Title: **Withdrawal of Insolvency Services Account for voluntary liquidations**	Impact Assessment (IA)
Lead department or agency: The Insolvency Service, an executive agency of the Department for Business, Innovation and Skills	**IA No: BIS0172**
Other departments or agencies:	**Date: 31**/12/2010
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries: stephen.parcej@insolvency.gsi.gov.uk

Summary: Intervention and Options

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

The rate at which voluntary liquidators use the Insolvency Services Account (ISA) has seen a marked decline since 2004 when it became optional. This decline has called into question whether the ISA should remain available for use in voluntary liquidations as the administrative effort involved in maintaining such accounts becomes disproportionate relative to their use by insolvency practitioners. It is also apparent that liquidators place accounts for short periods in order to take advantage of favourable interest rates or charges or a combination of the two. Where this has the effect of avoiding payment of the quarterly charge it makes provision of the service uneconomic and in order to ameliorate this effect it will be necessary to legislate to remove the option to use the ISA.

What are the policy objectives and the intended effects?

- To restrict the provision of ISA facilities to compulsory liquidations and bankruptcy cases
- To reduce the management cost of providing banking facilities for uncertain and declining numbers of voluntary liquidation estates.
- To withdraw from an activity that is not essential to meet Government priorities.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

(1) Do nothing – this option would leave it open for liquidators in voluntary liquidations to use the ISA at a time when the number of such accounts is in long-term decline.

(2) Remove the option for use of the ISA in voluntary liquidations to enable the resources involved to be more efficiently used by concentrating on bankruptcy and compulsory liquidation cases. It is estimated that this would save a minimum of £100,000 per annum in terms of administrative resources.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed 11/2014
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY Sign-off For consultation 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 and Evidence

Policy Option 2

Description: Withdrawal of Insolvency Services Account for voluntary liquidations

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High: Nil	Best Estimate: 0.8

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Nil	1	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	0.1		Nil	**0.1**

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

Cost to Insolvency Practitioners (IPs) - Cost of removal of funds from ISA, organising alternative facilities, changes to accounting & administrative systems: £100,000. This is a cost to business.

Cost to creditors in voluntary liquidations - In terms of reduced dividends where higher banking costs are not absorbed by the IP: less than 1p in the pound.

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

No other costs to affected groups identified

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional			
High	Optional			
Best Estimate	Nil		0.1	**0.9**

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

Benefits in overall calculation of costs and benefits accruing to the Insolvency Service in no longer providing ISA service for voluntary liquidations: £100,000 per annum. This is likely to be an underestimate as the operational and planning benefits and apportionment of overheads resulting have yet to be quantified in view of the programme of efficiency savings that are being implemented across The Insolvency Service.

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

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

The risks are that the costs of familiarisation and set-up incurred in assimilating the changes will affect more than a minority of insolvency practitioners, and that the estimated benefits of rationalising the Insolvency Service's application of the ISA and the efficiency gains made by doing so, will not be realised.

For the purposes of One In One Out, this measure imposes an Equivalent Annual Net Cost to Business of £0.01m

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB: N/A	**AB savings:** N/A	**Net:**	**Policy cost savings:**	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England and Wales		
From what date will the policy be implemented?			01/04/2011		
Which organisation(s) will enforce the policy?			N/A		
What is the annual change in enforcement cost (£m)?			N/A		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** N/A	**Benefits:** N/A	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro** n/a	**< 20** n/a	**Small** n/a	**Medium** n/a	**Large** n/a
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	Impact	Page ref within IA
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	No	8
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[1] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	**Consultation on the withdrawal of ISA accounts for voluntary liquidators**
2	**Insolvency Regulations 1994**

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs	-0.1	0	0	0	0	0	0	0	0	0
Annual recurring cost	0	0	0	0	0	0	0	0	0	0
Total annual costs	-0.1	0	0	0	0	0	0	0	0	0
Transition benefits										
Annual recurring benefits	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Total annual benefits	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

Background

1. This proposal to withdraw the optional facility for liquidators in voluntary liquidations to bank with the ISA is intended to reduce the costs attributable to this process and to reflect the long-term decline in use of that facility by insolvency practitioners. This will be achieved by amendment of the Insolvency Regulations 1994.

2. The cost of administering any given insolvency is paid from any residual assets of the failed entity, which are otherwise available for distribution to creditors. Therefore any financial savings to insolvency practitioners that arise as a result of implementing this measure would accrue to creditors by way of increased dividend payments out of the relevant insolvency process.

Problem Definition

3. The ISA was originally intended to provide for a uniform and secure means for official receivers and insolvency practitioners to deal with funds received in the administration of bankruptcy and company estates. However as part of the Enterprise Act 2002 reforms it was considered that the compulsion to use the ISA in voluntary liquidation cases was out of line with the fact that they are dealt with wholly by insolvency practitioners, who had been licensed and bonded for many years.

4. The provision of an optional service to voluntary liquidators is based on an expectation that a certain number will continue to avail themselves of that option. The numbers who now choose to use ISA has declined below the point at which it's operation for voluntary liquidations is cost effective. This is due to the fact that short-term deposits and distributions tend to have the effect of avoiding the quarterly charge which makes a significant contribution to the costs of operating the ISA as a whole. The loss of this contribution to any extent with respect to voluntary liquidations makes its operation uneconomic.

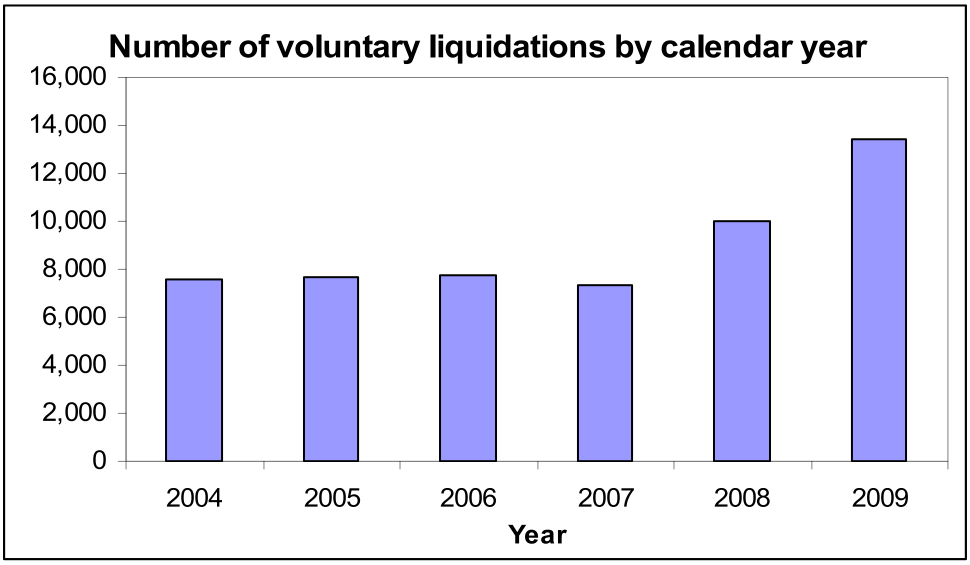
5. The reasons for the decline may be due to a number of factors and the precise commercial considerations that may be involved are uncertain. However it is likely that comparative interest rates, account charges, and possibly seasonal factors are included. Variable fund deposit and withdrawal patterns suggest that there could be still other factors involved.

6. The following shows the extent to which the number of accounts and charges made, have declined, at the same time that the number of voluntary liquidations has increased over the same period:-

Table 1 – Number of Voluntary Liquidation Estates and Fees Charged

Year	Number of Estates	Total Balances	Fees Charged	Fees Written Off	Net Fees Charged
		£m	£	£	£
2004/05	7,986	516	965,131	16,111	949,020
2005/06	5,966	673	532,998	1,657	531,341
2006/07	4,723	966	384,460	500	383,960
2007/08	4,247	1,077	332,740	315	332,425
2008/09	4,319	981	323,420	471	322,949
2009/10	3,398	619	339,543	594	338,949

Chart 1 – Number of voluntary liquidations by calendar year



Objectives

7. The policy objectives of this proposal are to:-

- To concentrate the application of the ISA on compulsory liquidation and bankruptcy cases where the purpose is to provide full fee-charging case administration and move away from pure banking services
- Encourage efficiency savings in terms of the use of public time and money through concentration on those activities that are essential to meet Government priorities including the recovery of fees to meet The Insolvency Service's costs in compulsory cases

Consultation on the withdrawal of the facility for liquidators in voluntary liquidations to bank with the ISA.

8. The consultation was issued by The Insolvency Service on 18 October 2010, via Dear IP, to insolvency practitioners and their representative bodies. It was also placed on the Service's public consultation register in order for any other interested party to respond. The consultation closed on 17 December 2010 and a summary of the responses received is shown at annex 2.
9. The responses largely confirm the anecdotal evidence that the ISA is useful to a minority of insolvency practitioners mostly in terms of the relative economy in issuing dividends and in the convenience of the unclaimed dividends account which enables liquidators to effectively close cases earlier than would otherwise be the case. Those practitioners who felt the ISA should be retained expressed the view that it was convenient and provided a uniform approach to the administration of voluntary liquidations.
10. The responses also tend to confirm the trend towards short-term use of the ISA, particular for the issuing of dividends, where the use of the ISA has not been replaced altogether by commercial as is shown by the decline in its use generally. This means that in many cases an account may only be opened for a period which does not incur the quarterly charge and the only fees payable will be for issue of cheques to creditors. As outlined above, this pattern of use makes its continuation for voluntary liquidations unsustainable.

Description of options considered and costs and benefits of each option

Option 1: Do Nothing

11. This option represents the baseline and as such imposes no costs or benefits as such. Proceeding with this option would leave the option open for liquidators in voluntary liquidations to use the ISA at a time when the number of such accounts is in long-term decline, which has made the administrative effort involved disproportionate. In cases where liquidators place accounts for short periods in order to take advantage of favourable interest rates or charges or a combination of the two, this makes planning resources in this area more and more difficult.

Option 2: Withdrawal of ISA facility for voluntary liquidations

12. Under this option the Insolvency Service would be enabled to make savings and concentrate on areas which involve the recovery of fees from cases fully administered through the ISA.

Analysis of Option 2

Costs

Insolvency Practitioners

13. It is not known precisely what costs would be incurred by insolvency practitioners in making alternative arrangements. In the consultation, the question on this issue was posed but not answered in quantitative terms. It is likely that many insolvency practitioners would consider information about banking costs and the terms upon which they negotiate with their banking providers as commercially sensitive.

14. We can provide an estimate for the process involved in each voluntary liquidation case, in closing its ISA account and placing the funds (if any) in a commercial/local account opened for the purpose. The resulting set-up/transitional costs is based on a scenario of 4,000 residual cases all of which require new facilities. In the absence of quantitative returns, the estimate per case is assessed at one hour per case at £25 per hour giving a total transitional cost of £100,000. As the current number of cases, as shown in table 1 above, stood at 3,398 this is almost certainly an overestimate of the likely outcome. The assumption is based on the time taking for an administrator to arrange for removal of funds from the ISA and place it in a commercial account in an average case.

15. Any ongoing costs of operating commercial accounts, would need to be offset against the average annual cost of operating within the ISA. Using the case numbers and fees charged for the last financial year in Table 1 above, this is £338,949/3,398 = £99.75. It is not known what charges would be payable for commercial facilities which will vary from business to business and their relationships with specific local providers, but it is clear that cost has been a motivation for movement away from ISA, ameliorated by the convenience of some aspects of the ISA as noted in responses to the consultation. As a result the overall impact on insolvency practitioners in terms of cost should not be significant. The only costs shown in the summary page of this IA therefore are transitional costs with the ongoing cost/benefit profile being neutral.

16. The benefits that most account holders have felt in the past have been in connection with favourable interest rates on the ISA, which no longer subsist. In these cases the main factor in retention of these accounts is inertia and although there may be putative benefits (as set out elsewhere in this IA) lost to a minority of account holders as a result of the changes, they are expected to be minimal. An attempt has been made to agree this with the trade body that represents the large majority of insolvency practitioners, but they have not been able to substantiate or reject this claim.

Creditors

17. The impact on creditors would be in terms of reduced dividends where the costs of administering voluntary liquidations increased as a result of the changes and those increases were passed on by insolvency practitioners in this way, but this is not thought likely to be a significant risk.

Benefits

The Insolvency Service

18. Benefits will mainly be connected with a reduction in the resources required to operate the ISA for voluntary liquidations and consist of direct costs such as staff and overheads attributable to that part

of ISA activity. This has been assessed at approximately £100,000 per annum, based on estimated direct staff costs. Indirect overhead costs are not yet known and have not been included.

<u>Insolvency Practitioners</u>

19. The same applies here as it does to costs, although it can be assumed that in the short term there would be set-up costs rather than set-up benefits. No attempt has been made to quantify potential benefits (if any) because the information about costs of alternative banking arrangements is not available. We have from the outset assumed that the trend towards withdrawal from the ISA has been made on cost grounds for the same reason, and that therefore the net result for those businesses would be neutral or positive in the medium to long term.

<u>Creditors</u>

20. It is not assumed, bearing in mind the likelihood of there being short-term costs incurred by insolvency practitioners, that there would be any benefits accruing to creditors.

Risks and assumptions

21. There are already alternatives available for the business sector affected (insolvency practitioners acting as voluntary liquidators) indeed as previously stated, this is part of the reason for the decline in use of the ISA. Although data in this area is difficult to gather because of its commercial sensitivity it is clear that the majority have made alternative arrangements since 2004. For this reason it is also considered unlikely that this would have any implications for creditors of these estates.

22. It is planned to minimise any costs of this change for voluntary liquidators by allowing existing cases to continue to conclusion. However, it should be noted that it may be necessary to raise the fees in relation to any accounts that continue to exist after this date in order to cover the costs of their administration. It is likely that such an increase would be brought into effect in October 2011 through a separate statutory instrument

23. The underlying policy assumes that the long-term trends of decline in use of the ISA by voluntary liquidators will continue, based on current statistical evidence. It is assumed that costs of familiarisation and set-up incurred in assimilating the changes noted above will only affect the minority of insolvency practitioners. Finally, it is assumed that estimated benefits of rationalising the Insolvency Service's application of the ISA and the efficiency gains made by doing so, will be realised.

One In – One Out

24. Under the 'One In, One Out' rule, whereby a measure that has a net cost to business must have a measure or measures of equivalent cost removed in order to be implemented, the equivalent annual net cost to business is £0.01m. Due to the very limited impact, it is disproportional to identify a specific one out for this measure, however this amount will be counted in the overall net position of the Department for Business Innovation and Skills.

Statutory Equality Duties:

25. Insolvency Practitioners: The IP profession is made up in the majority by white men. However, as any impact on individual IP's can be expected to be the same, we do not expect any disproportionate impact on different genders or races of IP's. As such there is no impact.
26. Creditors: Most creditors in corporate insolvencies are businesses rather than individuals, and voluntary liquidations occur across a wide range of business sectors. We do not expect any disproportionate impact on different genders or races of creditors, or owners of creditors.
27. Directors and shareholders of companies in voluntary liquidation: Voluntary liquidations 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 liquidated companies.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review]; The review would form part of an overall evaluation of the new legislative proposals put forward by the Insolvency Service.
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] A proportionate check that regulation is operating as expected to tackle the problem.
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] The evaluation would focus on the the cost to the Insolvency Service and the views of stakeholder groups, including insolvency practitoners. Evaluation would be of a qualitative and quantitative nature.
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] The current views of stakeholders can be found in this Impact Assessment, and in the consultation document entitled: 'Consultation on the withdrawal of the optional facility for liquidators in voluntary liquidations to bank with the Insolvency Services Account (“ISA”)’.
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives] Evidence that the proposals have been effective in improving the effectiveness of ISA post-implementation and the experience of insolvency practitioners and other stakeholders.

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review] The Insolvency Service maintains regular contact with stakeholders in a variety of forms that will support the ongoing collection of feedback on the impact of the proposals. An evaluation plan will be drawn up to collate qualitative and quantitative information from all stakeholder groups.
Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here] N/A

Annex 2: Summary of responses to consultation on withdrawal of ISA facilities in voluntary liquidations

1. List of respondents

The consultation letter was published in the "Dear IP" newsletter and placed on The insolvency Service website on 1 October 2010. As well as being received by all licensed insolvency practitioners (IPs), "Dear IP" is also sent to the recognised professional bodies who authorise them; to r3, the trade body that represents the large majority of IPs; and to lawyers, academics and other parties with an interest in insolvency law and practice. The letter was therefore issued to over 2,000 individuals and organisations who have been given an opportunity to express their views on the proposed withdrawal, as well as being available on The Insolvency Service website. In total there were nine responses and these are analysed below.

2. Analysis of responses

	Does the optional facility for voluntary liquidators to use the ISA need to be retained?	**Would removal of the facility result in extra costs and if so what would these costs be?**
1	Yes: In MVLs, important to shareholders mainly due to the effective guarantee and security the ISA offers. Recommended by IP Regulator on prudence & safety grounds. Deposit rates offered.	No: except possibly lower interest rates outside ISA
2	Yes: The cheque writing facility from the ISA is extremely beneficial when paying large dividends	Yes: cheques would need to be manually written and signed by the liquidator which is likely to increase the costs of a liquidation.
3	No: Some benefit where a large number of dividend cheques to be issued and historically good rate of interest on deposits but this is no longer the case. ISA too complex and could be abolished altogether for cases handled by IPs.	No: Other than potential need to retain unclaimed dividend fee.
4	Yes: although current low rate of uptake of ISA due to low interest rates. Liquidator will take pragmatic view on grounds of relative costs of ISA against interest on local bank account.	Yes: ISA cost effective where large number of dividend cheques issued. Earlier closing of cases due to automatic operation of unclaimed dividends account.
5	Yes: Good for small IP practices who can keep all funds in one place and have a uniform approach to banking.	Not specified.
6	Yes: cost effective where dividend cheques issued. Earlier closing of cases due to automatic operation of unclaimed dividends account.	Yes: Mainly set-up costs where large number of commercial accounts would be needed and staff resources to deal with transition.
7	Yes: competitive interest rate, low cost of paying dividends to large numbers of shareholders, earlier closing of cases due to automatic operation of unclaimed dividends account. Mostly deals with MVLs.	Yes: particularly for dividends to overseas recipients.
8	No: but operate most CVLs and 40% of MVLs through ISA.	Yes: Higher costs of operating commercial accounts. Costs of issue and re-issue of cheques to large numbers of creditors. Set-up costs and loss of unclaimed dividend facility.
9	No but retain unclaimed dividends (which remains anyway)	None specified.

3. Summary of Responses

Reasons for retention:

- Security/prudence/regulator recommendation
- Cheap and efficient to issue numbers of dividend payments
- Unclaimed dividends facility/early case closure
- Uniform treatment of cases for small firms
- Interest rate paid

Costs of removal

- Set –up costs for firms with large number of cases
- Costs of issuing dividend cheques
- Higher costs of commercial accounts generally
- Lower interest rates on commercial account balances

Reasons for removal

- Too complex to use
- Interest rates no longer favourable
- Overall no advantage over commercial accounts

4. Conclusion

While those in favour of retention cite the ease and convenience of issuing dividends to creditors/shareholders and of the unclaimed dividends facility (which is to remain anyway), it is clear that overall decline in use has been the result of many IPs already operating the ISA in tandem with local/commercial bank accounts. Many of those in favour of retention adopt a pragmatic approach, using the best features of ISA and non-ISA facilities, which accords with best business and professional practice. It also confirms the impression that short-term opening and closing of ISA accounts fits that approach.

5 January 2011