

Summary: Intervention & Options

Department /Agency:
Insolvency Service

Title:
Impact Assessment of changes to the Insolvency Act 1986 for the modernisation and streamlining of advertising .

Stage: Final

Version: 1

Date: 10 November 2008

Related Publications: A consultation document on changes to the Insolvency Act 1986 and the Company Directors Disqualification Act 1986 to be made by a Legislative Reform Order

Available to view or download at:

http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_reg

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

The existing mandatory requirement to advertise the creditors' meeting in a voluntary liquidation deliver little value to the insolvent estate and represents a considerable financial burden on the process.

What are the policy objectives and the intended effects?

The policy objective is to provide a better targeted regime to reduce the costs of administering voluntary liquidations and thereby increase the amount which can be paid to those owed money by the company in voluntary liquidation.

What policy options have been considered? Please justify any preferred option.

The burdens we propose to reduce are statutory and non-legislative means could not achieve the desired aim. Retaining the status quo would result in no reduction in burden.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? April 2012

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

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 Minister:

..... Date:

Summary: Analysis & Evidence

Policy Option: Advertising	Description: To provide a better targeted regime to reduce the costs of administering voluntary liquidations and thereby returns to creditors
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' One off costs of familiarisation for users of insolvency law. Advertising revenue lost to the newspaper industry
	One-off (Transition)	Yrs	
	£ Minimal	1	
	Average Annual Cost (excluding one-off)		
	£ 3.3 million		Total Cost (PV) £ 3.3 million
Other key non-monetised costs by 'main affected groups' Creditors by way of increased dividends.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The introduction of a more flexible and better targeted publicity regime would increase the possibility of unknown creditors becoming aware of the voluntary liquidation if, for whatever reason, they have not received an individual notice.
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 3.3 million		Total Benefit (PV) £ 3.3 million

Key Assumptions/Sensitivities/Risks

Number of voluntary liquidations per annum and the percentage of those cases in which a decision is taken that publicity in addition to the Gazette notice is deemed necessary.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	England and Wales				
On what date will the policy be implemented?	6 April 2009				
Which organisation(s) will enforce the policy?	Insolvency Service				
What is the total annual cost of enforcement for these organisations?	£ Minimal				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	N/A				
What is the value of the proposed offsetting measure per year?	£ 0				
What is the value of changes in greenhouse gas emissions?	£ 0				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; background-color: #ffffcc;">Micro</td> <td style="width: 25%; background-color: #ffffcc;">Small</td> <td style="width: 25%; background-color: #ffffcc;">Medium</td> <td style="width: 25%; background-color: #ffffcc;">Large</td> </tr> </table>	Micro	Small	Medium	Large
Micro	Small	Medium	Large		
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease of £	Net Impact £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

SUMMARY

1. These proposals are designed to reduce burdens on the voluntary liquidation process with a view to increasing the money available for a return to creditors. They are a part of a longer term project to update and modernise the insolvency legislation and run alongside equivalent changes that will need to be made to the Insolvency Rules 1986 for 6 April 2009. These changes will, we believe, reduce overall burdens and provide substantial savings in the administration of voluntary liquidations and feed through to creditors or members of those insolvent estates in the form of increased dividend payments.
2. We carried out a consultation exercise on these and a number of other proposals in late 2007 and the intention at that time was to bring wider changes into effect on 1 October 2008. Owing to difficulties in ensuring that our key stakeholders would be ready to implement the necessary changes to their procedures by that date, the implementation date for most of those proposals has been put back to 1 October 2009. However, these proposals in relation to the advertising regime in voluntary liquidations are not subject to those constraints and, in view of the extent of the burden, a decision has been made that they should be brought forward as soon as possible for the benefit of creditors.
3. The other proposed changes in the consultation paper issued in September 2007 are intended to be dealt with by separate LROs to be laid in early 2009.

INTRODUCTION TO THE PROPOSALS

4. In 1982, the Insolvency Review Committee published its report (referred to generally as the Cork Report) and this led to the new legislation in 1986, primarily the Insolvency Act 1986 (“the Act”) and the Insolvency Rules 1986 (“the Rules”).
5. The secondary legislation, the Rules, have been amended many times and a decision was therefore taken in 2005 to consolidate these Rules, to make them more accessible to users. At the same time, we decided to take the opportunity to modernise some of the procedures involved and to remove unnecessary requirements. The changes we propose now are central to the aim of modernising insolvency legislation and to achieve the reductions of burdens being sought.
6. The two sections which are proposed to be amended are section 95 (requirements on the liquidator when a members’ (solvent) liquidation is converted to a creditors’ (insolvent) liquidation and section 98 when the directors convene a meeting of creditors in a creditors’ (insolvent) liquidation. The requirements in section 98 are placed on the directors of the company, although in practice, an insolvency practitioner will advise on and deal with the formalities of the processes.
7. Sections 95 and 98 of the 1986 Act provide for the summoning and holding of an important meeting of creditors in a members’ voluntary liquidation (“MVL”) and in creditors’ voluntary

liquidation (“CVL”) respectively. Currently sections 95 and 98 require notice of the creditors’ meeting to be advertised both in the Gazette and at least once in 2 newspapers circulating in the locality of the company’s principal place of business. Individual notices are also required to be sent to all known creditors.

8. The intention of these provisions is to ensure that creditors of a company in voluntary liquidation are made aware that the company has gone into voluntary liquidation (or that the liquidation is no longer a solvent voluntary liquidation). The requirements for additional publicity are designed to ensure that creditors who do not receive an individual notice, for whatever reason, become aware that the meeting has been summoned.
9. The draft Order amends sections 95 and 98 of the 1986 Act as they apply to England and Wales by -
 - a) removing the requirement for a liquidator (MVL) or Company (CVL) to advertise in 2 local newspapers in addition to the London Gazette;
 - b) replacing it with a discretion to undertake additional publicity; and
 - c) in cases where that discretion is exercised, enabling the publicity to be effected by means other than an advertisement in a local newspaper.
10. If the liquidator/company deems it necessary to undertake additional publicity, the proposed amendments to the 1986 Act will enable them to publicise the liquidation in whatever way they consider it would best come to the attention of any additional creditors. The associated costs of the additional advertising will then only be incurred in cases where it will serve a useful purpose and when thought has been given to the most effective way of reaching unknown creditors.

11. OPTIONS FOR ACHIEVING POLICY INTENTION

(a) Do nothing

The mandatory requirement to advertise at least once in 2 local newspapers is statutory and could not be dealt with by non-legislative means such as guidance. To do nothing would therefore not achieve the policy aim of reducing burdens on the users of the insolvency legislation.

(b) Make changes to the Rules only

Equivalent changes are being made to the Rules in relation to the advertising requirements in voluntary liquidations. However, these would not remove the requirements in the Act and so would not on their own achieve the policy aim of reducing burdens on the users of the insolvency legislation.

(c) Change by LRO

By making this change by LRO we will maximise savings and deliver a better targeted regime for advertising in voluntary liquidations.

COSTS

12. The cost of local advertising has at present to be incurred in all cases regardless of whether it serves any useful purpose and, since it has to be paid for from the assets of the company, is passed on to the creditors in each case.
13. The costs of the proposed change will fall on the newspaper industry and insolvency practitioners.
14. The newspaper industry will see reduced revenues from advertising as fewer routine advertisements will be placed and this will match the figure for the benefits to the creditors in insolvent liquidations.
15. Insolvency practitioners and their staff will need to be made aware of the changes. We consider that the costs of familiarisation for the insolvency profession will be minimal for these reasons:
 - The Insolvency Service will inform the insolvency profession of the changes through its regular “Dear IP” newsletter, which is sent to all insolvency practitioners, to notify them of the changes;
 - The insolvency profession regularly budget for staff training and development and the costs of absorbing the implications of these proposals could be incorporated into existing budgets without significant additional costs; and
 - Members of the insolvency profession are under an obligation to keep themselves up to date on developments in their specialist field for CPD (Continuing Professional Development).
16. Company directors and their advisers (if not insolvency practitioners) may also need to be informed. This can be achieved for a one-off cost to Government by changing publications and guidance that give guidance on the liquidation process.

BENEFITS

17. The benefits of the reduction in costs incurred in voluntary liquidation will be passed on to the creditors and the costs, where they are incurred, should only arise where there is a business need. This will lessen the bad debts creditors will suffer and will therefore aid the economy in general.
18. There may also a non-monetised benefit to creditors from the more flexible approach to advertising. By getting the publicity, if deemed necessary, to them in the way best suited to the circumstances of the case.

THE PROPOSAL

19. This proposal was numbered 3 in the consultation paper issued in September 2007.

Moving to allow discretionary advertising of the appointment of a voluntary liquidator and to remove restrictions on the form any such advertisement can take.

20. The present provisions require a liquidator in a members' voluntary liquidation (section 95 of the Act) and a creditors' voluntary liquidation (section 98 of the Act) to advertise at least once in 2 newspapers circulating in the locality in which the company's principal place of business has been situated.
21. Notice of liquidation is required to be sent to all known creditors in any event. The cost of advertising has to be incurred whether or not it will serve any useful purpose.
22. We propose to remove the requirement to advertise in all voluntary liquidations, leaving it to the discretion of the company (in CVLs) or liquidator (in MVL conversions to CVL) whether it necessary in each case.
23. We also propose to remove the requirement for advertising to be made by local newspapers thereby enabling publicity of the meeting of creditors in a voluntary liquidation to be placed where it is most likely to come to the attention of unknown creditors. This publicity might be in a local newspaper but in some cases another form of publicity might be more likely to achieve the intended result.
24. We are concerned to ensure that where costs are incurred that they will be on the basis of the business need in the case, rather than an automatic procedure as at present. We do not consider that the creditors bearing the cost of an advertisement in a newspaper can be justified in all cases. Rather, we consider that publicity costs should only be incurred in those cases where it is considered it will serve some useful purpose. Removing the mandatory for publicity in voluntary liquidations to be by newspaper advertisement will provide for a better targeted advertising regime and improve the effectiveness of advertising where the discretion is exercised.
25. The requirement to put notice of the liquidation in the Gazette will continue.

Benefits of the changes

26. We estimate that the removal of the mandatory requirement to advertise in voluntary liquidations will be £3,360,000. This is calculated as follows:

Number of CVLs for 2009/10 (as per estimates of The Insolvency Service)	9,000
Number of these that are CVLs arising from administrations, by operation of paragraph 83 of Schedule B1 to the 1986 Act (as per estimates of The Insolvency Service). No advertising implications.	2,000
Number of CVLs where advertising provisions would therefore apply	7,000
Minimum number of advertisements required to be placed in newspapers – 2 in each case	14,000
% of cases in which further publicity will not be deemed necessary. Anecdotal but based on the assumption that the % would be high as voluntary liquidations are elective procedures	80%
Costs of advertising provided by insolvency practitioners with direct experience of the costs incurred.	£300
Total estimated savings: 14,000 x 80% x £300	£3,360,000

27. There will also be savings in MVLs converted to CVLs. However, as forecast numbers of MVLs for 2009/10 are only 2,600 of which only a small proportion will be converted into CVLs, we have not included a figure for that type of case in this calculation.

28. The cost per advertisement was provided by insolvency practitioners with experience of the costs incurred.

SPECIFIC IMPACT TESTS

Competition filter and reasoning

29. The two affected market are that of licensed insolvency practitioners, who take appointments in insolvency cases personally, not in the name of their firm, if any, and the newspaper industry.

30. Dealing first with insolvency practitioners:

Question	Answer
In the market(s) affected by the new regulation, does any firm have more than 10 per cent market share? See footnote 1.	Possibly
In the market(s) affected by the new regulation, does any firm have more than 20 per cent market share? See footnote 2. ⁱ	No
In the market(s) affected by the new regulation, do the largest three firms together have at least 50 per cent market share? See footnote 3.	No
Would the costs of the regulation affect some firms substantially more than others?	No
Is the regulation likely to affect the market structure, changing the number or size of firms? See footnote 4.	No
Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet? See footnote 5.	No
Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?	No
Is the market characterised by rapid technological change?	No
Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	No

31. All insolvency practitioners must be licensed to act as such; they may operate as sole practitioners or within firms of varying size dealing solely with insolvency work. Many also operate within firms of accountants or solicitors. A licensed insolvency practitioner can take appointments in any type of insolvency procedure, although some specialise, for example concentrating mainly on corporate insolvency work.

32. The market is characterised by lots of firms of varying size offering in essence the same product, which is the professional services of a licensed insolvency practitioner as an insolvency office-holder. There are no large firms serving a large proportion of the market.

33. The market is not characterised by rapid technological change and the professional services offered have remained over a relatively long period.

34. There are changes proposed as well as those dealt with here and those changes will cover the whole market. If going to mention this, should be a slightly more detailed explanation

35. The costs of the regulations are not large and they are likely to be distributed evenly between those operating in the market.

Newspaper industry

36. This proposed change will reduce the advertising revenue for newspapers. How that reduction will be spread across the newspaper industry will depend on the location of the newspaper and the locality where the company operated. For this reason, the effect on newspapers in particular parts of England and Wales or on newspapers of different sizes cannot be predicted with any degree of certainty.

Small Firms Impact Test

37. The Competition Assessment already explores whether the costs of these proposals would have a particular impact on small firms of insolvency practitioners and concludes that they would not.
38. These proposals would bring no costs to small businesses or the voluntary sector as creditors. So far as the benefits of the proposals to creditors are concerned, they would all benefit from any increase in payment to the creditors in proportion to the amount they are owed.
39. The costs to the newspaper industry would depend on the location of the advertiser in relation to the place where the company operated. This rather than any other factor such as the size of the newspaper would drive the decision concerning where to advertise at present and, therefore, where the costs to newspapers by way of loss of advertising revenue.

Legal aid impact test

40. We only have to carry out this impact test if we are thinking of introducing new criminal sanctions or civil penalties, which is not the case.

Sustainable Development

41. These proposals would appear to have no direct impacts so far as sustainable development is concerned.

Carbon Assessment

42. These proposals would appear to have no direct impacts for carbon assessment.

Other Environment

43. These proposals would appear to have no direct environmental impacts.

Health Assessment

44. There are no health implications to these proposals.

Equality Impact Assessments

45. The costs of these proposals, where applicable, would not have an adverse and/or disproportionate effect on any person as a consequence of race, ethnic origin, age, religion, gender or sexual orientation.

Human Rights

46. The consultation paper sets out the pre-conditions to the making of a LRO and in particular asks consultees to consider, in relation to each proposal, whether it meets the following pre-conditions:
- Whether the proposals are proportionate to the policy objectives
 - Whether the proposals strike a fair balance between the public interest and the interest of any person adversely affected by the LRO
 - That it does not remove any necessary protections
 - That it will not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise
47. The proposals do not raise any other human rights questions.

Rural Proofing

48. There are no direct implications for rural proofing tests.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	Yes	Yes
Sustainable Development	Yes	Yes
Carbon Assessment	Yes	Yes
Other Environment	Yes	Yes
Health Impact Assessment	Yes	Yes
Race Equality	Yes	Yes
Disability Equality	Yes	Yes
Gender Equality	Yes	Yes
Human Rights	Yes	Yes
Rural Proofing	Yes	Yes

Annexes

ⁱ See comments for question 1. In light of the findings of the research referred to there, it seems highly unlikely that the answer to this question would be yes.