



Department for Business, Innovation & Skills

**Small Business, Enterprise and Employment Act:
Insolvency fact sheets**

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Insolvency – General Aims

Aims of the measures:

- Increase creditor engagement in the insolvency process by encouraging the use of decision-making processes fit for the 21st century.
- Encourage the use of more modern methods of communication between insolvency office-holders and creditors.
- Remove administrative burdens that add no value for creditors.

Measures will:

- Change the way office-holders communicate with creditors by removing the requirement to hold physical meetings in every case, and instead replacing them with a process of deemed consent, or in certain circumstances a decision making process such as a virtual meeting, electronic voting, or a meeting by correspondence. Creditors will still be able to demand a physical meeting. Our goal is to increase creditor engagement by allowing development of communication as technology improves. Final meetings of creditors, for which there is rarely any creditor interest, will be abolished.
- Allow creditors with no further interest in the insolvency to opt out of receiving routine correspondence and reports from the office holder. This will not include correspondence with regard to payment of a dividend.
- Give administrators the same power that liquidators have to take civil actions against directors and others, on behalf of the general body of creditors, where they have caused a company to trade wrongfully or fraudulently.

Background:

The Government's Red Tape Challenge insolvency theme asked stakeholders for views on how unnecessary regulation could be reduced and procedures could be modernised and simplified. Responses produced a package of measures aimed at reducing costs and improving returns to creditors. Those that require changes to primary legislation are being taken forward in this Bill and will deliver the first of the savings that will arise from the total package of measures.

Administration: sales to connected persons (prepack administrations)

Aims of the measure:

- To provide greater confidence to unsecured creditors and other affected stakeholders that a pre-pack represents the best outcome for them.

Measure will:

- Create a reserve power to make regulations to either prohibit administration sales to connected parties or make regulations to impose conditions or requirements to allow a connected party administration sale to proceed.

Specific outcomes and impacts:

- Should the non-legislative solutions in respect of administration sales to connected parties recommended by the independent reviewer (see background) not change behaviour/increase confidence in such sales; it may be necessary to exercise the power.

Background:

- An independent review into pre-pack administrations (Graham review) was published on 16 June 2014. The reviewer recommended a number of voluntary, non-legislative solutions to improve outcomes and confidence in the process. The Review also recommended that the government take a power to enable it to swiftly legislate to tackle problems if the voluntary package did not have the desired effect. The SoS agreed to all recommendations.
- The review focused on pre-pack administrations. A pre-pack administration is a special type of administration (not defined in legislation) A pre-pack is commonly understood to mean a sale that is agreed prior to the appointment of the administrator, and which is effected on, or shortly after the appointment of the administrator. The Review recommended however that the power should target all sales out of administration to connected parties, rather than just pre-packs, to avoid the unscrupulous delaying sales to avoid legislation targeted solely at pre-packs.
- The Graham review found that the biggest harm to creditors occurred in sales to connected parties. A sale to a connected party is where the insolvent business is sold to a purchaser previously involved with the insolvent business. The most common form of connection is where someone is a director of both the insolvent and purchasing business. Roughly 2/3rds of pre-packs involve a connected party sale.

Regulation of insolvency practitioners and Power to establish single regulator of insolvency practitioners

Aims of the measure:

- Strengthen the regulatory framework for IPs to deal effectively and efficiently with poor performance and abuse and provide greater confidence in the insolvency profession.

Measure will:

- Introduce Regulatory objectives: these will provide regulators with a clearer, enhanced framework within which to carry out their activities. They will provide the oversight regulator with a framework on which to hold the regulators to account. These objectives will include:
 - having a system of regulating persons acting as insolvency practitioners which delivers fair treatment and consistent outcomes;
 - encouraging an independent and competitive IP profession whose members deliver high quality services and are remunerated at a rate which is fair and reasonable for the nature of the work properly undertaken;
 - maximising the value of returns to creditors; and
 - protecting and promoting the public interest
- Provide a range of sanctions for the oversight regulator to ensure that appropriate action is taken where a regulator is not acting in accordance with the regulatory objectives. The sanctions are; direct a regulator to take action; impose a financial penalty; issue a reprimand; revoke a regulator's recognition; and (where it is in the public interest) apply to court to directly sanction an IP.
- Provide a reserve power to establish a single insolvency regulator. This would only be used if the proposed changes to the current system of self-regulation do not have the desired effect (of increasing confidence in the regime).

Background:

- IPs are given a considerable amount of power and discretion within insolvency legislation so it is essential they are appropriately regulated.
- There are currently 7 different regulatory bodies, for a relatively small profession (1,355 appointment takers). The current system suffers as a result of having no clear legislative framework against which regulatory activities can be assessed and the regulators held to account. The SoS as oversight regulator does not currently have sufficient and proportionate powers to hold the regulators to account where abuse occurs. This lack of appropriate powers of sanction leaves the oversight regulator in a weak position and undermines the credibility of the regulatory regime.



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