Summary: Intervention & Options

Department /Agency:	Title:	
Insolvency Service	**Impact Assessment of changes to the Insolvency Act 1986 for the modernisation and streamlining of insolvency procedures**	
Stage: Final	**Version:** 1	**Date:** April 2009
Related Publications: Consultations in July 2005, September 2007 and August 2008		

Available to view or download at:

http://www.insolvency.gov.uk

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

Some of the existing procedures in the insolvency legislation are no longer necessary. Others do not enable best use to be made of electronic communication. This means that the costs of administering insolvency cases, which are borne by the creditors or members, are higher than they need to be.

What are the policy objectives and the intended effects?

To simplify those provisions such that costs are reduced thereby increasing returns to creditors/members.

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

We propose to make the necessary amendments to the Insolvency Act 1986 ("the Act") using a Legislative Reform Order("LRO") and this will enable changes to be made at the same time by amendments to the Insolvency Rules("the Rules") to deliver a package of measures to deliver the policy objective. This is the preferred option because the alternatives of making either no change or amendment of the Rules alone could not fully achieve the policy objective, since amendment of the statutory provisions within the Act is necessary. Similarly, the publication of non-statutory guidance to insolvency office-holders would be of no effect because such guidance could not override the relevant statutory provisions.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? October 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:	Description:

COSTS

ANNUAL COSTS

One-off (Transition) **Yrs**

£

Average Annual Cost (excluding one-off)

£ **3.54m**

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

One-off costs of familiarisation for users of insolvency law. There will also be a reduction in insolvency office-holder in fees chargeable in relevant cases and for solicitors will all lose some income as a result of one of the proposals.

Total Cost (PV) £ **32.98m**

Other **key non-monetised costs** by 'main affected groups' None

BENEFITS

ANNUAL BENEFITS

One-off **Yrs**

£ **0**

Average Annual Benefit (excluding one-off)

£ **11.4m**

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

The main beneficiaries will be creditors of insolvent entities, by way of increased dividends being paid out by the relevant insolvency office-holder.

Total Benefit (PV) £ **106.2m**

Other **key non-monetised benefits** by 'main affected groups' Insolvency practitioners from more efficient case processes

Key Assumptions/Sensitivities/Risks

Number of insolvency procedures per annum; percentage of those cases where amended procedures would be deemed appropriate; and the number of creditors who will consent to electronic communication.

Price Base Year 2005	Time Period Years 10	**Net Benefit Range** (NPV) £	**NET BENEFIT** (NPV Best estimate) £ **72.23m**

What is the geographic coverage of the policy/option?			England and Wales	
On what date will the policy be implemented?			6 April 2010	
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)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Decrease)

Increase of £ **12.21 m** Decrease of £ **5.15m** **Net Impact** £ **7.06m**

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

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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. The provisions contained in the draft LRO are part of a substantial project to modernise insolvency law with the aim of removing or reducing administrative and financial burdens on insolvency processes. As the cost associated with those burdens comes out of any assets that are realised, any measures which can be taken to reduce those costs will result in more monies being available for distribution to creditors of the relevant insolvency estates by way of dividend.

2. Some of the proposals in this LRO are intended to reduce burdens by providing insolvency office-holders with more flexibility than they currently have to undertake tasks in a certain way or to exercise their judgment in relation to particular activities. The proposals to allow for more flexible means of communication within insolvency processes fall into this category. Some of the other proposals, such as that to remove the requirement to file documents at court in individual voluntary arrangements or to hold annual meetings in voluntary liquidations, represent a more straight-forward removal of an unnecessary administrative burden that is no longer felt to be necessary or appropriate.

Introduction to the proposals

3. In 1982, the Insolvency Review Committee published its report (referred to generally as the Cork Report) and this led to new legislation in 1986, primarily the Act and the Rules.

4. 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 in this LRO are central to the aim of modernising insolvency legislation and reducing the burdens of that legislation.

5. In reviewing the present legislation, we considered the effects of significant changes to the way in which users of insolvency law viewed it in 1986 and how they use it, or would wish to use it, now and into the future.

6. Major changes to the climate of insolvency since 1986 include:

   - Insolvency practitioners are members of a regulated profession. Authorisation of insolvency practitioners was introduced in 1986 and is now well embedded. We consider that it is appropriate now to allow more discretion to insolvency practitioners, who are experienced members of a regulated profession, in some very specific areas of their work.

   - The ability to communicate electronically is now a much more widely used and accepted way of communicating. The insolvency legislation is outdated in that it does not generally enable this form of communication. Changes proposed by this LRO, along with associated changes to the Rules, will enable the use of websites as a method of providing information to creditors and members and further enable the use of electronic communication. It is clear from responses to the consultation that there is an appetite amongst users of

insolvency legislation to enable electronic communication and that they consider this would substantially reduce burdens.

Options for achieving policy intention

7. We wish users to benefit from changes which will modernise and streamline insolvency law. The four options are discussed in more detail in relation to each proposal but the following comments give a general view.

(a) Do nothing

In all of the proposals it is possible to maintain the status quo and to await an Insolvency Bill for an opportunity to make changes to the primary legislation. However, this would mean that the creditors/members would have to wait for an uncertain period to benefit from the savings that we consider would flow from the proposed changes. To the extent that the parallel project to modernise and consolidate the Rules depends on changes to the Act, it would also limit the scope for burden reduction there.

(b) Issue guidance

Guidance could be issued, however it is unlikely that this would be adhered to where it was not also required by the legislation, since in most cases the user would take the safer option. It would therefore be unlikely to be effective in delivering the savings set out elsewhere in this impact assessment. Guidance could not be issued which contradicted specific requirements in the legislation.

(c) Make changes to the Rules only

Some of the proposed changes will not work, or will not work as intended, unless there is consistency, as far as possible between the Act and the Rules. Examples of this can be seen in changes to the Rules to enable further the use of electronic communication and to replace affidavits with statements of truth. This option would therefore be unlikely to achieve the policy aim of reducing burdens on the users of insolvency law.

(d) Make change by LRO

The provisions we propose to change are all statutory and cannot therefore be changed by other means such as amended guidance or changes to the Rules alone, in the absence of an insolvency bill. We consider that the proposed changes satisfy the pre-conditions for change by LRO and that this is an appropriate vehicle to bring about the substantial cost savings we consider will flow from them.

COSTS AND BENEFITS – GENERAL REMARKS

COSTS

Familiarisation for users of insolvency law

8. Users of insolvency law will need to be made aware of the changes proposed. The users whose practices will be most directly affected by these proposals are authorised insolvency practitioners.

9. We consider that the costs of familiarisation for individual insolvency practitioners 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;

- 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);

- The proposals concerning the use of electronic communication may require some small changes to IT systems currently used by insolvency practitioners in their case management systems, specifically to record the consent of a creditor to electronic communication; and

- We understand that many insolvency practitioners use bespoke case management systems bought from a very small number of providers. Therefore if changes were needed, for example to provide additional fields for information, this would, we understand, be in the form of a change to the system devised by and bought from these providers. The cost would therefore be smaller than if each and every insolvency practitioner or firm were required to pay the cost of having their particular system updated. In any event, we consider that the small costs, which would be a one-off cost, would be eclipsed by the savings which will increase over time.

BENEFITS

General comments concerning the estimation of benefits

10. The starting point for estimating benefits is The Insolvency Service's forecast of the numbers of each type of insolvency procedure for 2010/2011. These are shown in Appendix I.

11. Some of the proposals enable a statutory function to be carried out in a different way from the present position, where it is deemed appropriate. This may depend on the attitude of the creditor or member or on the view of the insolvency office-holder on the basis of the facts of each specific case. Outcomes cannot therefore be accurately predicted but estimates and the assumptions on which on which they are based are set out in relation to each proposal.

12. Some of these estimates are based upon information that has been provided by consultees during the consultation process.

Who will benefit?

Creditors of insolvent estates

13. Creditors will be the ultimate beneficiaries of these proposals, as the reduction in the cost of administering insolvent estates will increase the amount that can be paid back to the creditors/members of such estates by way of dividend.

14. It is not possible to say that in every case the costs saved will result in a direct and commensurate increase in dividends for all creditors. However, it is the case that costs not incurred go to increase the pot of money available in the insolvency in all cases and that will mean higher dividends in some cases or dividends in cases where there would not otherwise have been one.

15. There are costs associated with the administration of insolvency cases and by law these have to be paid before the remaining money can be paid to the creditors and there may still in some cases be insufficient assets to enable a payment to be made. However, insolvency office holders may only charge legitimate costs and expenses and they are answerable to the creditors and ultimately the court for those costs and expenses. In changes being made to the Rules to come into force on 6 April 2010, there will be changes made to provide greater transparency for creditors on costs and expenses charged by office-holders. This should ensure that creditors will have an entitlement to clearer and more structured information concerning costs. In all cases, where the savings arise from not doing something that has to be done at present (for example obtaining sanction, sending hard copies of notices by post) there is no reason why costs should increase and therefore not go to increase the pot available for the creditors.

16. So far as the creditors themselves are concerned, there are broadly three categories and a legal order of priority of payment- secured, preferential and unsecured. However, for the avoidance of doubt when considering this Impact Assessment, it should be borne in mind that the only preferential creditors are claims in respect of employees and that unpaid

taxes can no longer be claimed preferentially. All unsecured creditors (which includes trade creditors) are treated equally amongst themselves.

17. These proposed changes will therefore benefit individuals and businesses by increasing the amount paid to them as creditors and will lessen the bad debts they will suffer, which will therefore aid the economy in general. They will also be able to choose to have information concerning the progress if the insolvency case electronically if that would suit their needs.

18. It is not appropriate to ring-fence the savings and make them the subject of a one-off dividend to the creditors because there are rules for the payment of dividend which themselves give rise to costs (such as advertising intention to pay a dividend, admitting claims for dividend purposes) and this should be done on as few occasions as necessary.

Insolvency practitioners

19. We consider that insolvency practitioners will also benefit from the flexibilities these modernisation proposals will provide and the simplification of some of their work. They welcomed the proposals as an aid to more streamlined business practice.

Courts

20. The proposals to remove the requirement for filing documents at court in most individual voluntary arrangements will additionally free up court time for dealing with other matters.

CONSULTATIONS AND OUTCOME IN RELATION TO PROPOSALS

21. The proposals dealt with in this draft LRO arise from two separate consultation exercises. Further detail are given in paragraphs 60 to 68 of the Explanatory Document.

THE PROPOSALS BEING TAKEN FORWARD IN THIS LRO

22. The background to each proposal and the estimated costs and benefits are dealt with in the following sections:

- Attendance at Meetings – see pages 9 to 10
- Use of websites – see pages 11 to 13
- References to “writing” and “post” - see page 14
- Affidavits – see pages 15 to 16
- Annual Meetings – see pages 17 to 18

- Filing requirements in non-interim order individual voluntary arrangements -`pages 19 to 20

- Powers of liquidator/trustee in bankruptcy exercisable with sanction – see pages 21 to 22

23. A summary of the estimated savings that will result from each of these proposals is as follows. These savings are explained more fully in paragraphs 25 to 92 below.

Summary of Savings as a result of changes in this LRO			
	Benefits (£)	**Costs (£)**	**Net Benefit (£)**
Flexible Meetings	426,307	Nil	426,307
Websites	4,155,250	3,543,000	612,250
Affidavits	106,170	Nil	106,170
Annual Meetings	5,189,640	Nil	5,189,640
Removing requirements for filing in court in some IVAs	324,000	Nil	324,000
Sanction	1,195,400	Nil	1,195,400
TOTALS	**11,396,767**	**3,543,000**	**7,853,767**

24. The impact of these savings on the administrative burdens baseline where a comparison can reasonable be made is shown in Appendix II. This shows a decrease in the baseline of £5.15m a year, a reduction of 18.10%.

Attendance at Meetings

25. Providing a legislative framework that will allow insolvency office-holders to convene meetings as part of their conduct of insolvency cases other than by attendance at a specific venue.

Background

26. The Act and the Rules require various meetings to be held from time to time as part of the conduct of insolvency proceedings, which can involve creditors and, in the case of limited companies, the shareholders. The types of meetings vary significantly but examples would include a meeting to appoint(or replace) an insolvency office-holder to administer the relevant insolvency proceedings, or perhaps to get the creditors together to vote on a proposal to secure their agreement to a voluntary arrangement to compromise their debts.

27. When the Enterprise Act 2002 amended the Act by introducing a new modernised form of company administration procedure, the opportunity was taken to include a provision allowing anything that can be done at a creditors' meeting to be done instead by correspondence. However, in all other forms of insolvency proceedings, meetings that are required to be held under the Act must be held at a particular venue which creditors must attend either in person or by proxy.

28. The proposed changes being introduced by this LRO therefore provide that, where the person summoning a meeting considers it appropriate, a meeting can be conducted and held in such a way as to obviate the need for all the persons concerned to be present together at the same place. A person "attends" the meeting if they are able to exercise their rights to speak and vote at that meeting and can communicate their opinions on the business of the meeting and vote on resolutions put to it. This would allow meetings to be held in a more flexible manner with some creditors attending by means such as telephone link, video-conferencing or on-line.

29. Whilst the existing legislation would allow the insolvency office-holder to ask the court to enable him to hold a meeting say by correspondence, that would incur costs and it is preferable to enable the office holder to exercise judgement as to whether this would be appropriate in the circumstances of the case.

Costs and benefits

30. The total projected savings for 2010/11 across all procedures is £426,307 as set out in the following table:-

Insolvency procedure	Projected number of cases in 2009/10	Number of meetings per case with creditors or members in 2009/10[1]	Total meetings	% of total meetings in which electronic meeting provision used	Average Savings per meeting[2]	Total saving from electronic meetings
					£	£
CVL	16,000	1.875[3]	30,000	2%	350	210,000
Compulsory Winding up	10,000	0.25	2,500	2%	350	17,500
Administrations	7,000	0.6	4,200	2%	350	29,400
Administrative Receivership	750	1	750	2%	350	5,250
CVA	600	1	600	2%	350	4,200
MVL	2,600	0	-	0%	-	-
Bankruptcy	72,900	0.19	13,851	2%	350	96,957
IVA	45,000	0.2	9,000	2%	350	63,000
TOTAL	**154,850**		**60901**			**426,307**

31. Savings for remote attendance at Members' Voluntary Liquidation meetings are not counted under this LRO because the procedures for such meetings are governed by the Companies Acts.

32. There would be a benefit to the creditors in being able to attend meetings remotely in that there would be no travelling costs or the need for example to take time off work or to make care arrangements for dependents. These are taken into account in the savings per case of £350.

[1] An exercise has been carried out to identify the most commonly held meetings in each form of insolvency procedure. See associated footnote for the worked example for creditors' voluntary liquidations.

[2] The assumed basic minimum saving is £350 per meeting. The total calculated benefits assume no capital cost overhead for office-holder in arranging telephonic, video conference or other form of meeting not involving attendance. They take account of office-holder savings on hire of venue for meeting and costs involved in managing creditor/member attendance (e.g. staff time, refreshments etc), savings for remote creditors/members who would not need to incur travel expenses or time costs in attending.

[3] Meetings under either section 95 or section 98 at the start of the liquidation (excluding 2,000 conversions under the provisions of paragraph 83 to Schedule B1 to the Insolvency Act 1986 – conversion from administration to creditors' voluntary liquidation) giving 14,000 out of 16,000 cases involving this meeting or 0.875 meetings. Section 106 final meeting held in all cases. Total 1.875

Use of websites

33. The proposal is to modernise and make more flexible the means of communication and exchange of information between insolvency office-holders and creditors (and others who send or receive information). This is to be achieved by sending to users a link to a website on which such information is posted.

Background

34. The Act and the Rules contain numerous provisions requiring the insolvency office-holder to send documents or information to creditors/members or other persons in the course of insolvency proceedings. As part of the project to modernise and consolidate the insolvency secondary legislation, new Rules will provide that provided there is consent between the parties to communicate in this way, electronic communication can be used where there is a requirement under the Act or the Rules for notice to be sent or document to be delivered in insolvency proceedings. It should then be possible in most cases for e-mail or other electronic methods of communication to be used as an alternative method.

35. A key proposal in this LRO is to allow the insolvency office-holder to put documents and information on a website which creditors can visit having been sent a link by e-mail or post. This proposal could not be introduced under the Rules without enabling primary legislation as an office-holder would not be complying with his obligation to "send" the document if all he was doing was providing the means by which a person might access it.

Costs and benefits

36. As well as reducing costs in the insolvency, implementation of this change will have the benefit that if a creditor or member is not interested in the information being provided, it can be ignored. The money that would have been spent on sending hard copies can therefore be saved. The benefit to the environment in reducing the number of paper copies being issued should also be borne in mind.

37. The use of websites will be particularly useful where detailed reports or a number of documents have to be sent to creditors or members. Documents are often bulky (e.g. proposals in voluntary arrangements or administration) and are required to be sent to numerous recipients (creditors or members). In these cases, the cost of postage in particular can be substantial. E-mailing reports/documents will save the costs of printing and posting hard copies, and the use of website links should provide another option where the documents involved are numerous or large in size, or the potential number of recipients high.

38. Estimated annual savings as a result of this initiative are £612,250 and the calculations are shown in the table below.

Insolvency procedure	No. of cases[4]	% of cases in which websites will be used[5]	No. of cases in which websites used	Creditors/members per case[6]	Times creditors/members written to[7]	No.of items posted on website	Savings per website communication[8]	Total savings
							£	£
CVL	16,000	10%	1600	35	8	4	2.0	448,000
Comp Winding up	10,000	0%	0	25	3	0	1.0	0[9]
Administration	7,000	30%	2100	60	5	3	3.0	1,134,000
Administrative Receivership	750	10%	75	35	2	1	2.0	5,250
CVA	600	30%	180	35	8	4	3.0	75,600
MVL	2,600	10%	260	60	5	2	2.0	62,400
Bankruptcy	72,900	0%	0	15	4	-	1.0	-
IVA	45,000	30%	13500	15	8	4	3.0	2,430,000
TOTAL	**154,850**		**17,715**					**4,155,250**
				Less capital cost of £200 per case for managing websites				**(3,543,000)**
							TOTAL	**612,250**

Note

2. No savings are anticipated

39. The gross estimated savings across all insolvency procedures are £4,155,250 used in 17,715 cases. In each case where a website is being used, we are assuming £200 per case for managing website so the total costs for managing the websites for those cases where they are used is estimated at £3,543,000 giving net savings of £612,250.

[4] See Appendix I to this Impact Assessment for numbers of cases for each procedure.

[5] This estimate is based on the type of case and whether use of a website is likely to be of benefit. This varies for each form of insolvency procedure.

[6] Insolvency Service data indicates an average of 35 creditors per compulsory liquidation and this is used for CVLs as they are similar. Estimates for the other forms of insolvency procedure vary.

[7] There are numerous requirements to issue notices in different forms of insolvency procedures. The figure used here is of the main requirements to write to the creditors/members, being those where the proposals are likely to have the most effect.

[8] No savings are anticipated in compulsory winding up cases because notices sent would not be sufficiently long to justify any savings.

[9]

References to "writing" and "post"

40. The purpose of the proposed change is to make it explicit that electronic communication is permitted within the various insolvency procedures. This will be achieved by amending the primary legislation so as to remove any doubt as to whether electronic communication is allowed.

Background

41. The Rules and, to a lesser extent, the Act, contain numerous provisions requiring documents or information to be sent by one person to another in the course of insolvency proceedings and for those to be sent in "writing" or by "post". Typically this will be statutory notices and other communications which the office-holder is obliged to send to all of the insolvent's creditors.

42. There is, however, currently, great uncertainty as to whether these can be sent using electronic communications because (with the exception of the provisions relating to administration which were introduced by the Enterprise Act 2002) the Act and the Rules do not refer to electronic communications. This means that to a great extent insolvency practitioners believe they are required to send things in hard copy.

43. Amendments to the Rules, expected to come into force on 6 April 2010, are being made to enable electronic communication across the whole of the insolvency regime contained within the Rules. The primary purpose of this part of the draft Order is to ensure that there will be no room for doubt as to the validity of the use of electronic communication in insolvency procedures by putting it beyond doubt that in those few references in the Act where something is required to be in writing or sent by post, that this can be achieved electronically unless otherwise specified in the Act.

44. A detailed explanation as to the reasoning behind this proposal can be found at Annex C to the Explanatory Document.

Costs and benefits

45. Insolvency practitioners will almost certainly already have online capability so the only cost to insolvency practitioners arising from this proposed change will be in adding a field on their case information systems to record whether consent to electronic communication has been given and to record the e-mail address to be used. We consider the cost of that will be minimal.

46. The person receiving the information may wish to print the document out and they will have to incur the cost of that themselves, although it will always be open to them to ask the insolvency office-holder for a hard copy. We would argue that at present the cost of printing every document in hard copy for all has to be borne by all of the creditors in all cases and that the overall burden will be fairer.

47. The cost reductions from enabling electronic communication will be achieved largely as a result of the amendments to the Rules. Those changes will be subject to a separate Impact Assessment which has yet to be finalised but it is likely the savings from that measure will amount to around £20 million a year.

48. The main benefit of the change in the draft Order is that it will avoid any doubt being cast on the validity of those changes being made to the Rules, where the vast majority of the relevant requirements and savings will be made. The specific provisions in the 1986 Act are very few and are also very rarely used so any specific savings as the result of those changes will be comparatively small and are therefore not quantified for the purpose of this Impact Assessment.

49. As this is an enabling change to the Act that is required to enable changes to the Rules, the savings have been treated as Nil in this Impact Assessment.

Affidavits

50. This proposal is to remove the requirement for certain documents in insolvency proceedings in England and Wales to be sworn by affidavit and replaced with a less burdensome requirement for such documents to be verified by a statement of truth in accordance with the Civil Procedure Rules 1998.

Background

51. Insolvency legislation at present requires certain documents to be verified by affidavit, requiring the document to be sworn before a solicitor or commissioner for oaths. The deponent to the affidavit in relation to these documents has to attend upon the solicitor or commissioner for the swearing to be administered and has to pay a swearing fee. In most cases the deponent to the affidavit will be the directors or members of the insolvent company although in a small number of cases it will be the insolvency office-holder and in those cases the relevant cost would fall as an expense of the insolvency proceedings.

52. The requirement to swear an affidavit has already been removed in most other areas of the civil law and we similarly intend to remove it from the insolvency legislation, replacing it with a requirement to verify these documents with a statement of truth . Such a move does not remove any protection because making a false statement in a document verified by a statement of truth without an honest belief in its truth would amount to a contempt of court under the Civil Procedure Rules 1998 and an offence under the Perjury Act 1911.

53. It would be possible to make changes only to those provisions contained in the Rules but that would have the undesirable consequence that users of insolvency legislation would be treated differently for what is essentially the same procedure, i.e. some would pay and some not depending upon whether the relevant provision falls under the Act or the Rules.

Costs and benefits

54. There are currently six sections of the Insolvency Act 1986 which require a document or other evidence to be verified by affidavit. These are sections 47(2), 95(4), 99(2), 131(2), 236(3) and 366(1). The first four of those sections deal with the preparation and submission of a statement of the affairs of an insolvent company. For example, section 99(2) requires the directors of a company which has passed a resolution for voluntary winding up to make a statement as to the affairs of the company which must include all of its known assets and liabilities. This must then be verified by affidavit. The last two of the listed sections deal with evidence to be submitted to the court in connection with an inquiry into the dealings of the insolvent company or bankrupt.

55. We have looked at the present provisions requiring sworn affidavits, identifying those that fall into the Act or the Rules. Those in the Rules will be dealt with by way of amendments to the Rules and are not therefore accounted for in this Impact Assessment, although those changes will be made at the same time as these provisions in the Act.

56. The estimated savings are based upon the number of documents which will be sworn under each of the existing provisions, based on the projected number of each relevant insolvency procedure and the frequency with which the obligation arises in each procedure. The only part of the current costs that will be saved is the swearing fee taken at £7, representing £5 for the affidavit itself plus £2 for the exhibit which typically arises in each case. Any other costs involved in the preparation of the Statement of Affairs will remain.

57. This proposal will result in the swearing fees incurred in swearing affidavits being removed, from the insolvency process, with no additional burdens being introduced in their place. This will save an estimated £106,170 a year, as follows:-

Section	Event	No. of relevant insolvencies	No. of Affidavits	Savings(£)
47(1-3)	Statement of Affairs in Administrative Receivership	750	750	5,250
95(3-4)	Statement of Affairs in Members' to Creditor's Voluntary Liquidation	2,600	260	1,820
99	Statement of Affairs in Creditors' Voluntary Liquidation	16,000	14,000	98,000
131(2)	Statement of Affairs in Compulsory Liquidation	10,000	40	400
236(3)	Account of Dealings with Company	17,750	100	700
	Total			**106,170**

58. The largest savings are in relation to statements of affairs' currently required to be sworn under the provisions of section 99 of the Act (after a resolution has been passed to put the company into voluntary liquidation). The calculation is based on the projected number of company's that will go into voluntary liquidation in 2010/11 of 16,000, less an estimated 2,000 of those cases to which the provision does not apply because those cases have converted from administration. Therefore the total benefits in respect of the provision will amount to £98,000 (14,000x £7).

59. The obligation to swear a statement of affairs under section 95 of the Act arises in only about 10% of cases, that being in those cases(which start out as members' voluntary liquidations) which are converted into creditors' voluntary liquidation because the liquidation has not been completed within 12 months of its commencement.

60. The savings associated with the requirement to swear affidavits in a compulsory liquidation under section 131 of the Act will result in a relatively small amount of savings because it is only in very few cases that the Official Receiver requires a statement of affairs to be submitted.

61. For the requirement in section 236 for the court in a compulsory liquidation to require an account of dealings with the insolvent company, the forecast number of insolvencies is arrived at by adding 10,000 compulsory winding up cases, 7,000 administrations and 750 administrative receiverships. However, this provision is rarely used and it can therefore be seen that the savings will be modest.

62. The legal profession will see a reduction of income from fees for swearing affidavits but we understand that the interruptions to other fee-paying work and the requirement to account for such small sums makes this a hindrance rather than a benefit. In responses to the consultation undertaken in respect of these changes, no comments were received from solicitors commissioners for oaths or any bodies representing those occupations to suggest this is not the case.

Annual meetings

63. This proposal removes a statutory requirement imposed upon the liquidator of a company in voluntary winding up proceedings within sections 93 and 105 of the Act, to summon annual meetings of creditors and/or members for the purpose of laying an account of his acts, dealings and of the conduct of the winding up during the preceding year.

Background

64. The removal of the requirement to hold annual meetings in voluntary winding up proceedings, contained within sections 93 (a provision which applies to members' voluntary liquidations-"MVLs") and section 105 (a provisions which applies to creditors' voluntary liquidations-"CVLs"), will be coupled with amendments to the Rules to be implemented alongside this provision in April 2010. These will ensure that creditors and/or members still receive the same information they would have received at the meeting but in the form of a written progress report containing, amongst other things, a receipts and payments account.

65. In practice these annual meetings are rarely attended and compliance with the provision amounts to no more than laying before the meeting a copy of the liquidator's receipts and payments account for the preceding period. The cost of summoning and holding the meetings are therefore incurred to no useful purpose. We therefore consider that this change will enable creditors and/or members to receive the information they require in a more cost-effective manner than they currently do without a loss to them of the substance of the meeting.

Costs and Benefits

66. The benefits associated with this proposal stem from the cost savings in organising and holding these meetings. It is estimated that the cost of summoning and holding annual meetings in voluntary liquidations amount to £5,189,640 per annum, the entire amount of which would be saved if these meetings were no longer required to be held. The following table provides a breakdown of the savings, based upon estimates of case numbers for 2010/11 projections :-

	RELEVANT ESTIMATES FOR 2010/11	**COST OF MEETING**	**ESTIMATED TOTAL SAVINGS**
MVLs (section 93)	2,600[10]		
Number of MVLs that last more than 12 months and therefore at present require a meeting (10%)	260	£354	£92,040
CVLs (section 105)	16,000[11]		
Number of CVLs that last more than 12 months and therefore at present require a meeting (90%)	14,400	£354	£5,097,600
TOTAL SAVINGS			**£5,189,640**

[10] See Appendix I – estimated no. of insolvency cases 2010/11

[11] See Appendix I – estimated no. of insolvency cases 2010/11

67. A company may only enter into a MVL where its directors make a statutory declaration that the company's debts can be paid in full within twelve months. It is therefore only in about 10% of MVLs that an annual meeting would be held, hence the figure of 260 used in the above table.

68. By contrast a CVL is an insolvent procedure and it is estimated that in about 90% of cases the procedure extends beyond a year, thereby requiring at least one annual meeting to be held, hence the figure of 14,400 used in the table.

69. The estimated savings have been calculated for each of the two provisions in the 1986 Act, being section 93 and 105. The estimated cost of holding a meeting is based on 3 hours of the office-holders administrative time in arranging and conducting the meeting, at a charge out rate of £100 per hour. Additionally an estimated cost of £54 per meeting has been included to take account of room hire fees.

70. Some of these savings may be offset by the modernising changes that will be made to the relevant Rules amendments that are referred to at paragraph 64 above. Those Rules changes will be the subject of a separate Impact Assessment.

Filing requirements in non-interim order individual voluntary arrangements ("IVAs")

71. This proposal removes an obligation currently imposed by legislation on insolvency practitioners, authorised persons or official receivers to file reports routinely with the court in non-interim order voluntary arrangements.

Background

72. IVAs are provided for in Part 8 of the 1986 Act. There are two procedures for obtaining an IVA – "slow-track" and "fast-track". The term "slow-track", whilst not specifically used in the legislation, is shorthand for any IVA that is not fast-track. There are two categories within the slow-track procedure, those being IVAs with or without an interim order. An interim order imposes a moratorium preventing creditors from taking action to enforce the debts owed to them during the currency of the order.

73. In the slow-track procedure an IVA is proposed by the debtor with the assistance of a nominee and managed and supervised by a supervisor, once accepted by the creditors. Both nominees and a supervisors must be an insolvency practitioner or an authorised person. The fast-track procedure, which is rarely used, applies only to a debtor who is an undischarged bankrupt and the nominee and supervisor is always the official receiver.

74. The policy aim is to remove the obligation currently imposed by legislation on insolvency practitioners, authorised persons or official receivers to file reports routinely with the court in cases in which the court is under no judicial obligation. This will ensure that creditors receive the best possible return on their debts from the debtor through less costly and more efficient procedures as the nominee will be relieved of the obligation to report to court. It should be noted that in practice this information is already sent to creditors as a requirement of rule 5.17(3) and therefore no additional burden is being imposed on insolvency practitioners

75. This proposal involves the amendment of section 256A of the 1986 Act, which deals with non-interim order voluntary arrangements. The proposed amendment requires the nominee to report immediately and directly to the debtor's creditors (rather than to the court), whether the proposal for an IVA has a reasonable prospect of being approved and whether a meeting of the debtor's creditors should be summoned, and if so, the date, time and place of the meeting.

76. The proposal also amends section 259, which applies where a meeting of the debtor's creditors is held, so as to remove the obligation on the chairman of that meeting, where no interim order has been applied for, to report the result to the court (where an interim order had been obtained the court will be notified of the result of the creditors meeting as they are currently).

77. Section 263C, which deals with fast track arrangements, will also be amended by requiring the Secretary of State to be notified whether an arrangement under the fast-track procedure has been approved or rejected rather than reporting it to the court.

Costs and benefits

78. The effect of the changes will be to remove an administrative and financial burden on those who administer voluntary arrangements and also contribute to the government's drive to reduce administrative burdens on HM Courts Service which is currently required to receive and file such reports.

79. The projected number of IVAs for 2010/11 is 45,000, of which at least 80% are expected to be non-interim order IVAs and therefore fall into the category affected by the proposed change. It is estimated that the cost of filing these reports at court amount to £4.50 per case due to the extensive amount of information that is required to be sent.

80. As detailed above section 263C relates to filings in fast-track IVA cases. As these are very rarely used (30 per annum) the savings are minimal and have therefore not been accounted for in the table below. Additionally the amendment requires notification to be given to the Secretary of State instead of the court and therefore in financial terms the savings are neutral.

81. The estimated savings for s256A and s259 are set out in the table below:

Section of 1986 Act	**Number of non-interim order IVAs**	**Saving per case (£)**	**Total savings (£)**
S256A	36,000	4.50	162,000
S259	36,000	4.50	162,000
TOTAL			**324,000**

82. In addition, there will be significant cost savings for the courts. Although these savings will not benefit creditors as such and has therefore not been quantified as a financial benefit in the above calculation, the courts estimate that removing the need to file papers in court will result in time savings of approximately 18,900 hours each year. They have stated it will also free up much needed filing space in the courts.

Powers of liquidator/trustee in bankruptcy exercisable with sanction

83. This proposal removes a statutory requirement imposed upon liquidators and trustees in bankruptcy, to obtain sanction from the liquidation or creditors committee, the creditors or the court, for a compromise in relation to the realisation of an asset that is owned by, or a debt or claim that is owed to, the company or the bankrupt.

Background

84. The provisions on sanction in the Act, which were carried forward from earlier bankruptcy and companies' legislation, were intended to provide a check on some of the activities of what was until 1986, an unregulated insolvency profession. Since 1986 there have been significant developments in the operation of that regulatory regime. The need for creditors to sanction in relation only to this specific activity of the liquidator or trustee is now considered unnecessary.

85. Schedules 4 and 5 of the Act list various powers that a liquidator of a company or a trustee in bankruptcy may exercise in the course of the winding up or bankruptcy. Whilst some of these actions are exercisable on the office-holder's own authority, there being no requirement to obtain sanction before or after taking any of those actions, others require the prior consent (sanction) of the liquidation or creditors' committee if there is one, the creditors or the court.

86. Currently one of the activities for which sanction is required is to compromise the realisation of an asset that is owned by, or a debt or claim that is owed to, the company or the bankrupt. We have received representations from the insolvency profession that the requirement to obtain sanction before compromising a debt due to the insolvent estate is particularly onerous. In particular this can result in delays in dealing with the asset which leads to a reduction in its value, thereby causing further losses to creditors.

87. The proposal to remove the requirement for sanction is confined to decisions on the settlement of claims owing to the estate, as it is considered that Insolvency Practitioners, as professional individuals, are best placed to make this type of decision using their commercial judgement. Furthermore, few creditors wish to be actively involved especially after the initial stages of an insolvency and consider that some decisions could be dealt with more expeditiously and economically by the office-holder.

Costs and benefits

88. The requirement to obtain sanction before compromising a claim results both in a financial cost to the insolvent estate and represents an administrative inconvenience for the office-holder. The cost of the insolvency office-holder's time spent in complying with this requirement is a cost which is ultimately borne by the creditors as the funds available for distribution are reduced.

89. Furthermore, the need to obtain sanction can delay appropriate action being taken in relation to the asset. This can result in the value of assets diminishing causing financial loss to the estate. The response to the consultation confirmed that creditor apathy can cause problems bringing matters to a satisfactory conclusion. There is also a direct burden on the creditors in time and money spent dealing with the request.

90. The estimated benefits of removing the requirement for sanction before compromising a claim amount to £1,195,400 per annum, with no additional burdens being introduced. The total amount would be saved if sanction in these circumstances was not required. These savings have been calculated by reference to the relevant paragraphs within each of Schedules 4 and 5 of the Act and may be illustrated as follows:-

	Total cases	Cost per sanction	Total Cost
Schedule 4, Part I (Liquidation)	16,000[12] 2,000[13] Total 18,000		
Estimated % of cases where sanction required	10%		
Estimated number of cases where sanction required	1,800		
Committee (in est. 90% of cases)	1,620	£500 per sanction	£810,000
No Committee (in est. 10%)	180	£600 per sanction	£108,000
Total			**£918,000**
Schedule 5, Part I (Bankruptcy)	10,880		
Estimated % of cases where sanction required	5%		
Estimated number of cases where sanction required	544		
Committee (in est. 90% of cases)	490	£500 per sanction	£245,000
No Committee (in est. 10%)	54	£600 per sanction	£32,400
Total			**£277,400**
OVERALL TOTAL SAVINGS			**£1,195,400**

91. Schedule 4 applies to companies in liquidation. The number of companies to which this provision applies is based on the total number of CVLs expected in 2010/2011 plus 20% of winding up orders in which a liquidator is appointed to replace the Official Receiver. We estimate that in 10% of these 18,000 cases sanction will be relevant for this activity, hence the 1,800 figure shown in the table above.

92. Schedule 5 applies to bankruptcy cases where a trustee has been appointed to realise and distribute assets. The number of cases to which sanction for this activity will be required is based upon an estimated 5% of the 10,880 cases in which it is expected that an insolvency practitioner will take office as trustee in bankruptcy in 2010/11.

93. Creditors committees tend only to be established in larger cases and for this reason it has been estimated that only in about 10% of cases would there be a committee. Where there is a committee, the committee would be expected to make a decision as to whether the requested sanction for the compromise should be given and it is estimated that that would give rise to a cost to the liquidator or trustee of £500 (based on an estimated 4 letters being sent out to the committee during the process and IP administrative time spent in preparing relevant information for committee members). Where there is no committee, the cost will be higher because there will be a need to write to all creditors, perhaps convene a meeting of creditors and in some cases to make an application to court, hence the £600 cost in those cases shown in the above table.

SPECIFIC IMPACT TESTS

[12] See Appendix I – total number of CVLs for 2010/2011
[13] See Appendix I – 20% of winding up orders for 2010/2011

Competition Filter and Reasoning

94. The only affected market is that of licensed insolvency practitioners, who take appointments in insolvency cases personally, not in the name of their firm.

Question - In any affected market, would the proposal:	Answer
Directly limit the number or range of suppliers?	No
Indirectly limit the number or range of suppliers?	No
Limit the ability of suppliers to compete?	No
Reduce suppliers' incentives to compete vigorously?	No

95. 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.

96. 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.

97. None of the proposals either directly or indirectly effect the number or range of suppliers. Neither do they have any effect on the ability of Insolvency Practitioner firms to complete, as the proposals apply equally to them all.

98. The changes proposed to the Rules as well as those dealt with in this draft LRO will cover the whole market. The costs of the regulations are not large and they are likely to be distributed evenly between those operating in the market.

Small Firms Impact Test

99. 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.

100. 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.

Legal Aid Impact Test

101. As we are not introducing new criminal sanctions or civil penalties, this test is not required.

Sustainable Development

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

Carbon Assessment

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

Other Environment

104. These proposals would appear to have no significant direct environmental impacts, although changes enabling electronic communication and reduction in sending paper copies of all documents will have an impact.

Health Assessment

105. There are no health implications to these proposals.

Equality Impact Assessments

106. There are proposed changes that would enable electronic communication but a person who does not wish to, or is not able to, participate in that form of communication for whatever reason would not lose their rights to participate in another way. For example, a creditor will receive information in paper form unless they consent to e-mail communication and an office holder will be obliged to send information posted on a website to a person in hard copy on their request, even if they have consented to e-mail communication.

Human Rights

107. 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

108. The proposals do not raise any other human rights questions.

Rural Proofing

109. 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	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	No	No

APPENDIX I to the Impact Assessment: Estimated Number of Insolvency Cases 2010/11

Insolvency Type	Estimated Number of Cases 2010/11	
Creditors' voluntary liquidation	16,000	
Winding up orders	10,000	
Insolvent liquidations		26,000
Administrations	7,000	
Administrative receivership	750	
Company voluntary arrangements	600	
Other corporate insolvencies		8,350
Bankruptcy	72,900	
Individual voluntary arrangements	45,000	
Debt Relief Orders	22,000	
Personal insolvencies		139,900
Total insolvencies		174,250
Members' voluntary liquidation		2,600
Total insolvencies (including MVLs)		**176,850**

APPENDIX II to the Impact Assessment: Impact of Savings on Administrative Burdens Baseline

MUID (where administrative burdens baseline data available)	Section of the Act	Estimated total administrative burden (calculated by reference to PwC data where available)	Estimated Saving(%)	Administrative Burden Saving
Flexible Meetings	numerous	n/a- largely an enabling change	variable	*
Websites		n/a- new provision	0-30% depending upon insolvency type	*
References to "writing" and "post"		n/a- enabling change	nil	nil
Affidavits				
12138	s47(1-3)	513,997	<1	3,958
13062	s95(3)-(4)	33,398	4.11	1,373
13742	s99(1) & (2)	7,986,692	<1	74,276
15181	s131(2)	no data	n/a	400
16857	s236(3)	no data	n/a	700
Annual meetings				
32929	s93	69,545	100	69,545
33001	s105	3,851,747	100	3,851,747
Removing requirements for filing in court in some IVAs				
17626	S256A	12,638,407	<1	121,329
No data	s259	est. 2,430,000	5	121,500
Sanction				
No data	Schedule 4, Part 1, para 3	est. 694,019	100	694,019
No data	Schedule 5, Part 1, Para 6 and 8	est.209,603	100	209,603
		28,427,408		**5,147,350**

* Combined net savings of £1,038,557 a year are expected to result from this measure. However, due to the nature of the measures, the baseline cannot reasonably be adjusted to reflect them and these amounts have therefore been excluded from the calculation as to the impact on the baseline so as not to distort that figure.

The estimated savings shown here represent 18.10% reduction against the baseline.