interim report. Minor revisions were made to the forms in 2001 but the forms have remained unchanged since.

Current IP reporting provisions

185. The legislation provides that a D1 (misconduct) report must be made immediately, once it appears to the IP that the director's conduct makes them unfit to be concerned in the management of a company.

186. A D2 (interim or fitted) return must in any event be made on the day one week before the expiry of the period of 6 months from the relevant date (the date of the insolvency event).

187. In submitting a D1 report, the IP must be satisfied that there is evidence of misconduct. Information can be delayed therefore whilst the IP ensures that they are satisfied that they can evidence misconduct and justify their opinion. This impacts on the vetting and investigation process which is significant because the Secretary of State has only 2 years in which to make an application for disqualification.

188. The decision as to whether to apply for disqualification is made by The Service on behalf of the Secretary of State based on a variety of factors. The Service must consider whether the case warrants investigation, taking into account the seriousness of the alleged misconduct, availability of evidence and witnesses plus any mitigating factors. These factors are considered before a decision is taken as to whether the case warrants investigation.

189. There can be an expectation from IPs that where they express an opinion that a director is unfit, the director will be disqualified. All adverse conduct reports are thoroughly considered by The Service before a decision is made on whether to target the case for investigation but in practice, cases are often not taken forward for a variety of reasons e.g. problems obtaining information, insufficient evidence, litigation risks, a credible defence, conduct not material enough to warrant a disqualification or other public interest criteria not being met. Where cases are taken forward, often the suggested misconduct set out by the IP are not the same grounds that are taken forward in disqualification proceedings. The current onus on the IP to evidence misconduct in the D1 report can therefore result in wasted effort on the part of the IP and time delays.

190. There are often **delays in IPs providing information**. This may be because they are reluctant to pass an opinion on the director's conduct due to concerns that the director may seek disclosure of the D1 report and take legal action against them. We receive around 600 interim D2 returns each year which represent a delay in the IP forming an opinion. Also, there are often delays in submission of post D1 information where IPs await legal advice.

191. The Secretary of State has a period of 2 years from the date of the insolvency event to issue disqualification proceedings. Currently only 68% of D1 reports are submitted by IPs within 6 months of the insolvency event. Delays in receiving the D1 report impact on any subsequent investigation by the Secretary of State and often on the enforcement outcome.

Changes to the D forms

192. We have discussed with our stakeholders how the quality and timeliness of information received from IPs and their engagement in investigations could be improved. We issued revised guidance notes and reviewed our feedback to IPs to explain why some cases are not taken forward. We sought to increase understanding of what makes a viable disqualification case. However, the issue of an outdated form with no electronic means of submission could not be addressed through these activities.

193. The Red Tape Challenge provided a further opportunity to consider the regulations around IPs reporting director misconduct. Following the insolvency theme Red Tape Challenge spotlight, we received a small number of responses around disqualification. Those responses, and subsequent suggestions made at a Red Tape Challenge stakeholder event included suggestions around;
    - a single return to replace the D1 report and D2 return;
    - electronic submission of returns;
    - removing the need for the IP to express an opinion on director misconduct; and
    - removing the need to submit a further report where liquidation follows administration.

The proposals

194. The proposals below reflect many of the Red Tape Challenge suggestions made. Additionally we propose **the introduction of a more responsive and intelligence-enhanced enforcement process.** This would require IPs to be vigilant to indicators of misconduct and to report them earlier. IPs would not be expected to provide fully evidenced allegations but instead to alert us where it appears to them that the director has 'behaved in a manner which may indicate misconduct'.

195. Our investigators would determine what relevant further information was required from other sources, including company officers, and, where necessary, what further information was required from the IP to add to information already gathered from our intelligence sources. We would be able to commence investigations earlier when contacts and information are fresher and we believe this would lead to more efficient investigations, successful enforcement outcomes and increased public protection.

196. We are seeking views on the policy impact of each element of the proposed reporting changes and overall, the likely costs and benefits.

Single return

197. We propose replacing the current D1 (misconduct) report and D2 (interim or fitted) return with a **single, shorter return** completed in all cases. We do not propose that this be a prescribed form as this introduces regulatory burdens and delays when changes are required. We are proposing rules requiring IPs to make an electronic return in a format specified by the Secretary of State.

198. Tick box options would be provided and the level of form completion required would be case dependent. Much of the information required by the current D1 form we can obtain from elsewhere (for example from Companies House) and we are considering reducing the burden on IPs by pre-populating returns with information which is already available. This would enable IPs to focus on providing information that we cannot obtain elsewhere or which contradicts other sources.

199. The proposal is to include on the return **an outline list of behaviours to assist IPs in reporting when it appears that there is behaviour which may indicate misconduct**. The list would not be exhaustive and a further free text box would be available to report other matters. Specified supporting documentation would not be prescribed with the return at the submission stage but there would remain a facility for the IP to submit the evidence relevant to the reported behaviour that was available at the time.

200. Information provided by IPs will be added to any gathered from our own intelligence sources and, where necessary, further requests for information will be made in appropriate cases focusing on matters under investigation. Additional information available to us comes from:

- the substantial volume of referrals we receive from other agencies and from the public relating to possible misconduct by individuals and companies;
- public and commercial databases and records;
- liaison with other government, regulatory and enforcement agencies;
- analysis of open source information; and
- our own databases which include compulsory and non-compulsory insolvency data and details of previous D1 reports and D2 returns.

201. Currently, where a company enters one formal insolvency procedure and subsequently goes into another, both office-holders are required to submit returns, even where the same IP holds both offices. We think this unnecessary and **propose that the burden of requiring IPs to submit a compulsory return in the subsequent insolvency procedure** be removed.

202. Although there were suggestions to remove the requirement to submit a return in cases where no misconduct is indicated we believe that a return made in respect of every corporate insolvency event would enhance our intelligence base, in addition to providing a check that all cases have been considered by the IP.

Q52. Do you agree with the proposal that a return be required in respect of all cases? If not, please explain why.

Q53. Do you agree with the proposal that where liquidation follows administration office holders should not be required to submit a further report? If yes, please estimate the average time saved per case based on the current form(s).

Q54. Do you agree with the proposal that the requirement to submit a statutory form is changed to require the IP to complete the return in a format specified by the Secretary of State?

Q55. If you are an IP, what problems do you encounter with the current reporting process?

Q56. If you are an IP how long per case (on average) does it take you to complete and submit the;

- **current D1;**
- **current D2 form?**

Q57. If you are an IP what impact do you think a single, pre-populated form would have on the time/cost involved in submitting a return?

Electronic submission of returns and submission of subsequent information

203. In line with BIS' vision for 'Digital by Default' the Government is committed to offering a faster, simpler and more convenient way for IPs to make the required returns.[9] We are aiming therefore to develop a modern, flexible technology platform to enable electronic submission of reports required from IPs.

204. We are currently developing an electronic reporting facility initially for IPs to use when engaging with our Redundancy Payments Service and we will consider whether that facility could also be used to receive disqualification reports. We believe that enabling electronic reporting is likely to lead to significant long term savings in terms of completion and inputting times, postage and other staff costs for both IPs and The Service. Prior to this facility becoming available we will consider provision of an interim web based solution for IPs to access and email returns.

205. We anticipate that IPs dealing with corporate insolvencies will have internet access. We propose therefore that **it be mandatory to make the return online** and propose that no alternative to electronic submission is offered. In the unlikely event that any IPs are without internet access, they could use publically available secure internet facilities e.g. in public libraries.

206. Guidance will be available on completing the return and our longer term aim would be to provide drop down guidance within an electronic form.

Q58. Do you support the proposals to require mandatory electronic submission of returns?

Q59. How would you expect to submit the new returns?
- **a) using a secure online form, which allowed you to cut and paste or type information**
- **b) via a secure web service* which could potentially integrate with your own case management system (*you would need to invest in developing an interface)**

Q60. Do you think that enabling electronic reporting will lead to savings in terms of the cost of completing and submitting returns? We would welcome comments on the costs and benefits you think will accompany electronic submission.

Q61. If you are an IP, would you want the ability to follow the progress of returns?
If yes would you prefer to do this in online 'account' environment or separately?

Q62. If you are an IP would you require individual logins for staff submitting returns, or would a single password for your firm suffice?

[9] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/66060/12-1370-bis-digital-strategy.pdf

Removal of IP opinion from return

207. Some IPs have expressed their reluctance to provide an opinion as to the directors' misconduct pointing to attendant litigation risks. The current statutory form requires the IP to state whether the director is '*a person whose conduct makes it appear to you that he is unfit'.* If the IP ticks 'yes' they are required to provide details.

208. The requirement for IPs to evidence alleged misconduct can often lead to delays in the provision of information to us whilst that evidence is gathered. This delay, and in some cases the quality or limitations of information received can impact on the ensuing investigation. As not all cases are proceeded with, IPs may also spend time gathering information unnecessarily, impacting on the IP's time and administration costs.

209. We propose **changing the requirement on the IP to express an evidenced opinion** specifying misconduct to an approach where the IP makes a return in all cases and provides details of director behaviour which may indicate misconduct (see paragraph 194). We are proposing a less prescriptive and more flexible approach to the provision of supporting documentary evidence by the IP at this stage. The Secretary of State would then consider the director's behaviour and what further information would be required before a decision could be made as to whether the case should be targeted for further investigation.

210. Subsequent to the return, in cases targeted for investigation, the IP would still be obliged to produce and permit inspection of books, papers and other records in cases targeted for investigation and to provide information which the Secretary of State or official receiver deems relevant. These requests would be focused and pertinent to matters under investigation.

211. Proposed changes to the CDDA (see paragraph 183) would remove some of the burden of providing authorities and information to the Secretary of State as, under the proposals, information could be obtained direct from any person including company officers.

Q63. Do you support the proposal to remove the requirement for IPs to express an opinion as to director misconduct? Please explain why.

Q64. Do you think that not being required to evidence an opinion would result in IPs reporting more instances where behaviour which may indicate misconduct? If so, can you provide an estimate of the proportion of cases?

Earlier return

212. As the initial burden of evidencing misconduct to the extent currently required by the CDDA would be removed from IPs, the new return will be easier to complete and submit. We propose therefore that **returns be submitted to the Secretary of State in all cases within 3 months of the insolvency event**. We anticipate that all of the information required for completion of the return will be available to the office-holder within that reduced period in the vast majority of cases.

213. Earlier submission would enable investigation of potential misconduct to commence at an earlier stage with greater proximity to events, fresher information, contact details and creditor interest. This would enable The Service (exercising the functions of the Secretary of State) to target cases for investigation sooner and engage with the office-holder in those cases focusing on information required for a full investigation of the case. This would save IPs' resources by reducing time spent evidencing cases that are not subsequently targeted for investigation.

Q65. Do you agree with the proposal that IPs be required to submit information to us within 3 months of the date of the insolvency event? If not, when is the appropriate deadline?

Q66. Do you think that if required to submit earlier returns, IPs would be more likely to report more instances of behaviour which may indicate misconduct? If you are an IP, can you provide an estimate of the proportion of cases?

Savings and benefits associated with changes to reporting procedures

214. We anticipate that the proposal to introduce a single electronic return will have significant benefits including;
    - Return quicker to complete/submit;
    - Increased proximity to events;
    - Improved security;
    - Earlier shared intelligence – increased synergy between the Service and IPs; and
    - Less wasted effort in IPs providing information which may not be used.

215. We estimate that the removal of this requirement will result in **savings of approximately £5.1 million per annum**, as outlined in the Impact Assessment at Annex 8.

216. There would be familiarisation costs to IPs but these are expected to be minimal. We would publish information concerning changes to reporting procedures on our website and in the publication 'Dear IP'. In terms of assisting IPs with form completion we would provide revised guidance notes and the longer term aim would be to embed guidance within the electronic return. We would highlight the changes in a series of outreach presentations and in a webinar. We would also work with the Joint Insolvency Committee on changes to Statement of Insolvency Practice 2 (investigations) and Statement of Insolvency Practice 4 (director disqualification).

Q67. If you are an IP we would welcome comments on the estimated savings associated with completing a single return and comments as to other costs or benefits which may not been identified.

Q68. We have outlined what actions we would take to publicise changes to reporting procedures and to make completion of the forms straight-forward. Is there anything else you would consider useful in terms of IP familiarisation with the new approach?

Annex 8: Part 3 - Impact Assessment - Changes to reporting on the conduct of directors by insolvency office-holders

Title: Report director misconduct: Proposals to change reporting processes **No:** **Lead department or agency:** Insolvency Service (Exec Agency of BIS) **Other departments or agencies:**	**Impact Assessment (IA)** **Date:** 12/07/2013 **Stage:** Consultation **Source of intervention:** Domestic **Type of measure:** Primary legislation **Contact for enquiries:** Clare.Quirk@insolvency.gsi.gov.uk

Summary: Intervention and Options

RPC Opinion: N/A (Deregulation measure RPC opinion not required)

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, One-Out?**	**Measure qualifies as**
43.40m	43.40m	-4.18m	Yes	Out

What is the problem under consideration? Why is government intervention necessary?

When a company has entered into formal insolvency proceedings Insolvency Practitioners (IPs) have a duty to report on director misconduct and are required to use two outdated statutory forms, D1:full report, to report misconduct or D2: interim or final return. Information from IPs can vary in timeliness and quality. Legislative change is required to update and streamline the reporting process; replacing statutory paper forms with a single, electronic return, alerting the Secretary of State (SoS) at an earlier stage to director misconduct and enabling a move to a more responsive, intelligence – led enforcement process.

What are the policy objectives and the intended effects?

The policy objective is to update the process for reporting director misconduct .The intended effects include:
Streamlined reporting - single electronic return, digital by default, removing requirement for IPs to give definitive opinion re director conduct (which introduces delay).
Earlier investigation of miscreant directors - IPs reporting misconduct indicators earlier; more efficient investigation and enforcement outcomes;
Increasing consumer confidence and protection - earlier focus on appropriate cases.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Improvements in the quality and timeliness of information received from IPs were sought by issuing revised guidance notes, extending outreach and stakeholder programmes and reviewing feedback to IPs. However, changing reporting requirements, streamlining forms and enabling electronic submission can only be addressed through legislative change.

Will the policy be reviewed? Yes **If applicable, set review date:** 2020

Does implementation go beyond minimum EU requirements?			**No**		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 **Yes**	Small Yes	Medium Yes	Large Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: ..... **Date:** .....

Summary: Analysis & Evidence

Description: Proposal to change the procedure for reporting director misconduct

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	**High:** 0	**Best Estimate:** 43.40

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			0	0
High			0	0
Best Estimate	0.5		0	0.5

Description and scale of key monetised costs by 'main affected groups'

Initial familiarisation costs estimated at 1 hour per Insolvency Practitioner affected.

Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				0
Best Estimate			5.1	43.9

Description and scale of key monetised benefits by 'main affected groups'

Cost savings from reduction in estimated time to complete single new electronic return compared with cost of completing current statutory form will enable more money to be returned to creditors.

Other key non-monetised benefits by 'main affected groups'

Earlier investigation of miscreant directors leading to;

- more efficient investigations and enforcement outcomes;
- increasing consumer confidence and protection.

It has not been possible to quantify these benefits.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

That a reduction in IPs' costs in completing returns will be passed on to creditors in the form of increased dividend payments.

BUSINESS ASSESSMENT (Option 8)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.0	**Benefits:** 4.2	**Net:** 4.2	**Yes**	N/A

Evidence Base (for summary sheets)

Scope of impact assessment

1. This Impact Assessment (IA) considers the likely costs and benefits of the Disqualification Reporting proposals. It is hoped that stakeholders will be able to provide further evidence to help quantify these further.

Affected Groups

2. The main affected groups will be:

   - Insolvency professionals and their staff;
   - Government, in respect of internal administrative processes;
   - Government, in respect of any consequential amendments required to UK legislation;
   - Businesses and company creditors.

The legislation

3. The Company Directors Disqualification Act 1986 (CDDA) came into force on 29 December 1986. All sections of the CDDA apply to England, Wales and Scotland, but not to Northern Ireland (although equivalent legislation has been in force since 1986). The Act applies to "companies" which includes any company which may be wound up under the Insolvency Act 1986. It also applies to foreign companies registered in the UK, building societies, incorporated friendly societies and NHS foundation trusts.

4. Disqualification undertakings were introduced in April 2001. These are the administrative alternative to a disqualification order where a director can offer a disqualification undertaking to the Secretary of State (SoS). A disqualification undertaking has the same effect as a court order, but does not involve court proceedings and their consequent costs.

5. The CDDA provides that the court shall disqualify directors of insolvent companies where it is satisfied that a director's conduct makes them unfit to be concerned in the management of a company. The Act provides that if it appears to the IP that the conditions for making a disqualification order are satisfied as respects a person who is or has been a director of the insolvent company, they shall immediately report the matter to the Secretary of State. In practice, reports are made to the Insolvency Service, which exercises the powers of the Secretary of State in relation to insolvent disqualifications.

6. The Act provides that the Secretary of State, or the official receiver, may require the office-holder to produce such information with respect to any person's conduct as a director of the company, and produce and permit inspection of such books, papers and other records relevant as may reasonably be required.

7. There are separate proposals to amend the CDDA to enable the Secretary of State or the official receiver to request information relevant to a person's conduct as a director of a company that has been insolvent, directly from any person, including from officers of the company themselves. The proposed changes would reduce the administrative burden on IPs who are currently asked to provide a signed authority to enable the Service to obtain information from third parties. This would reduce bureaucracy and delays in obtaining information.

8. The accompanying Rules to the CDDA (The Insolvent Companies (Reports on Conduct of Directors) Rules 1996 (as amended) provide statutory forms for use by the office-holder. The 'D1' report is used to report misconduct. The 'D2' return is used where no misconduct has been found or as an interim report. Minor revisions were made to the forms in 2001 but the forms have remained unchanged since.

Current IP reporting provisions

9. The legislation provides that a D1 (misconduct) report must be made immediately, once it appears to the IP that the director's conduct makes him unfit to be concerned in the management of a company.

10. A D2 (interim or fitted) return must in any event be made on the day one week before the expiry of the period of 6 months from the date of the insolvency event.

11. In submitting a D1 report, the IP must be satisfied that there is evidence of misconduct. Information can be delayed therefore whilst the IP ensures that he is satisfied that he can evidence misconduct and justify his opinion. This impacts on the vetting and investigation process which is significant because the Secretary of State has to make application for a disqualification order within 2 years of the insolvency event.

12. The decision as to whether to apply for disqualification is made by the Secretary of State based on a variety of factors. The Secretary of State must consider whether allegations can be made out taking into account their seriousness, availability of evidence and witnesses and any mitigating factors. These factors are considered before a decision is taken as to whether the case warrants investigation.

Problem under consideration

The present reporting system has material shortcomings;

13. **Outdated statutory forms** - The forms require updating – last changed in 2001.

14. **Digital agenda** - There is no mechanism to enable electronic submission.

15. **Information quality and timeliness** - IPs are currently required to evidence misconduct in all cases where it is identified and may often delay their reports whilst they satisfy themselves that they have sufficient evidence of misconduct. Only 68% of reports are submitted within 6 months of the insolvency event.

16. **Impact on investigation** - The Secretary of State has a period of 2 years from the date of the insolvency event to issue disqualification proceedings. Delays in receiving the D1 report impact on any subsequent investigation by the Secretary of State and often on the enforcement outcome.

Options considered

17. Improvements in the quality and timeliness of information received from IPs were sought by issuing revised guidance notes, extending outreach and stakeholder programmes and reviewing feedback to IPs. However, changing reporting requirements, streamlining forms and enabling electronic submission can only be addressed through legislative change. We have therefore only presented one option.

Rationale for intervention

18. Legislative change is required to enable electronic submission and update the reporting process.

19. **Electronic reporting** will lead to savings in terms of the cost of completing and submitting returns. Currently both forms are statutory forms completed manually. A single return made in all cases would streamline the process; make it easier to understand and more time efficient. Enabling submission of returns via an electronic gateway would improve the process further, enhancing the

quality, consistency and submission times of information from IPs and result in efficiencies in the allocation of investigations by the Insolvency Service.

20. Removing the need for submission of a statutory form to provide a return in a form specified by the Secretary of State would mean that the format of the return could be amended more easily to accommodate change. The proposal would be for the form to be pre-populated with information from Companies House when the INSS electronic gateway is available.

21. **Earlier reporting of misconduct** - If IPs report at an earlier stage (e.g. 3 months from the insolvency event), the Secretary of State would be able to consider behaviour identified by the IP in addition to available intelligence in deciding whether to investigate and in determining what further information he may reasonably require. This would lead to reduced administrative burdens for IPs and earlier focus on miscreant directors.

22. This would require a change of emphasis in terms of what the IP submits – in effect highlighting (at an earlier stage) information or behaviour which may indicate misconduct as opposed to providing a significant amount of evidence at that stage.

23. IPs would still be obliged to provide (additional) information and produce and permit inspection of books, papers and other records where the Secretary of State requires it. There would also be a requirement to submit (new) information about misconduct after submission of the return.

Policy objective

24. The policy objectives are modernisation of the law around reporting director misconduct. The intended effects are three-fold, as follows:

25. **Streamlined reporting -** modernising the way information is submitted in line with the Digital by Default agenda; delivering what stakeholders want by replacing two outdated statutory forms with a single electronic return and removing the current requirement on IPs to give a definitive opinion re director conduct.

26. **Earlier investigation of miscreant directors** - IPs reporting misconduct indicators earlier should result in more efficient investigation and enforcement outcomes.

27. **Increasing consumer confidence and protection** – earlier submission would enable investigation of potential misconduct to commence at an earlier stage with greater proximity to events, fresher information, contact details and creditor interest. This would enable the SoS to target cases for investigation sooner with earlier focus on miscreant directors. Reducing IP costs should result in higher distributions to creditors.

Costs

28. We estimate that the only cost to business will be transition costs incurred by IPs. To calculate the scale of transition costs, we estimated the amount of time that an IP and his/her staff would need to familiarise themselves with the new return and guidance. We expect that most IPs will require at least one hour to familiarise themselves with the changes. Additional costs should be minimal as responsible firms already operate staff training programmes.

29. There are 1352 appointment-taking IPs and, based on an IP hourly rate of £375, we would estimate that transition costs would total around £507,000 in the first year.

Benefits

30. The monetised value of benefits is based on the estimated reduction in the cost of completion of returns made by IPs to the Secretary of State. The methodology for calculating the estimated savings is to compare the current estimated cost of completing the D1: Full Report and D2: Interim with the estimated cost of completing the new single, electronic return.

We have based calculations on the following assumptions;

Current D1 report

31. That the current D1 form takes 5 hours to complete - R3, the industry body for IPs, estimate that the form takes 2-3 hours per director to complete. Based on an average of 2 directors per case we have estimated a completion time of 5 hours per report. We have included a notional cost of completion with 4 hours of manager's time (at £250 per hour) and 1 hour of an IPs time (at £375 per hour). In 2012/13 5335 D1 reports were submitted so the estimated total cost of completing D1 reports was **£7,335,625**.

Current D2 return

32. That the current D2 return takes 1 hour to complete – R3 estimated that the form takes 0.5 hours per director to complete. Based on an average of 2 directors per case, we have estimated completion time of 1 hour per return. We have costed this at 0.5 hours of manager's time (at £250 per hour) and 0.5 hours of an IPs time (at £375 per hour). In 2012/13 12031 D2 returns were submitted so the estimated total cost of completing D2 returns was **£3,765,703**.

33. The total estimated cost of submitting D1 reports and D2 returns in 2012/13 therefore was **£11,101,328.**

New single electronic return

34. Currently misconduct is reported on form D1 in around 30% of cases. Completion time of the new return will depend on whether or not the IP is reporting behaviour which may indicate misconduct. It is anticipated that earlier submission coupled with the reduced initial evidential burden may lead to an increase in returns indicating misconduct. We have estimated completion time of the new return as follows dependent on the nature of the return;

    - **Return where no misconduct indicated** - We have estimated that the proposed new return will take 15 minutes per director to complete where no misconduct is indicated. Based on an estimated average 2 directors per case we have estimated that the cost will be £156 which includes 15 minutes of a manager's time (at £250 per hour) and 15 minutes of an IP's time (at £375 per hour).

    - **Return where misconduct is indicated** - We have estimated that the proposed new return will take 1 hour per director to complete where misconduct is indicated. Based on an estimated average 2 directors per case we have estimated that the cost will be £625 which includes 1 hour of a manager's time (at £250 per hour) and 1 hour of an IP's time (at £375 per hour).

35. We have illustrated 3 different scenarios, dependent on;

    - The split between no misconduct: misconduct reported being the same as the current split (around 70:30) – Based on the current total number of returns, the estimated cost of completing the new returns using the current conduct: misconduct split would be **£5,211,211**.

    - The split between no misconduct: misconduct reported changing to 60:40 – Based on the current total number of returns, the estimated cost of completing the new returns would be **£5,966,770.**

    - The split between no misconduct: misconduct reported changing to 50:50 – Based on the current total number of returns, the estimated cost of completing the new returns would be **£6,781,423.**

36. Compared with the estimated current cost of completing D1 reports and D2 returns, this would result in indicative savings of **£5,890,117**, **£5,134,558** and **£4,319,905** per annum respectively. In the Impact Assessment calculations we have included a best estimate in terms of benefits derived from reporting changes of £5.1 million per annum, being the average saving from this sensitivity analysis.

One-in one out

37. The measure is in scope as it involves a forced change to submit the new return to the SoS. We estimate that the measure will reduce the cost of reporting misconduct, initially to the IP, but ultimately to the benefit of creditors, both in terms of the cost of making the return and in terms of the amount of information he/she would be required to submit subsequently to evidence misconduct.

Wider Impacts

38. We do not consider that the proposal has any impact on greenhouse gas emissions; wider environmental impact; health and well-being; human rights; rural proofing or sustainable development.

Equalities Impact

39. We do not expect the policy to have a disproportionate impact on any protected characteristic as all IPs will be required to submit the new return. The IS does not hold significant equality data on authorised IPs.

- Insolvency Practitioners: The IP profession is made up in the majority by white men. However, as any impact on individual IPs can be expected to be the same, we do not expect any disproportionate impact on different genders or races of IPs. As such there is no impact.
- Creditors: Most creditors in corporate insolvencies are businesses rather than individuals, and insolvencies occur over a wide range of business sectors. We do not expect any disproportionate impact on different genders or races of creditors, or owners of creditors.
- Company directors and shareholders: Insolvencies occur across a wide range of business sectors. We do not expect any disproportionate impact on different genders or races of individuals who are directors or shareholders of companies.

Competition Impact

40. We expect the policy to have no impact on competition in the IP market.

Small Firms Impact

41. We do not anticipate that there will be any particular negative effect on small firms beyond the moderate familiarisation costs outlined above.

Annex 9: Disqualification Legislation

Company Directors Disqualification Act 1986
The Insolvent Companies (Reports on Conduct of Directors) Rules 1996
The Insolvent Companies (Reports on Conduct of Directors) (Amendment) Rules 2001
The Insolvent Companies (Reports on Conduct of Directors) (Scotland) Rules 1996
The Insolvent Companies (Reports on Conduct of Directors) (Amendment) (Scotland) Rules 2001

Annex 10: Full list of questions for all three parts of the consultation

Part 1 Insolvency Practitioner Regulation Questions

Q1. **Do you agree that the requirement to maintain a separate case record should be removed?**

Q2. **Do you believe that the present requirements result in duplicate information being maintained? If so, can you provide an estimate of the amount of time taken to maintain this duplicate information?**

Q.3 **Do you agree that Regulations 15(1)(a) and 15(1)(b) should be repealed?**

Q.4 **Would it be necessary to introduce a new provision outlining in general terms what is expected in terms of case records and retention?**

Q5. **Do you agree that administrators and voluntary liquidators should be allowed to dispose of books and papers at any time with the approval of the Secretary of State?**

Q6. **Can you provide an estimate of the proportion of administrations and voluntary liquidations where it is necessary to retain books and papers until one year after dissolution and the associated costs?**

Q.7. **Are you aware of instances where companies are being placed into compulsory liquidation because of the present requirements to retain books and papers in administration and voluntary liquidation?**

Q8. **Do you agree that the requirement to obtain sanction to exercise certain powers within Schedules 4 and 5 of the Insolvency Act 1986 should be removed?**

Q9. **Do you agree that the requirement for liquidators and trustees in compulsory winding up and bankruptcy to obtain authorisation from the Secretary of State to operate a local bank account in place of banking with the Insolvency Services Account should be removed?**

Q10. **Can you provide an estimate of the approximate cost of obtaining sanction in liquidation and bankruptcy?**

Q11. **Do you agree that the requirement to maintain time records where remuneration sought is not on a time cost basis should be removed?**

Q12. **Can you provide an estimate of the proportion of cases where remuneration is sought on a non-time cost basis?**

Q13. **Can you provide an estimate of the average cost of maintaining time records in an individual case?**

Q14. **Can you provide an estimate of the approximate proportion of cases where insolvency practitioners would dispense with maintaining time records if able to do so?**

Part 2 Changes to the law governing insolvency proceedings Questions

A Meetings of Creditors

Q15. Do you think that meetings always serve a purpose where held?

Q16. Do you agree that meetings of creditors should no longer be the default position of gauging creditor opinion?

Q17. Do you think some groups' interests will be unfairly harmed by such an approach with meetings of creditors? If so, do you think such harm could be avoided by incorporating statutory protections?

Q18. Are there decisions (other than those relating to the approval of voluntary arrangements or an office-holder's remuneration) that you think should only be considered at a meeting of creditors?

Q19. Do you think that 10% is a reasonable threshold for objecting creditors? If not, what do you think it should be?

Q20. Do you find final meetings to be poorly attended?

Q21. Do you agree that all final meetings should be abolished?

Q22. Do you have any comments on any of the minor proposals on meetings of creditors included in Annex 4?

B Communication and creditor engagement

Q23. Do you agree that creditors should be able to opt out of receiving correspondence sent by the insolvency office-holder?

Q24. Do you think that creditors should stop receiving documents automatically at the point they cease to have an economic interest in an insolvency? If so, should individual creditors be able to request that the insolvency office-holder continue to send them documents after this point?

Q25. Do you know how often the existing (post-2010) provisions regarding use of websites in insolvency proceedings are used? Do you think that this measure will increase their usage, and if so by how much?

Q26. Do you agree with the proposal to remove the role of the court where the office-holder intends to place all documents on a website, with only one initial notice to creditors of this fact?

Q27. Do you agree that facilitating greater use of websites as described here could reduce unnecessary contact between the office-holder and the creditors? Or do you think that individual notice is always required?

Q28. Do creditors'/liquidation committees continue to play a worthwhile role where they are formed? Could more be done, through the committee structure or otherwise, to increase creditor engagement in insolvency

procedures?

Q29. Do you have any comments on any of the minor proposals on communication and creditor engagement included in Annex 5?

C Improving insolvency processes

Q30. Do you agree that creditors should be able to extend administrations for 6 or 12 months, rather than only 6?

Q31. Do you think that creditors should be able to extend administrations beyond 12 months? If so, what should the maximum period of an extension be.

Q32. Do you agree with the extension of wrongful and fraudulent trading provisions to administration?

Q33. Could you estimate the financial benefit of this proposal? Are there cases you are aware of in the past, where the current law has hampered recovery action?

Q34. Do you agree that low value dividends should not be distributed? If you do, is £5 or £10 an appropriate minimum dividend level? If not, what level would you suggest?

Q35. Do you think that there are any circumstances where a payment of less than the minimum dividend level should be paid?

Q36. Do you think that the minimum dividend level should reflect the total of all dividends that a creditor might receive in a case in respect of its debt (i.e. any interim dividends together with the final dividend)? Or should the minimum level be applied to each dividend payment for each distribution?

Q37. What savings do you think would be achieved in the costs of administering insolvencies were the insolvency office-holder not to make the payments of dividends less than £5 or £10 (or alternative limit if one suggested in your response to Q 34)?

Q38. Do you think that funds not distributed should be used for insolvency investigation and enforcement purposes, or should they be paid to HM Treasury?

Q39. Do you agree that a creditor's right to unclaimed dividends should lapse over time? If you do, do you think that 6 years after the payment is initially made is a suitable length of time to allow for a creditor to claim dividends owed to them? If not, what length of time do you suggest?

Q40. Do you agree that the insertion of a crystallisation trigger where an administrator wishes to distribute funds to unsecured creditors in a Scottish administration is required?

Q41. Where do you think that a crystallisation trigger, attaching the charge to

the company's assets, should be placed?

Q42. How widespread is this problem in Scottish administrations? How much do you estimate is 'wasted' from an administrator having to initiate an 'unnecessary' liquidation in an average case (where this issue applies) as a result of the current statutory framework?

Q43. Do you agree with the proposal to enable debtors to consent to a winding-up order / bankruptcy order where a petition has been served by a creditor?

Q44. Do you think there will be any circumstances where, despite consent being received by the court from the debtor that they do not object to an insolvency order being made, that a hearing will still be necessary?

Q45. Do you agree that a winding-up petition presented by the company itself need not follow the same procedure as a petition filed by another party?

Q46. Can you think of any drawbacks with having a streamlined process in these cases? Are there any parts of the winding-up petition procedure that you would like to see retained in this streamlined process?

Q47. Do you agree with there being a role for an Adjudicator in this streamlined process?

Q48. Do you agree that the official receiver's duty to investigate the cause of failure of a company in liquidation should be discretionary, as it is in bankruptcy?

Q49. Do you agree that the position of receiver and manager in a bankruptcy should be scrapped and instead the official receiver will become trustee upon the making of the order?

Q50. Do you agree that FTVAs should be abolished?

Q51. Do you have any comments on any of the minor proposals that seek to improve insolvency processes included in Annex 6? Please indicate which of the minor proposals is being referred to in any reply on this question.

Part 3 - Changes to reporting on the conduct of directors by insolvency office-holders – Questions

Q52. Do you agree with the proposal that a return be required in respect of all cases? If not, please explain why.

Q53. Do you agree with the proposal that where liquidation follows administration office holders should not be required to submit a further report? If yes, please estimate the average time saved per case based on the current form(s).

Q54. **Do you agree with the proposal that the requirement to submit a statutory form is changed to require the IP to complete the return in a format specified by the Secretary of State?**

Q55. **If you are an IP, what problems do you encounter with the current reporting process?**

Q56. **If you are an IP how long per case (on average) does it take you to complete and submit the;**

- **current D1;**
- **current D2 form?**

Q57. **If you are an IP what impact do you think a single, pre-populated form would have on the time/cost involved in submitting a return?**

Q58. **Do you support the proposals to require mandatory electronic submission of returns?**

Q59. **How would you expect to submit the new returns?**

c) **using a secure online form, which allowed you to cut and paste or type information**
d) **via a secure web service* which could potentially integrate with your own case management system (*you would need to invest in developing an interface)**

Q60. **Do you think that enabling electronic reporting will lead to savings in terms of the cost of completing and submitting returns? We would welcome comments on the costs and benefits you think will accompany electronic submission.**

Q61. **If you are an IP, would you want the ability to follow the progress of returns?**
If yes would you prefer to do this in online 'account' environment or separately?

Q62. **If you are an IP would you require individual logins for staff submitting returns, or would a single password for your firm suffice?**

Q63. **Do you support the proposal to remove the requirement for IPs to express an opinion as to director misconduct? Please explain why.**

Q64. **Do you think that not being required to evidence an opinion would result in IPs reporting more instances where behaviour which may indicate misconduct? If so, can you provide an estimate of the proportion of cases?**

Q65. **Do you agree with the proposal that IPs be required to submit information to us within 3 months of the date of the insolvency event? If not, when is the appropriate deadline?**

Q66. **Do you think that if required to submit earlier returns, IPs would be more likely to report more instances of behaviour which may indicate misconduct? If you are an IP, can you provide an estimate of the**

proportion of cases?

Q67. If you are an IP we would welcome comments on the estimated savings associated with completing a single return and comments as to other costs or benefits which may not been identified.

Q68. We have outlined what actions we would take to publicise changes to reporting procedures and to make completion of the forms straight-forward. Is there anything else you would consider useful in terms of IP familiarisation with the new approach?