THE LEGISLATIVE REFORM (INSOLVENCY) (ADVERTISING REQUIREMENTS) ORDER 2009

EXPLANATORY DOCUMENT BY THE DEPARTMENT FOR BUSINESS, ENTERPRISE AND REGULATORY REFORM

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INTRODUCTION

1. This explanatory document is laid before Parliament in accordance with section 14 of the Legislative and Regulatory Reform Act 2006 ("the LRRA") together with the draft of the Legislative Reform (Insolvency) (Advertising Requirements) Order 2009 ("the draft Order") which the Minister proposes to make under section 1 of that Act.

2. The purpose of the draft Order is to amend the Insolvency Act 1986 in order to modernise insolvency proceedings in relation to the advertising regime in voluntary liquidations. This was one of eight proposals consulted on in September 2007.

3. At the time of the consultation the intention was to bring the changes into effect on 1 October 2008. Due to unforeseen issues the implementation date for most of the proposals has been put back to 1 October 2009. However, the proposal to modernise the advertising regime in voluntary liquidations, is not subject to those constraints and, in view of the scope the proposal provides for delivering substantial savings, a decision has been made that this proposal should be taken forward at this time for the benefit of creditors.

4. The other proposals being taken forward, which were contained within the consultation paper issued in September 2007, will still be proceeded with but will be dealt with under a separate draft Order to be laid in Parliament in early 2009.

THE DUTIES OF THE MINISTER

5. With regard to the duties imposed on the Minister in relation to public consultations by section 13 of the LRRA, the Minister of State for Employment Relations and Postal Affairs ("the Minister") considered and approved the consultation document before publication. Following the consultation period the Minister considered that, in light of the responses, three of the proposals should no longer be proceeded with at this time. Additionally the Minister considered that this proposal should proceed under a separate draft Order to that which will deal with the remaining proposals.

6. Accordingly the Minister is laying before Parliament the documents required by section 14(1) of the LRRA as well as the additional information requested by the Parliamentary Committees which is all annexed to this Explanatory Document. The Minister is satisfied that the Order serves the purposes set out in section 1(2) of the LRRA and meets the conditions imposed by section 3(2) of the LRRA.

RECOMMENDED PARLIAMENTARY PROCEDURE

7. The Minister recommends that the draft Order and Explanatory Document be laid in Parliament under the affirmative resolution procedure, for which

provision is made by section 17 of the LRRA. This procedure was chosen because the draft Order has an impact on insolvency proceedings which deal with the assets of an insolvent company and has an impact on creditors. The draft Order also has a limited impact on publishers of local newspapers, a trade body of whom have raised some objections to the amendments in the draft Order. For these reasons, a degree of Parliamentary scrutiny greater than that which is available under the negative resolution procedure was felt to be appropriate. However, none of the amendments are of wider political or public importance, so it was felt that there is no justification for invoking the super-affirmative procedure under the LRRA.

GENERAL BACKGROUND

8. The main legislation governing insolvency proceedings in England and Wales is contained within the Insolvency Act 1986 ("the 1986 Act"). The 1986 Act brought together the insolvency regimes for companies and individuals which had previously been contained within the Companies Act 1985 and for individuals the Bankruptcy Act 1914. The 1986 Act also governs corporate insolvency in Scotland but individual insolvency in Scotland is governed by the Bankruptcy (Scotland) Act 1985.

9. One of the key changes made by the 1986 Act was that for the first time Insolvency Practitioners ("IPs"), who take appointment as statutory insolvency office-holders and thereby administer insolvency cases, were required to be licensed either by the Secretary of State or by one of a number of professional bodies recognised by the Secretary of State for the purpose of licensing its members. This is now a well embedded principle of insolvency law with IPs being experienced members of a regulated profession.

10. The 1986 Act is underpinned in England and Wales by the Insolvency Rules1986 (the "1986 Rules") which set out much of the procedural detail for insolvency proceedings under the 1986 Act. The 1986 Rules have been amended many times since 1986 due to developments in policy and case law affecting the legislation.

11. Therefore in July 2005 the Insolvency Service initiated a project to consolidate the numerous amendments that have been made by revising the Insolvency Rules and as part of that to review, simplify and modernise the existing Insolvency Rules and other statutory instruments which support the main insolvency statute. As a significant simplification project, this supports the government's aim of reducing burdens on users of insolvency legislation.

12. The review has included extensive consultation with users of the insolvency legislation, particularly members of the insolvency and legal professions, but additionally many other stakeholders. During the course of the review it became evident that to provide a fully modernised insolvency regime certain changes would need to be made to primary

legislation alongside the changes to the Insolvency Rules, changes that are well suited to being made by means of a Legislative Reform Order.

13. We consider that the requirement to advertise twice in local newspapers as well as in the Gazette is unnecessarily burdensome. Lifting this burden would reduce the costs of administering voluntary liquidations and therefore bring benefits to creditors as a whole, without removing any necessary protections for them. Any reduction in costs in the administration of insolvency procedures should feed through into increased dividend payments to creditors.

14. The groups most directly affected by the proposal are IPs, creditors and the newspaper industry. IPs will benefit from the removal of this burdensome requirement whilst creditors will be the beneficiaries of a reduction in the costs of the conduct of the case and will gain from changes in the way advertising is undertaken. Although the newspaper industry will no longer enjoy the level of income they currently enjoy from advertising these two meetings, a power will remain for the liquidator or company to advertise where necessary.

THE LEGISLATIVE AND REGULATORY REFORM ACT 2006 – PRE-CONDITIONS

15. Section 1 of the LRRA provides that a Minister of the Crown may by order make any provision which he considers would serve the purpose in subsection (2). That subsection provides that the purpose is removing or reducing any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation. Subsection (3) defines burden to include financial cost.

16. As mentioned previously the Minister considers that the proposal in the draft Order removes or reduces an unnecessary burden on IPs and creditors by modernising the legislation to take account of developments since 1986 (this reduction of burden is expanded on under “Impact Assessment” below and in the final Impact Assessment at Annex B). This view was endorsed by the consultation.

17. The Minister considers that all the conditions in section 3(2) of the LRRA are satisfied. This view was also endorsed by the consultation. The conditions are assessed in detail in Annex A.

DETAILS OF THE PROPOSAL

Advertisement of meetings under sections 95 and 98 of the Insolvency Act 1986

18. The proposal is to allow discretionary advertising of initial meetings of creditors in a voluntary liquidation and to remove the restrictions on the form such advertisement can take.

The present position

19. Section 95 of the 1986 Act provides that where the liquidator of a company in members' voluntary liquidation (i.e. a "solvent" winding up) is of the opinion that the company will in fact be unable to pay its debts in full within the period stated within the directors' statutory declaration, the liquidator must summon a meeting of creditors and cause notice of that meeting to be advertised both in the Gazette and at least once in 2 newspapers circulating in the locality in which the company's principal place of business has been situated.

20. Additionally, after a company has passed a resolution to put itself into creditors' voluntary liquidation, section 98 of the1986 Act requires the company to cause a meeting of creditors to be summoned and to cause notice of that meeting to be advertised both in the Gazette and at least once in 2 newspapers circulating in the locality in which the company's principal place of business has been situated. In practice, this is normally arranged by the proposed liquidator who will have been working with the directors in the run up to the meeting putting the company into liquidation or converting to a different form of liquidation.

21. The intention of these two provisions is to ensure that creditors of the company are made aware that the company has gone into liquidation (or that the liquidation can no longer be a solvent liquidation). Whilst individual notices are required to be sent to all known creditors of the company by post these provisions are designed to ensure that creditors who do not receive that individual notice, for whatever reason, become aware that the meeting has been summoned.

The proposal

22. Article 3 of the draft Order amends sections 95 and 98 of the 1986 Act as regards England and Wales by-

    - removing the requirement on a liquidator in members' voluntary liquidation ("MVL"),or a company in creditors' voluntary liquidation ("CVL"), to advertise in 2 local newspapers in addition to the Gazette;
    - replacing it with a discretion to undertake additional advertising; and
    - in cases where that discretion is exercised, to enable notice of the meeting to be advertised in such other manner as the liquidator or company (as appropriate) thinks fit.

23. Article 3(2) and (3) make minor consequential amendments to section 98(6) and 166(5).

Commencement and transitional provision

24. The proposal is that the amendments to sections 95 and 98 should come into force on 6th April 2009. Those amendments would not apply in respect of a company in voluntary winding up where the resolution to wind up was passed before that date – see article 4 of the draft Order.

How does the proposal remove or reduce burdens?

25. As set out in the final Impact Assessment at Annex B, a typical advert in a local newspaper costs approximately £300 meaning that for each CVL (or MVL converted to a CVL) there is a total cost of around £600. These costs are borne by the insolvent estate (i.e. they come out of the assets available for distribution to creditors).

26. The liquidator or company is required to advertise in the manner set out by law and therefore the cost to the estate has to be incurred, regardless of whether such an advertisement is likely to come to the attention of any creditor who may not have received individual notice.

27. The proposal involves removing the present requirements for newspaper advertising and enabling the liquidator or company instead to advertise the liquidation in whatever way they consider it would best come to the attention of any additional creditors. This would mean that the costs of advertising the liquidation would be incurred only in cases where it was genuinely useful and when thought had been given to the most effective way of reaching possibly unknown creditors.

28. A full assessment of the proposal against the pre-conditions laid down in section 3(2) of the LRRA is set out in Annex A.

IMPACT ASSESSMENT

29. A final impact assessment signed by the Minister is attached at Annex B.

30. In summary, this proposal is intended to reduce the cost of administering voluntary liquidations, so as to increase monies available for return to creditors by way of a dividend.

31. The aim of this proposal is to give more discretion to the liquidator or the company (in this limited area) when deciding whether publicity in addition to the Gazette notice is necessary and if so, the form that publicity should take to reach the greatest number of creditors. As previously detailed the licensing of IPs was introduced in 1986 and is now a well embedded principle in the administration of insolvency cases. We consider that IPs, as experienced members of a regulated profession, are best placed to make these decisions or to advise directors on their responsibilities in relation to the exercise of this discretion, at the same time as remaining answerable to creditors on any decisions taken. Voluntary liquidations are elective procedures and it would therefore be unusual for the directors to fail to provide a full list of creditors or to fail to act on the IPs recommendation.

32. The reduction in burden will, we believe, provide substantial savings in the administration of voluntary liquidations, which will feed through in the form of increased payments to creditors of that insolvent estate.

33. This proposal relates to advertisement of members' and creditors' voluntary liquidations. At present, in addition to placing a notice in the Gazette they are also required to advertise in all cases at least once in two local newspapers circulating in the area where the company had its principle place of business. The proposal is to move to a system in which the costs of advertising need only be incurred in cases where there is a genuine need to advertise and where it would serve a useful purpose. The Gazetting requirements will remain as they are at present. The proposal enables the liquidator or company to advertise, other than by a local newspaper, so enabling a choice over the form that any such advertising should take. This would ensure that the most appropriate method is chosen in which to bring the matter to the attention of any unknown creditors. Estimated annual savings are £3.3 million, based on assumptions of the numbers of cases where advertisement costs would no longer need to be incurred and the cost of each newspaper advertisement being an estimated sum of £300.

CONSULTATION

34. Between the 19th September and the 10th December 2007 the Insolvency Service carried out a full public consultation on 8 different proposals of which this was one. A full list of all those consulted is attached to the "Summary of responses to the consultation on changes to the Insolvency Act 1986 and the Company Directors Disqualification Act 1986" at Annex C (which also shows who responded). The relevant part of the document which relates to this proposal can be found at paragraphs 135 to 146. The consultation document was previously sent to the Parliamentary Committees for information in June 2008.

35. The consultation sought views on the policy and detail of 8 different proposals (including the burdens, costs and benefits) and the pre-conditions in section 3(2) of the LRRA that need to be satisfied. As previously stated, following the consultation, it was originally intended that the proposals to be taken forward would be included in one draft Order, which would come into effect on 1 October 2008. Due to unforeseen issues the implementation date for most of the proposals was put back to 1 October 2009. However, the proposal to modernise the advertising regime in voluntary liquidations is not subject to those constraints and, in view of the scope the proposal provides for delivering substantial savings for business, a decision has been made to bring forward the implementation of this proposal, to April 2009, for the benefit of creditors.

36. The remaining proposals to be taken forward will proceed within a separate draft Order that is likely to be laid early in 2009.

37. The consultation was sent directly to 26 stakeholders who were identified as being likely to have an interest, with 16 written responses subsequently being received. The consultation was also available publicly on the Insolvency Service website and hard copies were sent to interested parties who contacted the Insolvency Service directly.IPs, as the group most likely to be affected, were "targeted" by the consultation being publicised in the Insolvency Service's "Dear IP" newsletter, which is sent quarterly to every IP in the UK. The Insolvency Service also held meetings with The Association of Business Recovery Professionals ('R3') (a body that speaks for nearly all licensed IPs in the UK) and the Newspaper Society, following responses these organisations submitted. Although the response level appears low it is reflective of the major stakeholder groups having active trade associations who can be relied upon to represent the views of their wider membership. As a consequence fewer responses were received from those who were sent the consultation document directly than might otherwise have been expected.

38. The overall response to the consultation in relation to this proposal was generally very positive with respondents being broadly in favour. The consultation reinforced our view that this proposal would reduce burdens without removing any necessary protections.

39. The consultation response confirmed that in fact very few creditors come forward directly as a result of the placing of advertisements in local newspapers but that occasionally some do. However, some respondents had reservations about the accuracy of lists of known creditors and did not wish advertising to be dispensed with altogether. These concerns are discussed within the legal analysis in Annex A under "necessary protection" (paragraphs 8 to 19).

40. The only substantial objections made were raised by R3 and The Newspaper Society, although it will be noted from paragraph 43 below that R3 subsequently withdrew their objections to the proposal.

41. The Newspaper Society objected, principally on the grounds that we had underestimated the effectiveness of local newspaper advertisements and that we appeared to be trying to discourage liquidators from using newspapers as a method of publicity. Their comments were made in relation to the overall insolvency legislation modernisation project and therefore included references to local newspaper advertising within the 1986 Rules, rather than just those contained within the 1986 Act.

42. Following receipt of their comments the Insolvency Service held a meeting with representatives of The Newspaper Society about their objections. Although during that meeting, or indeed subsequently, we have been unable to persuade them to support this proposal, we have decided to proceed on the basis that the existing requirements impose a disproportionate financial burden that can no longer be justified in every case. A legislative provision which mandates that newspaper advertisements must be placed in every single voluntary liquidation,

without any consideration of the value derived from that expense (which necessarily falls upon the creditors), is not sustainable. There is evidence that the way in which creditors now obtain information about their debtors has changed markedly as technology has developed. It can no longer be assumed that a significant proportion of creditors will be local and have access to local newspapers and therefore a provision which provides a degree of judgement and flexibility will better benefit creditors of insolvent estates.

43. R3 initially objected to the proposal on the grounds that local newspaper advertisements played a useful part in bringing matters to the attention of creditors. Following a subsequent meeting with the Insolvency Service, however, they confirmed that they were not opposed to the removal of the mandatory requirement to advertise creditors' meetings in local newspapers provided that liquidators were to be given the discretion to advertise in cases where they considered it desirable and in whatever medium they considered appropriate to bring the meeting to the attention of creditors.

44. A full analysis of the consultation responses is at Annex C, paragraphs 135 – 146.

DEVOLVED ADMINISTRATIONS

Wales

45. The proposed changes apply to Wales. However corporate insolvency is not a devolved matter and consequently the draft Order does not require the formal consent of the Welsh Assembly Government. The proposal was nevertheless notified to the Legal Services Department of the Welsh Assembly Government who confirmed that they were not aware of any powers available to the Welsh Ministers under the Government of Wales Act 2006 which would be affected by the draft Order.

Scotland

46. Most matters relating to the insolvency of business associations are reserved (see Section C2 of Schedule 5 to the Scotland Act 1998 a copy of which appears in Annex F). However, where there are substantial differences in insolvency law and practice between England and Wales, on the one hand, and Scotland on the other, affecting certain matters (as for example, in the case of matters relating to receiverships or the process of winding up), these matters are excepted from the general reservation.

47. The requirements in sections 95 and 98 in relation to advertising the meetings under those sections fall into the category of "process of winding up" and are therefore devolved as regards Scotland. As a result, the amendments create separate subsections dealing with the administrative requirements for a winding up in Scotland and England and Wales

respectively, the requirements for Scotland being preserved as they currently stand.

48. The consultation paper and the draft Order have been sent to the Accountant in Bankruptcy (which is an Agency of the Scottish Executive and develops policy for personal and corporate insolvency and diligence in Scotland) and to the Office of the Solicitor to the Scottish Executive. They have confirmed that they are content that the draft Order does not make any provision as regards devolved matters.

Northern Ireland

49. Corporate insolvency is a devolved matter in Northern Ireland and therefore the proposed amendments do not extend to Northern Ireland.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

50. The Minister is satisfied that there are no human rights issues associated with these proposals.

THE EUROPEAN UNION

51. We consider that the draft Order is compatible with all the requirements of EU membership and with EU legislation.

ANNEX A

Legal analysis against the requirements of section 3 of the Legislative and Regulatory Reform Act 2006

Could the policy objective be secured by non-legislative means?

1. As the requirements to advertise the meetings under sections 95 and 98 of the 1986 Act are set out in those sections, the policy objective of making advertising discretionary could only be achieved by an amendment to the 1986 Act.

Is the effect of the provision proportionate to the policy objective?

2. The policy objective is to ensure that the costs of advertising these meetings are only incurred in cases where the advertisement serves a genuine purpose and are incurred in the manner the liquidator or company considers most appropriate to bring the meetings to the attention of creditors. In other words, the policy is that the advertising should be better targeted and that creditors' money should not be spent needlessly.

3. The proposal is proportionate in its effect in that it does not simply remove the requirement to carry out advertising altogether. The obligation to advertise in the Gazette is maintained. In addition, the liquidator or company is given a discretionary power to carry out further advertising should it be judged useful.

Does the provision, taken as a whole, strike a fair balance between the public interest and the interests of any person adversely affected by it?

4. This proposal does mean that local newspapers and certain advertising agencies will no longer enjoy the level of income they currently enjoy from the placing of the advertisements for these two meetings. However, there will remain a power for the liquidator or company to advertise where necessary. We do not wish to discourage the use of advertisement in cases where the office-holder considers some value may be derived.

5. However, we do want to encourage office-holders to use the proposed discretion to target those cases in which additional advertising is worthwhile. We also want to provide less restrictive legislative rules so that if in a particular case they consider that more effective advertising can be achieved through means other than, or in addition to, a newspaper advertisement, they will have that option. The relevant office-holder, knowing the particular circumstances of the case, will be the person best placed to make that judgement (and advise the directors in a CVL accordingly).

6. The present position of course is that the costs of two newspaper advertisements need to be incurred in every CVL (or MVL converted to a CVL), whether or not they serve any useful purpose. It is in the public

interest that the money spent on these adverts should be spent in a more targeted manner. It is quite wrong to expect the creditors of an insolvent estate, who will invariably have suffered a bad debt, to effectively bear the cost of two newspaper advertisements if the office-holder considers that that advertisement serves no useful purpose. We believe therefore that the provision, taken as a whole, strikes a fair balance between the public interest and the interests of newspapers and advertising agencies.

7. A couple of respondents to the consultation raised the question of whether making the requirement to advertise a discretionary power instead might lead to potential for criticism of or even risk of liability for liquidators (either for advertising when they should not have or for a failure to advertise). One of the respondents went on however to point out that in their experience, the courts are slow to interfere in the general exercise of discretion by experienced and commercial insolvency practitioners and so that risk may be largely illusory. We agree with this and would add that we would expect insolvency practitioners to cope very quickly with this new decision which is probably a less difficult judgement to make than many others in their handling of a liquidation. In addition, we will issue general guidance to insolvency practitioners as to the sort of circumstances in which the advertising discretion might be exercised. The bodies that represent insolvency practitioners might also choose to issue their own guidance in relation to the exercise of the new discretion.

Does the provision remove any necessary protection?

8. It is obviously important that creditors of a company are made aware that the company has gone into liquidation so that they can notify the liquidator of their interest and attend the meeting if they wish.

9. However, given the way that the geographical profile of creditors has changed since this obligation was first put into the legislation and the developments in technology, we are not convinced that the present statutory requirement to advertise in two newspapers circulating in the locality of the company's principal place of business provides a meaningful long stop protection to the creditors any more. This seems to be supported by the fact that, as we understand it and as was confirmed by a number of respondents to the consultation, very few creditors come forward as a result of the advertisements in local newspapers.

10. Given the change in the way in which businesses trade, it can no longer be assumed that a significant proportion of creditors will be local. The likelihood of creditors chancing upon reading the local newspaper in which the advertisement has been posted is therefore a lot smaller than it would have been in the past.

11. It is also worth bearing in mind that a newspaper advert only appears in the paper for one publication whereas under the new discretion to advertise liquidators may want to place adverts in other media such as the internet where the notice would have a much longer life.

12. We would also suggest that the amount of information that has become available to creditors in recent years has reduced the need for mandatory local newspaper advertisements. For example, most companies now have websites and if the company is in liquidation the liquidator is obliged to update the company's websites to disclose that fact. Other potential sources of information would include search engines such as Google and, Companies House whose online search facility would indicate if a company was in liquidation. It is therefore very much easier for a creditor pursuing a debt to establish the status of the debtor and to establish the identity of the liquidator.

13. It should also be borne in mind that the obligation to advertise in the Gazette will remain. Creditors can access and search the Gazette online free of charge.

14. Creditors cannot of course easily be categorised but it would be fair to say that the larger creditors such as banks, other lenders and major companies will have their own procedures, for example, reading the Gazette or using credit reference agencies who do so, and so will pick up on the onset of an insolvency procedure.

15. In any event, in most cases the liquidator will have what he considers an accurate and full list of creditors. Companies are required by law to maintain accounting records and a liquidator should be able to gain a list of known creditors from those and from information provided by the directors. In addition, the statement of affairs of the company which has to be prepared and laid at the meeting (see sections 95(4) and 99) has to include a list of known creditors and this statement has to be verified by affidavit. Known creditors identified in this way will be sent individual notice of the meetings.

16. It is important to remember that a CVL is a voluntary procedure i.e. it is initiated by the company. As a result it is in the company's and directors' interests to disclose all creditors to ensure an orderly winding up.

17. The final point is that liquidators will still be able to advertise (or advise the directors to advertise) if for any reason they think some creditors may not be known. This could be the case, for example, if there has been a lack of complete co-operation from the directors of the company. The liquidator will be the person best placed to judge in each individual case whether it is genuinely worthwhile spending the £300 per advert it costs, bearing in mind that this cost comes out of monies, which would otherwise be available to be distributed to creditors.

18. A refusal by the directors to advertise where advised to do so by the proposed liquidator is extremely unlikely. In a CVL the directors would have approached the liquidator to help and advise them prior to the passing of the resolution for winding up and it would be strange for them not to take his advice on this point. A refusal against his advice would

inevitably lead the liquidator to ask why, although in practice it would almost certainly be the prospective liquidator who would place the advert. If he was not satisfied with the explanation and was concerned that there had not been a full disclosure of creditor details, this would be a matter for further investigation by him both by looking at company records and by interviewing the director.

19. For all these reasons we do not believe that the proposal will remove any necessary protection.

Does the provision prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise?

20. We do not believe that this proposal prevents any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

Is the provision of constitutional significance?

21. We do not believe that the proposal is of constitutional significance.

Summary: Intervention & Options

Department /Agency:	Title:	
Insolvency Service	**Impact Assessment of changes to the Insolvency Act 1986 for the modernisation and streamlining of advertising procedures.**	
Stage: Final	**Version:** 1	**Date:** 11 November 2008

Related Publications: The Sept 2007 Consultation Document by LRO on the modernisation and streamling of the insolvency procedures.

Available to view or download at:

http://www.insolvency.gov.uk

Contact for enquiries: Katherine Parker **Telephone:** 020 7637 6651

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

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

What are the policy objectives and the intended effects?

To provide a better targeted advertising regime to reduce the costs of administering voluntary liquidations, thereby increasing the monies available for return by way of dividend to creditors of companies in voluntary liquidation. Equivalent changes are being made within the insolvency secondary legislation to deal with requirements that exist for the advertising of key insolvency events across all insolvency procedures.

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

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

Pat McFadden

..... Date: 2 December 2008

Summary: Analysis & Evidence

Policy Option: Advertising	Description: To provide a better targetted regime to reduce the costs of administering insolvent voluntary liquidations

COSTS

ANNUAL COSTS		Description and scale of **key monetised costs** by 'main affected groups'
One-off	**Yr**	One off costs of familiarisation for users of insolvency law. Advertising revenue lost to the newspaper industry
£ 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'

BENEFITS

ANNUAL BENEFITS		Description and scale of **key monetised benefits** by 'main affected groups' Creditors
One-off	**Yr**	
£ 0		
Average Annual Benefit		
£ 3.3 million		**Total Benefit** (PV) **£ 3.3 million**

Other **key non-monetised benefits** by 'main affected groups' The introduction of a more flexible and better targeted publicity regime would increase the possibilty of unknown creditors becoming aware of the voluntary liquidation if, for whatever reason, they have not received an individual notice.

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 10	**Net Benefit Range** (NPV) **£**	**NET BENEFIT** (NPV Best estimate) **£ 30.74 million**

What is the geographic coverage of the policy/option?	England and
On what date will the policy be implemented?	6 April 2009
Which organisation(s) will enforce the policy?	Insolvency
What is the total annual cost of enforcement for these	£ Minimal
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per	£ 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)					(Increase - Decrease)
Increase	£	Decreas	£ 50,000	**Net**	**£** 50,000

Key: **Annual costs and benefits: Constant Prices**

[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. This proposal is designed to reduce burdens on the voluntary liquidation process with a view to increasing the money available for return to creditors. It is a part of a longer term project to update and modernise the insolvency legislation and runs alongside equivalent changes that are being made to the Insolvency Rules 1986 from 6 April 2009. These changes will, we believe, reduce overall burdens and provide substantial savings in the administration of voluntary liquidations. That ought to feed through to creditors of those insolvent estates in the form of increased dividend payments.

2. We carried out a consultation exercise on this and a number of other proposals in late 2007. The intention at that time was to bring wider changes into effect on 1 October 2008. Owing to unforeseen issues, the implementation date for most of these proposals has been put back to 1 October 2009. However, the proposal in relation to the advertising regime in voluntary liquidations is not subject to those constraints and, in view of the scope the proposal provides for delivering substantial savings, a decision has been made that this should be taken forward at this time, for the benefit of creditors.

3. Most of the other proposals that were contained in the consultation paper issued in September 2007 will still be proceeded with but are likely to be dealt with under a separate LRO, likely 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 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 company convene a meeting of creditors in a creditors' (insolvent) liquidation. The requirements in section 98 are placed on the company, although

in practice, an insolvency practitioner will advise on and deal with the formalities of the process.

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 CVL (or that the liquidation has converted from a solvent MVL to CVL). The requirements for the newspaper advertisements are designed to ensure that creditors who do not receive an individual notice of the creditors meeting, for whatever reason, become aware that a meeting of creditors has been summoned.

9. In answer to the question in the consultation "*In your experience as an insolvency practitioner, how many creditors come to light as the result of an advertisement being placed?*" 4 consultees responded directly. All respondents were in agreement that very few creditors come to light as a result of an advertisement being placed. The Institute of Chartered Accountants in England and Wales further commented that an IP may not actually know the reason or prompt behind the creditor coming forward. The only respondent to provide a figure was Wilson Field Ltd who estimated that in one in every fifty cases a creditor comes to light as a result of an advertisement being placed.

10. The Newspaper Society objected to the proposal, principally on the grounds that we had underestimated the effectiveness of local newspaper advertisements and that we appeared to be trying to discourage liquidators from using newspapers as a method of publicity. Their comments were made in relation to the overall insolvency legislation modernisation project and therefore included references to local newspaper advertising within the 1986 Rules, rather than just those contained within the 1986 Act.

11. Following receipt of their comments the Insolvency Service held a meeting with representatives of The Newspaper Society about their objections. Although during that meeting, or indeed subsequently, we have been unable to persuade them to support this proposal, we have decided to proceed on the basis that the existing requirement imposes a disproportionate financial burden that can no longer be justified in every case. A legislative provision which mandates that newspaper advertisements must be placed in every single voluntary liquidation**,** without any consideration of the value derived from that expense (which necessarily falls upon the creditors), is not sustainable. We consider that the way in which creditors now obtain information about their debtors has changed markedly as technology has developed. It can no longer be assumed that a significant proportion of creditors will be local and have access to local newspapers and therefore a provision which provides a degree of judgement and flexibility will better benefit creditors of insolvent estates.

12 The draft Order amends sections 95 and 98 of the 1986 Act as they apply to England and Wales by –

a) removing the requirement on a liquidator (MVL) or Company (CVL) to advertise in 2 local newspapers in addition to the Gazette;
b) replacing it with a discretion to undertake additional advertising; and
c) in cases where that discretion is exercised, to enable notice of the meeting to be advertised in such other manner as the liquidator or company(as appropriate) thinks fit.

13. If the liquidator or company deems it necessary to undertake additional publicity, the proposed amendments to the 1986 Act will enable them to advertise the liquidation in whatever way they consider it will 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 possibly unknown creditors.

14. 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 requirement to advertise key insolvency events across all insolvency procedures. However, those changes alone would not deliver an amendment to the two statutory requirements to advertise provided for by sections 95 and 98 of the Act. Amending only the Rules would not fully achieve the policy objective that has been identified.

(c) Change by LRO

By making these two changes by LRO we will maximise savings and deliver a better targeted advertising regime in voluntary liquidations. This will also follow equivalent changes that are being made by the amendments to the Rules for other key insolvency events.

COSTS

15. The cost of local newspaper advertising presently has 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, it is effectively passed on to the body of creditors in each case.

16. The costs of the proposed change will fall on the newspaper industry and insolvency practitioners.

17. 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.

18. 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).**

19. 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 that give guidance on the liquidation process.

BENEFITS

20. 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, will only arise in those cases in which a business need for the advertisement can be identified. This will lessen the bad debts creditors will suffer, thereby bringing economic benefits.

21. There may also be a non-monetised benefit to creditors from the more flexible approach to advertising because, going forward, the advertisement need not necessarily be by means of an advertisement in a newspaper, it could be by some other form of advertisement. This greater flexibility will enable the form of advertisement to better suit the circumstances of the case and may therefore result in a more effective form of advertising, when the discretion is exercised.

THE PROPOSAL

22. 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.

23. The present provisions require a liquidator of a company in MVL which is converting to a CVL (section 95 of the Act) and the company in a creditors' voluntary liquidation (section 98 of the Act), to advertise notice of the creditors' meeting at least once in 2 newspapers

circulating in the locality in which the company's principal place of business has been situated.

24. Notice of the meeting is required to be sent by post to all known creditors in any event. The requirement to advertise in local newspapers is designed to ensure that any creditors who do not receive that notice may become aware that a meeting of creditors has been summoned.

25. At present, the cost of the newspaper advertisements has to be incurred whether or not it can be seen to serve any useful purpose. We propose to remove the requirement to place such an advertisement in all voluntary liquidations, leaving it to the discretion of the company (in CVLs) or liquidator (in MVL conversions to CVL) whether it is necessary in each case.

26. 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, or undisclosed, 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.

27. 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 the costs of an advertisement should only be incurred in those cases where it is considered it will serve some useful purpose. Replacing the mandatory requirement to advertise with a discretion will provide a better targeted advertising regime and ought to improve the effectiveness of advertising where the discretion is exercised.

28. The requirement to give notice of the creditors meeting in a voluntary liquidation in the Gazette will continue.

Benefits of the changes

29. 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 advertising will not be deemed necessary. Anecdotal but based on the assumption that the % would be high as voluntary liquidations are elective procedures and a full disclosure would therefore be expected(see paragraph 32 below)	**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**

30. 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.

31. The estimated £300 cost per advertisement has been provided by a number of insolvency practitioners who have experience of taking insolvency appointments.

32. The estimate of 80% of cases in which savings will be made is based upon an assumption that because voluntary liquidation is an elective procedure whereby the company will have approached an insolvency practitioner to advise and assist it in liquidating the company. It would therefore be expected that the directors of the company will make a full disclosure of all known creditors to the prospective liquidator and will also comply with a statutory requirement that exists to deliver up all of the company's accounting records which will in most cases provide full details of all known creditors.

SPECIFIC IMPACT TESTS

Competition filter and reasoning

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.

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]	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? See footnote.[4]	No
Is the regulation likely to affect the market structure, changing the number or size of firms? See footnote[5]	No
Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	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

[1] In terms of "firms" it is possible but unlikely that any one firm would have more that a 10% market share if by market share we mean the number of cases (which must be the sensible approach) rather than the value of the assets they would deal with. The changes would apply regardless of the size of the case. So far as the 10% test is concerned, the best and most recent available data is contained in a report entitled *Report on Insolvency Outcomes* published by Dr Sandra Frisby, Baker and Mackenzie lecturer in Company and Commercial Law, University of Nottingham on 26 June 2006. In that report the author looks at appointment trends by firms in administration. They found that one firm (i.e. not an individual insolvency practitioner) had 9% of appointments and two other firms each had the next largest share of 5% each. So it is possible for one firm to have more than 10% market share.

[2] See comments concerning question 1. In light of the findings on the research referred to there, it seems unlikely that the answer to this question would be yes.

[3] See comments concerning questions 1 and 2. In light of the findings on the research referred to there, it seems unlikely that the answer to this question would be yes.

[4] We think not as the costs of familiarisation would be the same regardless of the size of the firm. There are no costs to firms as creditors.

[5] We can see no reason why this would have an effect on the set up costs for new insolvency practitioners.

Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	No

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.

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.

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

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

Newspaper industry

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

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.

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.

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 will fall.

Legal aid impact test

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

This proposal would appear to have no direct impacts so far as sustainable development is concerned.

Carbon Assessment

This proposal would appear to have no direct impacts for carbon assessment.

Other Environment

This proposal would appear to have no direct environmental impacts.

Health Assessment

There are no health implications to this proposal.

Equality Impact Assessments

The costs of this proposal 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

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

The proposals do not raise any other human rights questions.

Rural Proofing

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	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

ANNEX C

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 for the modernisation and streamlining of insolvency procedures

Summary of responses
(including list of stakeholders consulted)

November 2008

Issued

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Executive Summary

1. The Insolvency Service ("INSS") issued a consultation document on behalf of the Minister of State for Employment Relations and Postal Affairs in September 2007. The consultation proposed a number of amendments to the Insolvency Act 1986 ("1986 Act") and the

Company Directors Disqualification Act 1986 ("CDDA"), through the use of a Legislative Reform Order ("LRO") under the Legislative and Regulatory Reform Act 2006.

2. The proposed amendments to the legislation are intended to achieve one or more of the following aims:

    - Modernise certain aspects of insolvency law to take account of technological developments, particularly the growth in the use of electronic communication over the last 20 years;
    - Recognise that some decisions are best left to the professional judgment of insolvency office-holders, who are experienced members of a regulated profession;
    - Remove unnecessary burdens on insolvency practitioners and others, while not removing any necessary protections for creditors; and
    - Make more flexible the means of communication, and the exchange of information, between insolvency office-holders and creditors (and others who send or receive information) in insolvency cases.

3. 16 substantive responses were received to the consultation, of which 5 were from trade associations representing the views of their members. The overall response was generally very positive with widespread support for most of the proposals. Having considered the various responses to the consultation, INSS has decided not to proceed at this point in time with proposal 1.1 (opt-in), proposal 6 (report on conduct of directors required by CDDA) and proposals 7 and 8, which relate to the Bank of England, as they were set out in the consultation document. Further detail on proposal 1.1 can be found at paragraph 92-108, detail on proposal 6 at paragraph 155-156 and information on proposals 7 and 8 at paragraphs 157-162 .

4. The consultation reinforced the INSS' view that the proposals would reduce burdens without removing any necessary protection. The proposals aimed at modernising and streamlining insolvency procedures, particularly those enabling the use of electronic communication have been well received.

5. Although most respondents welcomed the proposals certain reservations were raised by the Association of Business Recovery Professionals ("R3"), The Newspaper Society and HMRC on particular aspects of some of the proposals. The Insolvency Service subsequently held meetings with The Newspaper Society and R3 to explain the policy intention behind the proposals and to afford them the opportunity to discuss the issues further.

6. R3 subsequently withdrew their objections. We were however unable to allay the concerns of The Newspaper Society but believe the adverse impact proposal 3 has on newspapers and advertising agencies is justified, in light of the overall benefits it provides to other parties, principally creditors.

7. Following receipt of HMRC's initial response to the consultation, further clarity was required. The INSS wrote to HMRC requesting clarification and providing further information on the proposals to which they appeared to object. A further letter was received from HMRC and a further response provided by the INSS. In their final letter of the 17th June 2008 HMRC withdrew their objections to all proposals with the exception of the proposal for opt-in. Although it is noted at paragraph 15 below that the opt-in initiative of proposal 1 will no longer be proceeded with (further detail can be found at paragraphs 92 -108).

Introduction

8. INSS issued a consultation document on the 19th September 2007 proposing a number of amendments to the 1986 Act and a proposed amendment to the CDDA. The aim of the amendments was to modernise and streamline processes within the insolvency legislation. The closing date for responses was 10th December 2007.

9. The consultation document was sent to all of those named consultees that are listed in Annex A and was additionally posted on the INSS website. Hard copies of the consultation document were sent to persons who contacted us directly. We also targeted all Insolvency Practitioners ("IP"s) by publicising the consultation in our "Dear IP" newsletter that is sent quarterly to every IP in the UK.

10. The consultation posed 27 questions, 11 on the pre-conditions laid down in the Legislative and Regulatory Reform Act 2006 ("LRRA") and the proposed parliamentary scrutiny process (questions A-K) and the remaining 16 on each proposal (questions 1-16).

Consultation Reponses:

11. 16 substantive responses were received to the consultation and these can be broken down is as follows:

Trade Associations	5	
Solicitors and legal organisations	3	
Creditor organisations		3
Insolvency representative groups	2	
Government bodies	2	
Insolvency Practitioners	1	

12. The relatively low response level is in our view reflective of the fact that the major stakeholder groups have active trade associations who can be relied upon to represent the views of their wider membership. This is particularly the case for insolvency professionals within the insolvency and legal professions. Consequently, many businesses consulted would have left it to their respective trade associations to represent their interests.

13. The majority of respondents answered by way of a proforma attached to the consultation document; however a few respondents chose to answer in the form of a letter. Copies of the original responses (unless the respondent has requested non-disclosure) are available on request. Please contact Alison Parine on 020 7637 6365 or via email at Alison.Parine@insolvency.gsi.gov.uk for further information.

Proposals no longer proceeded with:

14. Following receipt of responses to the consultation and in light of recent events in the banking sector, the INSS has decided not to proceed at this time with proposal 1.1, proposal 6 and proposal 7 and 8 contained within the consultation document.

15. Proposal 1.1 (Opt-in) – Although there was some support for this limb of the first proposal, many consultees had concerns about it (see paragraphs 92-108 below). Having carefully considered those concerns, the INSS has decided that there is insufficient support to justify

proceeding with this aspect of proposal 1 at this point in time. However, it should be noted that the other 3 parts of proposal 1 as consulted on will be proceeded with.

16. Proposal 6 (reporting under CDDA) – Having reflected further upon this proposal, a view has been taken that it is not an appropriate measure to be taken forward by means of an LRO. Further consideration will be given to this issue at an appropriate opportunity in the future.

17. Proposal 7 (removing the requirement for the Insolvency Services Account being held at Bank of England) – In light of difficulties that have been encountered by the banking sector since the INSS consulted on this proposal last year, we have concluded that it is not appropriate to take this proposal forward at the current time. The INSS recognises that circumstances have changed since issuing the consultation in September 2007 and intends to issue a short additional consultation regarding this proposal before proceeding with it by means of an LRO.

18. Proposal 8 (removal of power of court to order monies to be paid into account held at the Bank of England) – Since issuing the consultation the INSS has received legal advice stating that this amendment is not one which can be made by means of an LRO. The INSS intends to take that change forward at the next legislative opportunity.

Further Consultation:

19. In the light of representations made by respondents to this consultation the INSS gave further consideration to the proposal to enable office-holders to provide information by sending a link to a website on which information is posted (proposal 1.3). The INSS concluded that by modifying the proposal, so as not to require the insolvency office-holder to obtain consent from creditors as a pre-condition for sending reports and other documents via a website, would result in greater savings for creditors.

20. As a result we issued a further consultation on the 15th August 2008 concerning this proposal. Further details can be found at -

    http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/registerindex.htm

21. The consultation was open for a period of 6 weeks and closed on the 26th September 2008. The INSS received 10 substantive responses to this further consultation and all were in support of removing the requirement for the insolvency office-holder to obtain the consent of creditors as a pre-condition to sending reports and other documents via a website. Respondents acknowledged that far greater savings would be achieved by the removal of this requirement but sufficient safeguards were provided for those who might otherwise be adversely effected by retaining the ability for creditors to request a hard copy if required. Further details can be found at paragraphs 116 to 123.

22. The INSS is very grateful to all respondents for their feedback on all of the proposals. The views and opinions expressed have been particularly helpful in helping us to assess the implications for all of the proposals, but especially so for the opt-in initiative, which as stated above has resulted in that part of proposal 1 no longer being proceeded with.

23. The responses to the consultation have been carefully considered. This report provides a summary of the views expressed together with the INSS response, where appropriate, to the issues raised.

24. A summary of the questions asked in the consultation document is at Annex B.

Background

25. In July 2005 the INSS commenced a project to consolidate and modernise the Insolvency Rules 1986. One of the key aims was to reduce and remove burdens on users of insolvency legislation with a view to delivering better returns to creditors of insolvent estates. In addition, this project (of which the proposed amendments to the 1986 Act form part) supports the Government's wider commitment to reduce the adverse impact of regulation by delivering administrative burden reductions for business.

26. It became clear within this project that certain changes would need to be made to primary legislation to enable the desired changes to be made to the Rules. This opportunity allowed us to introduce initiatives to streamline and modernise insolvency law.

27. The proposals are designed to lift unnecessary burdens on users of insolvency law and achieve the overall aim to modernise and make more flexible, insolvency processes.

28. The consultation document proposed 8 areas for amending the legislation, which are set out below. However following representations made by consultees and further reflection by the INSS a decision was taken not to proceed at this time with proposals 1.1, proposal 6 and proposal 7 and 8 below.

29. It was originally intended that all the remaining proposals would be taken forward by means of one draft Order. However, in order to meet Ministerial priorities, the advertising changes (made by proposal 3) will proceed within a separate draft Order with the intention of commencing in April 2009. The remaining proposals will continue to be taken forward within a subsequent draft Order that is likely to be laid early in 2009.

<u>Summary of the Proposals:</u>

Proposal 1 –

1.1 - To require creditors to "opt-in" if they wish to receive information during the conduct of proceedings and/or who wish to participate in the insolvency process. **Following representations made by consultees this proposal has now been withdrawn.**

1.2 - To allow electronic communication where the legislation requires communication to be "in writing".

1.3 - To allow insolvency office-holders to provide information by sending a link to a website on which information is posted.

1.4 - To enable meetings to be held through media, rather than just being held at a physical venue.

Proposal 2 –

To remove a requirement imposed on liquidators and trustees in bankruptcy requiring them to obtain sanction for certain actions.

Proposal 3 –

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

Proposal 4 –

To remove a requirement imposed upon liquidators to summon annual meetings of members and/or creditors for the purpose of laying an account of their acts and dealings and of the conduct of the winding up, during the preceding year.

Proposal 5 –

To remove the requirement for documents in insolvency proceedings to be sworn by affidavit and to replace it with a requirement for such documents to be verified by a statement of truth in accordance with the Civil Procedure Rules 1998.

Proposal 6 –

To remove the requirement for an insolvency practitioner, acting as liquidator, to submit a report to the Secretary of State on the conduct of the directors of a company if he has already submitted such a report as administrator of the same company. **Please note this proposal is no longer being proceeded with.**

Proposal 7 –

To remove a requirement for the Insolvency Services Account ("ISA"), kept by the Secretary of State, to be held with the Bank of England. **Please note that in light of recent events in the banking sector, this proposal is no longer being proceeded with at this time – see further comments at paragraph 160.**

Proposal 8 –

To remove the power of the court to order that a person owing monies to a company in liquidation pay those monies into an account, in the liquidator's name, at the Bank of England. **Please note that following advice from lawyers this proposal is no longer being proceeded with.**

Responses by Question

Pre-conditions and parliamentary process:

Question a: Do you think the proposals will remove or reduce burdens as explained in relation to the proposals set out in this paper?

30. This question sought comments in relation to all 8 proposals to the consultation. Many respondents did not answer the question directly, although it was implicit from many of their general responses to the proposals that they concur with the views expressed below by those who did respond to the question specifically.

31. 11 respondents provided a response to the question directly. Those respondents agreed that the proposals would reduce burdens but opinion differed on the level of the reduction in burdens for the Insolvency Practitioner ("IP") and the creditors. In particular the Institute of Credit Management ("ICM") were concerned that although there would be a reduction in burden on IP time, this benefit would not be passed onto creditors by way of a reduction in costs.

32. **In relation to this point the INSS comments that IPs are regulated professionals and as such would be expected to conduct themselves professionally and in the best interests of creditors. Additionally changes are being made to the process by which creditors fix and agree the office-holders remuneration within the new Insolvency Rules. These changes will deliver greater transparency for creditors by giving them better rights for requesting more detailed particulars as to the amounts of remuneration that have been charged.**

33. Eversheds LLP commented specifically on electronic communication, stating that it will reduce the financial cost of administering cases for the IP and will remove a current obstacle to efficiency, productivity and profitability for IPs. They also commented that this proposal will reduce the burden on creditors by reducing financial cost and administrative inconvenience.

34. Wilson Field Ltd felt the proposals will reduce burdens in the long term but raised concern that some proposals may bring forward new burdens. However it is evident in their response to subsequent questions that this comment was made in reference to the opt-in proposal and the initiative to hold meetings electronically, rather than the proposals generally. As has been noted above, we are no longer proceeding with the opt-in initiative. Wilson Field Limited's concern regarding meetings of creditors being held by electronic means and in particular money laundering issues are addressed in paragraph 56.

35. The Insolvency Technical Managers Forum ("ITMF") commented that the proposals for electronic communication and the proposal to abolish the requirement for sanction for certain actions would particularly reduce burdens.

36. Members of the ICM believe the proposals will reduce burdens, primarily for IPs. They commented that provided there is robust control from regulators to ensure Insolvency Practitioners do comply with creditors requests promptly, they also consider the process will be advantageous to all parties.

37. Two respondents felt that even greater savings could be achieved were provision made to include the transfer of data files and introduce some standardisation in respect of the documentation that is being provided electronically.

38. **The INSS comments that although there may be scope for greater savings to be achieved by a more far reaching approach we do not feel this would be welcomed by all stakeholders at this time.**

Question b: Do you have views regarding the expected benefits of the proposals as identified in Chapters 4 to 11 of this consultation document and addressed in the partial Impact Assessment attached at Annex D?

39. This question sought comments in relation to all eight proposals in the consultation. Many respondents did not answer this question directly, preferring instead to provide information on the benefits in their responses to the proposals generally.

40. 8 respondents answered this question, 7 of which commented on the proposals generally and one gave a comment individually for each proposal.

41. All 7 agreed with the expected benefits for the proposals and commented that they will result in cost and time savings and will allow for flexibility. A few respondents emphasised that the proposals will be of most benefit to IPs rather than creditors.

42. Wilson Field Limited agreed with the expected benefits for the majority of proposals but commented that opt-in will result in additional burdens as a result of the need to record and filter creditors.

43. **INSS comments that the proposal to introduce opt-in will no longer be proceeded with. For the INSS response to the suggestion that it is primarily IPs who will benefit from these changes, please see paragraph 32 above.**

Question c: If there is any empirical evidence that you are aware of that supports the need for these reforms, please provide details here?

44. Two respondents provided empirical evidence but one asked for this not to be disclosed.

45. Eversheds LLP stated that six months ago they were receiving a little over 8,000 items of post a week and are currently receiving 18,000 items of post a week. In the next six months they expect to receive in excess of 25,000 items of post a week. They state:

> *"The burden upon IPs of producing all this paperwork and upon ourselves in terms of processing this is very significant. We believe that if the proposals were adopted as envisaged, together with some standardisation in terms of reporting, we could reduce this burden by at least 50%."*

46. Other comments in response to this question were that the reduction in paperwork would be extremely welcomed.

Question d: Are there any non-legislative means that would satisfactorily remedy the difficulty which the proposals intend to address?

47. 8 respondents answered this question. All were agreed that the issues addressed in the consultation could not be remedied by any means other than legislation. Eversheds LLP commented:

> *"We believe one of the fundamental hurdles to moving to an electronic basis of information exchange, is that IPs believe there is a legislative requirement to send the paperwork out. Therefore legislation is required to remove this obstacle."*

Question e: Are the proposals put forward in this consultation document proportionate to the policy objective?

48. 10 respondents answered this question. All were agreed that the proposals represent a proportionate response to the policy objectives. However a few respondents suggested the proposals could go further to achieve significant additional gains by introducing standardisation of documentation and allowing any type of electronic interchange of information.

49. **INSS comments that although even greater savings could be achieved by a more far reaching approach we do not feel this would be welcomed by all stakeholders at this time.**

50. The Student Loans Company ("SLC") commented that from details provided in the consultation document it appears the costs of implementation would be minimal and therefore proportionate to the policy objective.

Question f: Do the proposals put forward in this consultation document, taken as a whole, strike a fair balance between the public interest and any person adversely affected by it?

51. 11 respondents answered this question. All agreed that the proposals do provide a fair balance between the public interest and any person adversely affected by them, with the exception of opt-in for ITMF.

52. **INSS refers to paragraph 15 where it will be noted that the opt-in aspect of proposal one is no longer being taken forward.**

Question g: Do the proposals put forward in the consultation document remove any necessary protection?

53. 8 respondents answered this question. With the exception of Wilson Field Ltd, all were agreed that no necessary protections were being removed under any of the proposals.

54. ICM commented that provided the regulators are able to address any abuse of the process, then they have no concerns.

55. Wilson Field Ltd raised concern over the possibility of money laundering issues arising as a result of holding meetings by electronic means.

56. **INSS comments that IPs will still need to comply with the law in relation to money laundering. However the INSS intends to include wording within the provision on attendance at meetings allowing the convener of a meeting to take any necessary measures to deal with security and identification issues. We believe that IPs as regulated and accountable professionals will only opt to use technology if they can be satisfied it is sufficiently robust and secure as to be fit for purpose.**

Question h: Do the proposals put forward in this consultation prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise, as explained on page 7 above? If so, please provide details.

57. 9 respondents answered this question. With the exception of the ITMF, all were agreed that the proposals would not prevent any person from continuing to exercise any right or freedom which they might reasonably be expected to continue to exercise.

58. ITMF considered the opt-in proposal risked disenfranchising creditors.

59. **INSS comments that this proposal will no longer be proceeded with.**

Question i: Do you consider the provisions of the proposal to be constitutionally significant?

60. 8 respondents answered this question and all agreed that the proposals were not constitutionally significant.

61. Eversheds LLP commented:

> *"No-we regard these as simply recognising the transformation in technology and methods over the last twenty years."*

Question j: Do the proposals put forward in the consultation document make the law more accessible and easily understood?

62. 9 respondents answered this question. Five were in agreement that the proposals would make the law more accessible and easily understood. Eversheds LLP commented that the proposals will provide clarity for IPs that electronic communication is permissible.

63. Three respondents felt that the proposals will make the law partially more accessible and easily understood. R3 Scottish Technical Committee felt the changes will make the law more user friendly but not necessarily more easily understood and the ITMF raised concern that opt-in could make the law more complicated and less readily understood by creditors.

64. **INSS comments that the proposal to introduce opt-in will no longer be proceeded with.**

Question k: Do you agree that the proposed parliamentary resolution procedure (as outlined in the summary of the proposals at the beginning of the consultation paper above and at Annex C below) should apply to the scrutiny of this proposal?

65. 11 respondents answered this question and all were agreed that the affirmative procedure should apply to scrutiny of the proposals.

66. Eversheds LLP commented in agreement:

> *"Whilst we do not regard ourselves as experts in Parliamentary procedure, we do not believe the proposals are in any way controversial or adversely impact any individual or other interested parties. Indeed, the proposals enhance the efficiency of the process and the interaction between the creditors and the IPs. We therefore believe that the proposals should be implemented at the earliest opportunity and be subject to the minimal level of scrutiny."*

Proposal specific questions:

Electronic communication generally

Question 1 – Would you take advantage of proposals to make communication in insolvency procedures more flexible, as set out on pages 14 to 25?

67. 12 respondents answered this question directly. All were in support of the proposal and agreed that they would take advantage of more flexible methods of communication, although Wilson Field re-iterated their concerns about the opt-in proposal and the use of electronic meetings in certain cases.

68. The Insolvency Lawyers Association ("ILA") commented that the greater use of electronic communication would be in the interests of IPs and creditors, with the most significant benefit being in cases where there are large numbers of consumer creditors. They further stated:

> *"We are aware of a number of cases in which applications have been made to the court for orders allowing communication by email and website, and our experience is that the courts are generally sympathetic to such applications."*

69. The Institute of Chartered Accountants in England and Wales ("ICAEW") positively endorsed the move to allow electronic means of communicating, stating that it would improve efficiency and reduce burdens on IPs and the estate.

70. A number of respondents discussed the idea that electronic communication would only be permissible where there is consent between the parties, with the office-holder sending an initial communication by post. Some were in agreement that this was unavoidable as not all parties will necessarily be capable of receiving communications electronically, whereas others felt this was unnecessary especially where major creditors had already given their consent to electronic communication in other cases.

71. **INSS comments that detailed rules on the use of electronic communication are to be contained in the new Insolvency Rules and these representations have been noted. However the need for prior consent is necessary to provide adequate protection for those who are unable to access information electronically. The new Insolvency Rules are expected to provide that creditors would be able to give a general consent to any IP for all documents in insolvency proceedings of which they are a creditor, being sent electronically, thereby removing the requirement to send an initial notice by post.**

72. HMRC initially raised concern about electronic communication, in particular security and the effect electronic communication may have on their IT systems. They also commented that the need to print documents could have an adverse effect on their stationary budget. However they acknowledge the advantages of electronic communication, such as the ability for attachments to be more readily forwarded internally.

73. Following this correspondence the INSS wrote to HMRC confirming that the intention is not to impose electronic communication on users, stressing that consent would always be required before an IP could send documents electronically as well as creditors being able to request a hard copy if necessary.

74. HMRC responded subsequently welcoming the proposal and commenting that as a potential creditor in the majority of insolvency cases, they are keen to reduce the volume of paperwork coming into the department. They further commented that they accept they have

much to gain from electronic communication and are comforted by the reassurance that consent will be required and they will be able to obtain hard copies if necessary.

75. **The INSS comments that it is the general view that electronic communication is seen as safer than postal delivery. One of the reasons for this is that with communication by email it is very easy to get confirmation of receipt. In relation to the cost of printing documents, the INSS comments that at present all creditors effectively bear the cost of documents being printed and sent out in hard copy form. This proposal means that these costs will be reduced for all creditors. Creditors will also be able to request a hard copy of any document they have been sent electronically.**

Question 2 – Electronic communication (cont)
If certainty were provided that you could send communications electronically, would you take advantage of the provision?

76. 13 respondents answered this question and all agreed they would take advantage of electronic communication if certainty was provided within the legislation.

77. Other than the comments stated above under question 1, no further representations were made with regard to electronic communication within the responses to this question.

Question 3 – Electronic communication (cont)
Do you consider that this would provide savings? If so, can you give some estimation of what those savings might amount to?

78. 8 respondents went on to answer this question directly. They all agreed that electronic communication would provide savings, but only 3 respondents were able to provide figures.

79. Eversheds LLP estimated that if implemented electronic communication would provide savings to them of approximately £1 million a year.

80. Wilson Field Ltd commented that on average time and postage savings of £5 per letter would be made.

81. ICM, although unable to quantify the amount, provided the following quote from a member:

> *"I am aware of one creditor in personal unsecured lending who will spend a minimum of £25,000 per annum on post handling (receiving, sorting, transmitting etc) before any cost in dealing with the insolvent accounts."*

82. Further empirical evidence was provided in response to question (c). Eversheds LLP stated that six months ago they were receiving a little over 8,000 items of post a week and are currently receiving 18,000 items of post a week. In the next six months they expect to receive in excess of 25,000 items of post a week. They state:

> *"The burden upon IPs of producing all this paperwork and upon ourselves in terms of processing this is very significant. We believe that if the proposals were adopted as envisaged, together with some standardisation in terms of reporting, we could reduce this burden by at least 50%."*

83. However the ITMF felt that savings were only likely to arise if all of a mailing is sent electronically. Additionally they felt there would be little savings in time as the majority of time incurred is spent preparing the report or other communication rather than physically sending it out and additional time would be spent in obtaining the creditors consent.

84. **The INSS acknowledge that the level of savings achievable will be dependant upon the number of creditors consenting to the use of electronic communication. However we believe that many creditors will consent and that over time the savings will be substantial as more creditors recognise the benefits. As acknowledged above we envisage major creditors giving a general consent over all insolvency proceedings with individual IPs or firms, which will minimise the amount of time spent on requesting consents on a case-by-case basis.**

85. **It should be noted that the estimates given by respondents here relate to the overall expansion of electronic communication in insolvency proceedings, some of which will be effected by changes to the 1986 Rules and will not arise directly out of these amendments to the Act by LRO.**

Meetings

86. Although none of the questions specifically referred to the attendance at meetings proposal, some respondents made general comments relating to this provision and it is felt necessary to express these here.

87. The majority of respondents commented positively and welcomed a more flexible approach to holding meetings in insolvency cases, especially where creditors are based in different jurisdictions.

88. ITMF believed that there would be occasions when the ability to hold meetings in other formats would be helpful. However they raised concern regarding the suggestion within the consultation document that creditors could requisition a physical meeting within 5 business days of the date of the notice. They felt that this did not leave much time for a suitable venue to be identified and creditors informed. They further stated:

> *"We would be concerned if any new legislation provided increased scope for creditors to challenge the validity of proceedings at meetings, for example, by claiming that the technology did not work and they had been unable to access the meeting."*

89. **In response to the concerns raised by ITMF, INSS comments that the right of significant creditor(s) to request to be able to attend the meeting at a physical venue (if the media proposed does not include the provision of a physical venue) would not of itself turn the meeting into an entirely physical meeting, but will entitle those creditor(s) to be provided with details of a venue at which they may attend the meeting in person (i.e. other creditors may still attend through the media originally proposed (provided the convenor of the meeting were prepared to allow it). It is only the request for a physical venue that need be made within 5 business days, the meeting itself may be held some time later although that would be a matter for the chairman of the meeting.**

90. HMRC initially raised concern over meetings being held by electronic means, principally the limitations to telephone conferencing, which can lead to the conference becoming cumbersome and difficult to control. They also raised concern over video conferencing not being readily available or adapted to large numbers of people unless at least some are gathered together. However these objections were withdrawn upon receipt of correspondence from the INSS explaining that if an office-holder proposes to summon a meeting in circumstances where he does not intend to provide any physical venue for the meeting, creditors representing a prescribed percentage in value of the total creditors (10%) will have the option of obliging the office-holder to provide such a venue.

91. **INSS comments that it will be for the convenor of the meeting, generally the relevant office-holder, to use their judgment as to the most appropriate media to use for the**

meeting. We consider that insolvency practitioners, as responsible and accountable professionals, will only opt to use technology when they are satisfied that it is sufficiently robust and secure to meet the needs of the meeting.

Opt-in

Question 4 – If you were given the chance to decide not to opt-in to receiving information concerning an insolvency procedure, and so not receive information, would you welcome that opportunity provided that you would receive any information concerning any notice of intended payment to creditors?

92. Only four respondents answered this question directly, two said they would take up the option not to opt-in and the other two said they would not.

93. 13 respondents commented on opt-in generally. The majority of respondents raised concern over the onus being on the creditor to opt-in and expressed that the burden should be reversed so that creditors are required to opt-out rather than opt-in.

94. Further concerns were raised which included that creditors would only have the option to opt-in at the outset. If they decided to opt-out and later the circumstances of the case change, they would not receive relevant information which may lead them to opt-in later. Additional comments included that the procedure provides an opportunity for vexatious creditors to play a disproportionate role in the proceedings.

95. A further concern was that the majority of creditors would not understand what is being asked of them which may then lead to confusion. ICM commented that the original notice should contain a very clear provision regarding opt-in to avoid any confusion for inexperienced creditors.

96. R3 opposed the proposal; amongst their list of objections was that the proposal erodes the collective nature of most insolvency proceedings and will result in confusion for the creditors and an additional administrative burden for the office-holder. They also stated that there is a risk that an opt-in procedure could distort the office holder's functions and impede his ability to act in the interests of the general body of creditors.

97. The City of London Law Society ("CLLS") recognised that many creditors are only interested in knowing the likely level of dividend and when the dividend is likely to be paid, but commented that a cost saving is only likely to be achieved if the proposal is structured carefully so as not to increase the burden on insolvency office-holders. They also highlighted that the opt-in procedure may be redundant if the proposal to post information on a website is proceeded with, as the information will be available for the creditor to view.

The following respondents commented on both the benefits and negatives of the proposal:

98. HMRC stated that opt-in would have both positive and negative effects for HMRC. On the positive side they commented that it would reduce the volume of limited value communication, whether by paper or in electronic form, but negatively this would require them to vet each case to determine whether they wanted to opt-in.

99. ICM considered that some creditors would be wary of giving up the right to receive information but saw the benefits of opt-in where the claim was relatively small.

The following respondents commented positively on the proposal:

100. The ILA acknowledged the usefulness of distinguishing between those creditors who wish to participate actively in the insolvency process and those who simply wish to be

informed of how the insolvency is progressing. They further commented that the opt-in procedure is a sensible and cost-effective measure, provided that the mechanism for opting in is simple and transparent, and can include late-emerging creditors.

101. R3 Scottish technical committee commented that they consider some creditors would adopt this course of action.

Question 5 – Opt-in (Cont)
As a creditor, do you wish to receive any updating communications, provided you get notice of any intended dividend?

102. 8 respondents answered this question directly. Five out of the eight respondent's responded saying that they would like to receive updating communications. However ITMF and SLC went further and commented that non consumer creditors are likely to need further information in order to make accurate provisions for bad debts (ITMF). SLC stated that they would also like to receive any notices and proxies for any procedure they may wish to vote on, for example notice of requests for variation of an IVA.

103. HMRC and ICM stated that that it would depend on the circumstances and a decision would be made on a case by case basis.

104. Civil Court Users Association ("CCUA") stated that they would only wish to receive material updates, for example, reporting by exception and definitely a notice of any dividend payable.

Question 6 – Opt-in (Cont)
If an opt-in procedure were available, what advantages if any would you see to the administration of insolvency procedures?

105. 9 respondents answered this question directly. 3 respondents commented that there would be little or no advantages to the opt-in procedure.

106. The advantages listed by the remaining 6 respondents included cost and time savings for the insolvency practitioner, less formality, and time savings for creditors as a result of a reduction in their workload from unwanted paperwork.

107. Further comments included those referred to above.

108. **INSS has considered carefully the representations made in response to questions 4, 5 and 6 of the consultation. Due to the widespread concern respondents have raised and the lack of unanimous support for the proposal, it has been decided not to proceed with the opt-in aspect of proposal 1 at this time. From comments and evidence provided it appears that the cost and risk of this proposal outweigh the potential benefits.**

<u>Websites</u>

Question 7 – If insolvency office-holders were able to provide information via a website, would you be agreeable to this?

109. 13 respondents answered this question, 12 were in agreement and one sought further information and clarity on the proposal. ILA welcomed the proposal as being in the interest of both office-holders and creditors alike whilst ICAEW felt it was a positive step that would improve efficiency and reduce burdens on the office-holder and the estate.

110. A number of respondents raised the issue that safeguards, both in terms of security and confidentiality, would need to be in place for this proposal to work in practice.

111. ITMF noted that consideration would need to be given to how, and by whom, the website was hosted, concluding that the best solution would be for there to be a central website for insolvency communications.

112. R3 commented that costs associated with maintaining a website, although likely to be less than the costs of printing and sending numerous notices, may still be significant in the context of smaller cases.

113. **INSS comments that the proposal is to enable office-holders to use websites as a means of communication. It will therefore be up to the office-holder whether they wish to use a website and how they wish to operate it. It is acknowledged that in some circumstances it would not be appropriate.**

114. HMRC initially raised concern regarding the use of websites as a method of communication, primarily the time the documents will be stored on the website. However they withdrew their opposition when the INSS confirmed that hard copy documentation will be available upon request by the creditor.

115. **INSS would like to confirm that the new Insolvency Rules underpinning the new section allowing website use will provide that any document that is required to be sent to creditors under the Act or Rules may be sent by way of the office-holder issuing a notice stating that the document is available for viewing on the website, and providing the address for the website along with any password required for access. The notice will also give a contact whom creditors may contact if they wish to make a request for a hard copy of the document.**

116. A second consultation was issued on 15th August 2008 to clarify and seek views on this change in policy since the publication of the original consultation, namely that consent of recipients would not be required for the use of a website. Details of the further consultation can be found at the link below:

http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/registerindex.htm

117. The consultation was sent to all those who were sent the original consultation document and to others who responded to that consultation. Additionally, the consultation document was placed on our website and remained open for 6 weeks from 15th August 2008, closing on 26th September 2008. A total of 10 responses were received and all were in favour of amending the proposal to remove the requirement for the consent of creditors prior to the office-holder posting information on a website.

118. The responses received acknowledged that this would result in an additional reduction in burdens for IPs as well as for creditors having no desire to be sent every communication about the proceedings.

119. ITMF commented:

"The current proposal that no consent should be required for the information to be provided via a website would reduce further burdens for insolvency practitioners, as it will remove the need to communicate in different ways to those who have and have not consented, and to keep records of who has and has not consented. It will also avoid the

need to send documents to creditors who fail to respond to a request for consent as a result of apathy."

120. Ernest and Young LLP acknowledged that the proposal will provide cost savings by reducing the expense of sending out mailings, which will be particularly significant in big cases with large numbers of creditors. In relation to the question concerning empirical evidence they commented:

"Often a group of companies is placed into an insolvency process. Where the affairs of group companies are interlinked, it may be appropriate to send out reports or proposals which cover the dealings of a number of companies. This can significantly increase the bulk of mailings and may result in stakeholders receiving some information which they do not require. Publishing information on a website should enable stakeholders to more readily identify and download the information they need. A website also provides an opportunity to provide additional background information which is not required by legislation or best practice to be provided, but which may nonetheless be helpful in understanding an insolvents affairs."

121. Respondents additionally commented that this amendment would not produce any reduction in protection as creditors would still be able to request a hard copy, free of charge, of the information posted on the website. Further, Ernest and Young LLP correctly observed that insolvency practitioners will not be obliged to communicate in this way.

122. ICAEW felt that the revised proposal was sensible, proportionate and would not undermine the public interest by adversely impacting the rights or freedoms of any person. In their view creditors without personal access to the internet could obtain access to a website via local libraries or internet café's or alternatively could request a hard copy from the insolvency office-holder.

123. **In light of these responses the INSS has decided to proceed with the revised proposal by removing the requirement for having the consent of creditors and/or members prior to posting information on a website.**

Sanction

Question 8 – Do you have experience, as a creditor, of involvement in the process of giving sanction to a liquidator or trustee? If so, did you consider it a useful process?

124. Only two respondents were able to answer this question. The other respondents either commented on sanction generally or did not provide a response because the question did not apply to them.

125. ICM commented that their members had experience of this issue and considered it a useful process.

126. HMRC initially raised concern that if the need for sanction was removed, IPs would be able to spend creditors' money without consulting with them. The Insolvency Service wrote to HMRC in late March 2008 clarifying that this is not what is proposed and outlined that the proposal attempts to reduce costs in the realisation of, and maximisation in value of, an asset which forms part of the estate. It was explained that the changes proposed are narrow and outlined that a robust system is in place to deal with alleged misconduct on the part of insolvency practitioners.

127. HMRC subsequently responded stating they are supportive of the changes proposed.

Question 9 – Sanction (cont.)
If you are an insolvency practitioner, what is your experience as to this process? Can you identify examples of instances where the present process has worked against the best interests of the estate?

128. 4 respondents answered this question directly, all of whom were IPs. All were in support of this proposal and provided examples of instances where the present process has worked against the best interests of the estate.

129. Wilson Field Ltd gave an example of a general meeting for sanction, where the only creditor who responded was the bankrupt's father who did not want the trustee to take possession action on the house. Additional costs were incurred in dealing with this situation, including legal fees.

130. ITMF said that in their experience it is costly and time-consuming to have to obtain specific sanction to be able to compromise book debts and creditors claims:

> *"Sometimes it is more cost effective (where a small book debt is involved) not to pursue a book debt rather than to agree a compromise settlement with the debtor… In our experience obtaining sanction is often just a costly rubber stamping exercise which adds no value to the process. There are sufficient safeguards and checks in place to enable creditors to question and challenge an office holder's conduct retrospectively that prospective sanction is not required."*

131. A member of ICM's experience was that there is a general reluctance and apathy from creditors to take part once the initial excitement of the insolvency has passed. If the case takes time to finalise then the creditor's enthusiasm wanes and difficulties are encountered in bringing matters to a conclusion.

General comments on sanction

132. The following general comments concerning sanction were received and all were in support of the proposal:

> *"The decision to commence litigation is fundamentally a commercial one for the office holder, with the benefit of legal advice." "The relevant authority on sanction is Re Greenhaven Motors Limited (1996) where the Court of Appeal held that the test on such an application was the best interests of the creditors as a whole giving appropriate weight to the views of the liquidator who will normally be in the best position to take an informed and objective view."* ILA

> **The INSS would like to clarify that this proposal is only in relation to the removal of the requirement for insolvency office-holders to obtain sanction 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. It is not our intention for this to extend to the removal of sanction for commencing litigation.**

> *"We support this as a sensible deregulatory step"* ICAEW

> *"The collection of debts owing to the estate can be a complex task in cases where the debtor is unwilling or unable to pay. The decision as to whether to settle a claim at less than full value requires experience and judgement and the office holder is best placed to make that decision."* CLLS

133. A number of respondents further commented that they had hoped the proposal would go further and also remove the requirement for sanction to compromise creditor's claims but

would rather have the proposal as it stands than not at all. They comment that it may also be confusing only to remove the requirement one way.

134. **In response to this INSS comments that of all the requirements in Schedule 4 and 5 this is the most burdensome for office-holders and creditors and one which has the most direct impact on returns to creditors as it arises much more frequently in proceedings than any of the other occurrences for which sanction is required. The INSS has chosen to proceed with this requirement alone as it is only in respect of this activity that there is a demonstrable need to lift the burden.**

Advertising

Question 10 – In your experience as an insolvency practitioner, how many creditors come to light as the result of an advertisement being placed?

135. 4 respondents answered this question directly. All respondents were in agreement that very few creditors come to light as a result of an advertisement being placed. ICAEW further commented that an IP may not actually know the reason or prompt behind the creditor coming forward. The only respondent to provide a figure was Wilson Field Ltd who estimated that in one in every fifty cases a creditor comes to light as a result of an advertisement being placed.

General comments on advertising

136. 7 respondents commented generally on this proposal. Those who supported the proposal commented that IPs should be given discretion as to whether or not to advertise, and flexibility as to the form the advertisement may take. CLLS commented that any move from certainty to flexibility in the permitted methods of advertising would, in theory at least, increase the risk of liability for office holders. They further commented however, that in their experience the courts are slow to interfere in the general exercise of discretion by experienced and commercial insolvency practitioners.

137. Other comments included:

> *"If the requirement to advertise in a newspaper is to be changed we would prefer it to be abolished outright rather than be turned into a discretion. We are concerned that if advertising is stated to be discretionary, a practitioner who did not advertise could be criticised for not having used the option open to him or her."* ITMF

138. **The INSS notes these concerns. However, we agree with the comment made by CLLS that this risk is largely illusory as the courts are slow to interfere in the general exercise of discretion by experienced and regulated insolvency professionals. We would expect IPs to cope very quickly with this new discretion which will be a less difficult judgement to make than many others they exercise in their routine handling of insolvency cases. Guidance in relation to the exercise of this new discretion will be issued to IPs.**

139. In their initial response R3 objected to the proposal stating:

> *"In our view local advertisements are generally very effective in bringing matters to the attention of creditors, and we would therefore like to see the requirement to advertise in a local paper retained."*

140. However following a meeting between representatives and the INSS, they withdrew their objections to this proposal stating the following in a letter dated the 16th May 2008:

"I confirm we are not opposed to the removal of the mandatory requirement to advertise creditors' meetings in local newspapers, provided that liquidators are to be given the discretion to advertise in cases where they consider it desirable, and in whatever medium they consider appropriate to bring the meeting to the attention of creditors."

141. The Newspaper Society was strongly opposed to the proposed changes, commenting that the contribution of newspaper advertising is valuable to the public. They raised concern that if a discretion to advertise was given, this should be in addition to, rather than in substitution for, local newspaper advertising. They also suggested that better use could be made of the expertise of the advertising industry in targeting publicity.

142. The INSS subsequently met with representatives of the Newspaper Society to discuss their concerns more fully, however they remain opposed to this proposal.

143. **The INSS feel that The Newspaper Society's objections are unfounded and that a legislative provision which mandates that newspaper advertisements must be placed in every single insolvency, without any consideration of the value derived from that expense (which necessarily falls upon the creditors), is not sustainable. The way in which creditors now obtain information about their debtors has changed markedly as technology has developed and that a provision which provides a degree of judgement and flexibility will better benefit creditors of insolvent estates. The INSS has no desire to stop all newspaper advertising, merely to require some consideration to be given of the need for publicity and the best means of achieving that, by the office-holder on a case-by-case basis.**

144. CCUA commented that although they see what the proposal is seeking to achieve, they cannot see that the savings will have sufficient impact to justify the lack of benefit to larger creditors and the detriment to smaller companies who may use this information source.

145. **The INSS comments that given the change in the way in which businesses trade, it can no longer be assumed that a significant proportion of creditors will be local and have access to the relevant local newspaper. It should also be noted that the amount of information which has become available to creditors in recent years, through online facilities such as Companies House, has reduced the need for mandatory local newspaper advertisements.**

146. **It should be noted that this proposal will be taken forward within a separate draft Order, ahead of the one that will be laid for the other proposals being proceeded with that are set out within this summary of responses. It is intended that the draft Order amending the 1986 Act to allow for discretionary advertising, will be commenced in April 2009.**

<u>Annual meetings</u>

Question 11 – In your experience, how often do creditors/members attend the annual meetings at which a liquidators' receipts and payments are laid?

147. There was wide spread support for this proposal, although only 8 respondents answered this question directly. All respondents commented that creditors or members very rarely attended annual meetings. The only figures were provided by Wilson Field Ltd who estimated that one creditor in every 30 cases attended.

Question 12 – Do you agree that the information presently laid at the meeting should instead be sent to the creditors/members as part of a proposed progress report?

148. 12 respondents answered this question and all agreed that the information could instead be sent to the creditors or members as part of a proposed progress report.

149. CLLS supported this proposal where the relevant information is made available to creditors by some other means and where a creditor or creditors with a minimum percentage of the value of the debt have the power to require the office holder to convene a general meeting of creditors.

150. ILA commented that:

> *"Provided that the annual report itself is obtained, we would not expect that the abolition of the annual meeting would prejudice the interests of creditors, and it would clearly involve a saving of costs for office holders."*

151. **The INSS confirms that the information presently laid at this meeting will be provided to members/creditors by means of a written report. Creditors or members will still be able to ask questions of the liquidator concerning information contained in the report and any general rights under the 1986 Act to challenge the actions of the liquidator will remain unaffected by this change.**

Affidavits

Question 13 – Do you agree that the requirement for documents to be sworn by affidavit within insolvency proceedings should be replaced with a requirement for such documents to be verified by a statement of truth?

152. 12 respondents answered this question. All agreed that the requirement for documents to be sworn by affidavit within insolvency proceedings should be replaced with a statement of truth. This was welcomed by the ILA on the basis that:

> *"Administering oaths is a burden, rather than a source of income, for solicitors."*

153. Other comments included:

> *"Agree provided there is no reduction in regulatory protection and in penalties for making false statements"* ITMF

> *"The requirement to swear affidavits in some circumstances can lead to unnecessary expense for the estate because it is time consuming and requires the involvement of a Commissioner of Oaths or an independent solicitor. We believe that witness statements subject to a statement of truth would be adequate in those cases where affidavits are still required."* CLLS

154. **The INSS comments that replacing affidavits with statements of truth is consistent with the approach taken in other areas of civil law and has been encouraged by the courts generally whose Civil Procedure Rules have been changed so that affidavits have, with only a few exceptions, been replaced by witness statements verified by a statement of truth. Under the Civil Procedure Rules 1998 proceedings for contempt of court may be brought against a person wilfully making a false statement in a document verified by a statement of truth and such conduct could amount to an offence under s. 5 of the Perjury Act 1911 (false statements made otherwise than on oath).**

Reporting on conduct of directors

Question 14 – Do you agree that it is appropriate to remove the requirement for an insolvency practitioner, acting as liquidator, to submit a report to the Secretary of State on the conduct of the directors of a company if he has already submitted or will be submitting a substantially similar report as administrator of the same company.

155. 13 respondents answered this question and all were in support of this proposal. However, the majority of respondents commented that they were in agreement as long as a requirement remains to report any matters that subsequently come to the attention of the liquidator.

156. **INSS comments that having reflected further upon this proposal, a view has been taken that it is not an appropriate measure to be taken forward by means of a Legislative Reform Order. The INSS has concluded that this proposal will not remove or reduce burdens as an alternative reporting requirement would be necessary for the IP to convey to the Secretary of State that the reason for failure to submit a report was as a result of no new information to report rather than an oversight to provide the information. Further consideration will be given to this issue when an appropriate legislative opportunity arises in the future.**

Insolvency Services Account

Question 15 – Do you agree that the historical reasons for using the Bank of England for the ISA are no longer relevant or cost-effective?

157. 12 respondents answered this question. With the exception of the ITMF and R3, all agreed that the historical reasons for using the Bank of England for the Insolvency Services Account ("ISA") are no longer relevant. CLLS commented that the commercial banking sector is self-evidently the appropriate place for the ISA to be maintained given the Bank of England's move away from providing retail banking services and it is anticipated this proposal will lead to cost savings for insolvent estates.

158. The reservations raised by the ITMF were in light of recent issues of bank stability and the effect on costs and interest rates. They commented that unless costs are controlled by legislation, they are likely to be structured by banks to reflect the true costs of holding accounts and will be proportionately greater on smaller cases.

159. R3 commented on how the change may affect the insolvency specific services, such as the management of unclaimed dividends, which is presently controlled by the ISA, enabling the timely closure of cases. They also raised slight concern as to how this change may alter the charging structure.

160. **INSS comments that given recent events and the current difficulties being encountered by the banking sector, a decision has been made to withdraw this proposal at the current time. The nature of changes that may be made by an LRO are such that they must be non-controversial and have the support of key stakeholders. Given what we have recently seen within this sector the INSS feels that this can no longer be said of this proposal. As such the INSS feels that it is appropriate to issue a further consultation, to obtain the current views of stakeholders and to ensure there is consensus for proceeding with the proposal, before taking it forward by means of an LRO.**

Bank of England

Q16 –In your experience, has the court utilised s151 of the 1986 Act since 1991?

161. 11 respondents answered this question and all were agreed that to their knowledge the provision has not been used since 1991.

162. **The INSS has recently received legal advice to the effect that due to the lack of a reduction or removal of a burden in relation to this proposal, the change that was consulted on cannot be made by means of an LRO. The INSS has therefore decided not to proceed with this proposal at the current time, although it will be taken forward at the next appropriate legislative opportunity.**

ANNEX A

List of consultees

The Association of Business Recovery Professionals ("R3") *+
8th floor, 120 Aldersgate St, London, EC1A 4JQ
The Law Society
113 Chancery Lane, London, WC2A 1PL
The Notaries Society
Administration dept, PO BOX 226 Melton, Woodbridge, IP12 1WX
Small Business Service
66/74 Victoria St, London, SW1E 6SW
Institute of Directors
116 Pall Mall, London, SW1Y 5ED
Disability Rights Commission
Freepost MID 02164, Stratford Upon Avon, CV37 9BR
Equal Opportunities Commission
36 Broadway, London, SW1H 0BH
Commission for Racial Equality
St Dunstan's House, 201-211 Borough High Street, London, SE1 1GZ
HM Courts Service
5th Floor, Selborne House, 54-60 Victoria St, London, SW1E 6QW
City of London Law Society *+
4 College Hill, London, EC4R 2RB
Insolvency Lawyers Association *
(Email address: president@ilauk.com)
Confederation of British Industries,
London Region, Centre Point, 103 New Oxford Street, London, WC1A 1DU
Trades Union Congress
Congress house, Great Russell St, London, WC1B 3LS
Finance and Leasing Association
Imperial House, 15-19 Kingsway, London, WC2B 6UN
Asset Based Finance Association
Boston House , The Little Green , Richmond, Surrey , TW9 1QE
British Bankers Association *
Pinners Hall, 105-108 Old Broad St, London, EC2N 1AP
Federation of Small Businesses
Sir Frank Whittle Way, Blackpool business park, Blackpool, FY4 2FE
Citizens' Advice
Myddleton House, 115-123 Pentolville Road, London, N1 9LZ
Institute of Credit Management *+
The water mill, Station Road, South Luffenham, Oakham, Leicestershire, LE15 8NB
The Bank of England
Threadneedle St, London, EC2R 8AH
The Accountant in Bankruptcy
1 Pennyburn Road, Kilwinning, Ayshire, KA13 6SA
Insolvency Technical Managers' Forum *+
C/O Helen Smithson, Ernst & Young LLP, 1 More London Place, London, SE1 2AF

Her Majesty's Revenue and Customs *
100 Parliament St, London, SW1A 2BQ
Oyez Forms Publishing
Oyez House, 7 Spa Road, London, SE16 3QQ
Salford Welfare Rights and Debt Advice Service
Crompton House, 100 Chorley Road, Swinton, Salford, M27 6BP

School of Law, University of Southampton
Highfield, Southampton, S017 1BJ

* Consultees who responded
+ Consultees who responded to further consultation

Additional respondents

Eversheds LLP
Fairfax House, Merrion St, Leeds, LS2 8HE
The Newspaper Society
St Andrew's House, 18-20 St Andrew St, London, EC4A 3AY
Wilson Field Ltd
260 Ecclesall Road South, Sheffield, S11 9PS
Institute of Chartered Accountants in England and Wales+
Chartered Accountants' Hall, PO Box 433 Moorgate Place, London, EC2P 2BJ
Civil Court Users Association
Warwick HRI, Wellesbourne, Warwickshire, CV35 9EF
R3 Scottish Technical Committee
80 George St, Edinburgh, EH2 3BU
Student Loans Company
100 Bothwell Street, Glasgow, G2 7JD
Anonymous respondent 1 +
Anonymous respondent 2 +

Additional respondents to further consultation

Ernest and Young LLP
1 More London Place, London, SE1 2AF
Grant Thornton UK LLP
Elgin House, Billing Road, Northampton, NN1 5AU
Deloitte & Touche LLP
5th Floor, Athene Place, 66 Shoe Lane, London, EC4A 3WA

ANNEX B

Summary of questions asked in the consultation

Question a: Do you think the proposals will remove or reduce burdens as explained in relation to the proposals set out in this paper?

Question b: Do you have views regarding the expected benefits of the proposals as identified in Chapters 4 to 11 of this consultation document and addressed in the partial Impact Assessment attached an Annex D?

Question c: If there is any empirical evidence that you are aware of that supports the need for these reforms, please provide details here?

Question d: Are there any non-legislative means that would satisfactorily remedy the difficulty which the proposals intend to address?

Question e: Are the proposals put forward in this consultation document proportionate to the policy objective?

Question f: Do the proposals put forward in this consultation document taken as a whole strike a fair balance between the public interest and any person adversely affected by it?

Question g: Do the proposals put forward in this consultation document remove any necessary protection?

Question h: Do the proposals put forward in this consultation prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise, as explained on page 7 above? If so, please provide details.

Question i: Do you consider the provisions of the proposal to be constitutionally significant?

Question j: Do the proposals put forward in the consultation document make the law more accessible and easily understood?

Question k: Do you agree that the proposed Parliamentary resolution procedure (as outlined in the summary of the proposals at the beginning of the consultation paper above and at Annex C below) should apply to the scrutiny of this proposal?

Electronic communications generally:

Question 1: Would you take advantage of proposals to make communication in insolvency procedures more flexible, as set out on pages 14 to 25?

Question 2: If certainty were provided that you could send communications electronically, would you take advantage of the provision?

Question 3: Do you consider that this would provide savings? If so, can you give some estimation of what those savings might amount to?

Opt-in:

Question 4: If you were given the chance to decide not to opt in to receiving information concerning an insolvency procedure, and so not receive information, would you welcome that opportunity provided that you would receive any information concerning any notice of intended payment to the creditors?

Question 5: As a creditor, do you wish to receive any updating communications, provided you get notice of any intended dividend?

Question 6: If an opt-in procedure were available, what advantages if any would you see to the administration of insolvency procedures?

Websites:

Question 7: If insolvency office-holders were able to provide information via a website, would you be agreeable to this?

Sanction:
Question 8: Do you have experience, as a creditor, of involvement in the process of process of giving sanction to a liquidator or trustee? If so, did you consider it a useful process?

Question 9: If you are an insolvency practitioner, what is your experience as to this process? Can you identify examples of instances where the present process has worked against the best interests of the estate?

Advertising:
Question 10: In your experience as an insolvency practitioner, how many creditors come to light as the result of an advertisement being placed?

Annual Meetings:
Question 11: In your experience, how often do creditors/members attend the annual meetings at which a liquidator's receipts and payments are laid?

Question 12: Do you agree that the information presently laid at the meeting should instead be sent to the creditors/members as part of a proposed progress report?

Affidavits:
Question 13: Do you agree that the requirement for documents to be sworn by affidavit within insolvency proceedings should be replaced with a requirement for such documents to be verified by a statement of truth?

Reporting on conduct of directors:
Question 14: Do you agree that it is appropriate to remove the requirement for an insolvency practitioner, acting as liquidator, to submit a report to the Secretary of State on the conduct of the directors of a company if he has already submitted or will be submitting a substantially similar report as administrator of the same company.

Insolvency Services Account:
Question 15: Do you agree that the historical reasons for using the Bank for the ISA are no longer relevant or cost-effective?

Bank of England:
Question 16: In your experience, has the court utilised s151 of the 1986 Act since 1991?

ANNEX D

Keeling Schedule: Insolvency Act 1986 as amended by the proposed Legislative Reform (Insolvency) (Advertising Requirements) Order 2009

KEELING SCHEDULE: Insolvency Act 1986 as amended by the Legislative Reform (Insolvency) (Advertising Requirements) Order 2009

(changes shown in bold)

PART IV
WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACTS

Chapter III
Members' Voluntary Winding Up

95 Effect of company's insolvency

(1) This section applies where the liquidator is of the opinion that the company will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration under section 89.

(2) **In the case of the winding up of a company registered in Scotland, the liquidator** shall—

(a) summon a meeting of creditors for a day not later than the 28th day after the day on which he formed that opinion;

(b) send notices of the creditors' meeting to the creditors by post not less than 7 days before the day on which that meeting is to be held;

(c) cause notice of the creditors' meeting to be advertised once in the Gazette and once at least in 2 newspapers circulating in the relevant locality (that is to say the locality in which the company's principal place of business in Great Britain was situated during the relevant period); and

(d) during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require;

and the notice of the creditors' meeting shall state the duty imposed by paragraph (d) above.

(2A) In the case of the winding up of a company registered in England and Wales, the liquidator—

(a) shall summon a meeting of creditors for a day not later than the 28th day after the day on which he formed that opinion;

(b) shall send notices of the creditors' meeting to the creditors by post not less than 7 days before the day on which that meeting is to be held;

(c) shall cause notice of the creditors' meeting to be advertised once in the Gazette;

(d) may cause notice of the meeting to be advertised in such other manner as he thinks fit; and

(e) shall during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require;

and the notice of the creditors' meeting shall state the duty imposed by paragraph (e) above.

(3) The liquidator shall also—

(a) make out a statement in the prescribed form as to the affairs of the company;

(b) lay that statement before the creditors' meeting; and

(c) attend and preside at that meeting.

(4) The statement as to the affairs of the company **...** shall show—

(a) particulars of the company's assets, debts and liabilities;

(b) the names and addresses of the company's creditors;

(c) the securities held by them respectively;

(d) the dates when the securities were respectively given; and

(e) such further or other information as may be prescribed.

(5) Where the company's principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duty imposed by subsection (2)(c) applies separately in relation to each of those localities.

(6) Where the company had no place of business in Great Britain during the relevant period, references in subsections (2)(c) and (5) to the company's principal place of business in Great Britain are replaced by references to its registered office.

(7) In this section "the relevant period" means the period of 6 months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.

(8) If the liquidator without reasonable excuse fails to comply with this section, he is liable to a fine.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 83(1)–(6), (9), (10).

Initial Commencement
To be appointed

To be appointed: this Act shall come into force on the day on which the Insolvency Act 1985, Pt III comes into force: see s 443.

Appointment

Appointment: 29 December 1986 (being the day on which the Insolvency Act 1985, Pt III came into force): see SI 1986/1924, art 3.

Modification

Modified by the Building Societies Act 1986, s 90, Sch 15, and the Friendly Societies Act 1992, s 23, Sch 10.
The Limited Liability Partnerships Act 2000 provides for the creation of Limited Liability Partnerships (LLPs). The Limited Liability Partnerships Regulations 2001, SI 2001/1090 and the Limited Liability Partnerships (Scotland) Regulations 2001, SSI 2001/128, regulate LLPs by applying to them, with modifications, the appropriate provisions of this Act: see SI 2001/1090, reg 5, Sch 3 and SSI 2001/128, regs 4, 6, Schs 2, 3.
Modified, in relation to the notification to the Financial Services Authority of the application of this section in the case of a members' voluntary winding up where the liquidator is of the opinion that this section applies, by the Credit Institutions (Reorganisation and Winding up) Regulations 2004, SI 2004/1045, reg 9(4).

Chapter IV
Creditors' Voluntary Winding Up

98 Meeting of creditors

(1) **In the case of the winding up of a company registered in Scotland, the company** shall—

(a) cause a meeting of its creditors to be summoned for a day not later than the 14th day after the day on which there is to be held the company meeting at which the resolution for voluntary winding up is to be proposed;

(b) cause the notices of the creditors' meeting to be sent by post to the creditors not less than 7 days before the day on which that meeting is to be held; and

(c) cause notice of the creditors' meeting to be advertised once in the Gazette and once at least in two newspapers circulating in the relevant locality (that is to say the locality in which the company's principal place of business in Great Britain was situated during the relevant period).

(1A) In the case of the winding up of a company registered in England and Wales, the company—

(a) shall cause a meeting of its creditors to be summoned for a day not later than the 14th day after the day on which there is to be held the company meeting at which the resolution for voluntary winding up is to be proposed;

(b) shall cause the notices of the creditors' meeting to be sent by post to the creditors not less than 7 days before the day on which that meeting is to be held;

(c) shall cause notice of the creditors' meeting to be advertised once in the Gazette; and

(d) may cause notice of the meeting to be advertised in such other manner as the directors think fit.

(2) The notice of the creditors' meeting shall state either—

(a) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who, during the period before the day on which that meeting is to be held, will furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require; or

(b) a place in the relevant locality where, on the two business days falling next before the day on which that meeting is to be held, a list of the names and addresses of the company's creditors will be available for inspection free of charge.

(3) Where the company's principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duties imposed by subsections (1)(c) and (2)(b) above apply separately in relation to each of those localities.

(4) Where the company had no place of business in Great Britain during the relevant period, references in subsections (1)(c) and (3) to the company's principal place of business in Great Britain are replaced by references to its registered office.

(5) In this section “the relevant period” means the period of 6 months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.

(6) If the company without reasonable excuse fails to comply with subsection (1)**, (1A)** or (2), it is guilty of an offence and liable to a fine.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 85(2), (3), (6)–(8), (9)(a), (10).

Initial Commencement
To be appointed

To be appointed: this Act shall come into force on the day on which the Insolvency Act 1985, Pt III comes into force: see s 443.

Appointment

Appointment: 29 December 1986 (being the day on which the Insolvency Act 1985, Pt III came into force): see SI 1986/1924, art 3.

Modification

Modified by the Building Societies Act 1986, s 90, Sch 15, and the Friendly Societies Act 1992, s 23, Sch 10.
The Limited Liability Partnerships Act 2000 provides for the creation of Limited Liability Partnerships (LLPs). The Limited Liability Partnerships Regulations 2001, SI 2001/1090 regulate LLPs by applying to them, with modifications, the appropriate provisions of this Act: see SI 2001/1090, reg 5, Sch 3.

Chapter VII
Liquidators

166 Creditors' voluntary winding up

(1) This section applies where, in the case of a creditors' voluntary winding up, a liquidator has been nominated by the company.

[(1A) The exercise by the liquidator of the power specified in paragraph 6 of Schedule 4 to this Act (power to sell any of the company's property) shall not be challengeable on the ground of any prior inhibition.]

(2) The powers conferred on the liquidator by section 165 shall not be exercised, except with the sanction of the court, during the period before the holding of the creditors' meeting under section 98 in Chapter IV.

(3) Subsection (2) does not apply in relation to the power of the liquidator—

(a) to take into his custody or under his control all the property to which the company is or appears to be entitled;

(b) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and

(c) to do all such other things as may be necessary for the protection of the company's assets.

(4) The liquidator shall attend the creditors' meeting held under section 98 and shall report to the meeting on any exercise by him of his powers (whether or not under this section or under section 112 or 165).

(5) If default is made—

(a) by the company in complying with subsection (1)**, (1A)** or (2) of section 98, or

(b) by the directors in complying with subsection (1) or (2) of section 99,

the liquidator shall, within 7 days of the relevant day, apply to the court for directions as to the manner in which that default is to be remedied.

(6) "The relevant day" means the day on which the liquidator was nominated by the company or the day on which he first became aware of the default, whichever is the later.

(7) If the liquidator without reasonable excuse fails to comply with this section, he is liable to a fine.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 84.

Initial Commencement

To be appointed

To be appointed: this Act shall come into force on the day on which the Insolvency Act 1985, Pt III comes into force: see s 443.

Appointment

Appointment: 29 December 1986 (being the day on which the Insolvency Act 1985, Pt III came into force): see SI 1986/1924, art 3.
Amendment

Sub-s (1A): inserted by the Bankruptcy and Diligence etc (Scotland) Act 2007, s 155(1), (3).

Date in force: to be appointed: see the Bankruptcy and Diligence etc (Scotland) Act 2007, s 227(3).

Modification

Modified by the Building Societies Act 1986, s 90, Sch 15, and the Friendly Societies Act 1992, s 23, Sch 10.
The Limited Liability Partnerships Act 2000 provides for the creation of Limited Liability Partnerships (LLPs). The Limited Liability Partnerships Regulations 2001, SI 2001/1090 and the Limited Liability Partnerships (Scotland) Regulations 2001, SSI 2001/128, regulate LLPs by applying to them, with modifications, the appropriate provisions of this Act: see SI 2001/1090, reg 5, Sch 3 and SSI 2001/128, regs 4, 6, Schs 2, 3.

ANNEX E

Keeling Schedule: Insolvency Act 1986 prior to amendment by the proposed Legislative Reform (Insolvency) (Advertising Requirements) Order 2009

KEELING SCHEDULE: Insolvency Act 1986 prior to amendment by the Legislative Reform (Insolvency) (Advertising Requirements) Order 2009

PART IV
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(1) This section applies where the liquidator is of the opinion that the company will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration under section 89.

(2) The liquidator shall—

(a) summon a meeting of creditors for a day not later than the 28th day after the day on which he formed that opinion;

(b) send notices of the creditors' meeting to the creditors by post not less than 7 days before the day on which that meeting is to be held;

(c) cause notice of the creditors' meeting to be advertised once in the Gazette and once at least in 2 newspapers circulating in the relevant locality (that is to say the locality in which the company's principal place of business in Great Britain was situated during the relevant period); and

(d) during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require;

and the notice of the creditors' meeting shall state the duty imposed by paragraph (d) above.

(3) The liquidator shall also—

(a) make out a statement in the prescribed form as to the affairs of the company;

(b) lay that statement before the creditors' meeting; and

(c) attend and preside at that meeting.

(4) The statement as to the affairs of the company shall be verified by affidavit by the liquidator and shall show—

(a) particulars of the company's assets, debts and liabilities;

(b) the names and addresses of the company's creditors;

(c) the securities held by them respectively;

(d) the dates when the securities were respectively given; and

(e) such further or other information as may be prescribed.

(5) Where the company's principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duty imposed by subsection (2)(c) applies separately in relation to each of those localities.

(6) Where the company had no place of business in Great Britain during the relevant period, references in subsections (2)(c) and (5) to the company's principal place of business in Great Britain are replaced by references to its registered office.

(7) In this section “the relevant period” means the period of 6 months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.

(8) If the liquidator without reasonable excuse fails to comply with this section, he is liable to a fine.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 83(1)–(6), (9), (10).

Initial Commencement
To be appointed

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Appointment

Appointment: 29 December 1986 (being the day on which the Insolvency Act 1985, Pt III came into force): see SI 1986/1924, art 3.

Modification

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The Limited Liability Partnerships Act 2000 provides for the creation of Limited Liability Partnerships (LLPs). The Limited Liability Partnerships Regulations 2001, SI 2001/1090 and the Limited Liability Partnerships (Scotland) Regulations 2001, SSI 2001/128, regulate LLPs by applying to them, with modifications, the appropriate provisions of this Act: see SI 2001/1090, reg 5, Sch 3 and SSI 2001/128, regs 4, 6, Schs 2, 3.
Modified, in relation to the notification to the Financial Services Authority of the application of this section in the case of a members' voluntary winding up where the liquidator is of the opinion that this section applies, by the Credit Institutions (Reorganisation and Winding up) Regulations 2004, SI 2004/1045, reg 9(4).

Chapter IV
Creditors' Voluntary Winding Up

98 Meeting of creditors

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(c) cause notice of the creditors' meeting to be advertised once in the Gazette and once at least in two newspapers circulating in the relevant locality (that is to say the locality in which the company's principal place of business in Great Britain was situated during the relevant period).

(2) The notice of the creditors' meeting shall state either—

(a) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who, during the period before the day on which that meeting is to

be held, will furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require; or

(b) a place in the relevant locality where, on the two business days falling next before the day on which that meeting is to be held, a list of the names and addresses of the company's creditors will be available for inspection free of charge.

(3) Where the company's principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duties imposed by subsections (1)(c) and (2)(b) above apply separately in relation to each of those localities.

(4) Where the company had no place of business in Great Britain during the relevant period, references in subsections (1)(c) and (3) to the company's principal place of business in Great Britain are replaced by references to its registered office.

(5) In this section "the relevant period" means the period of 6 months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.

(6) If the company without reasonable excuse fails to comply with subsection (1) or (2), it is guilty of an offence and liable to a fine.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 85(2), (3), (6)–(8), (9)(a), (10).

Initial Commencement
To be appointed

To be appointed: this Act shall come into force on the day on which the Insolvency Act 1985, Pt III comes into force: see s 443.

Appointment

Appointment: 29 December 1986 (being the day on which the Insolvency Act 1985, Pt III came into force): see SI 1986/1924, art 3.

Modification

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The Limited Liability Partnerships Act 2000 provides for the creation of Limited Liability Partnerships (LLPs). The Limited Liability Partnerships Regulations 2001, SI 2001/1090 regulate LLPs by applying to them, with modifications, the appropriate provisions of this Act: see SI 2001/1090, reg 5, Sch 3.

Chapter VII
Liquidators

166 Creditors' voluntary winding up

(1) This section applies where, in the case of a creditors' voluntary winding up, a liquidator has been nominated by the company.

[(1A) The exercise by the liquidator of the power specified in paragraph 6 of Schedule 4 to this Act (power to sell any of the company's property) shall not be challengeable on the ground of any prior inhibition.]

(2) The powers conferred on the liquidator by section 165 shall not be exercised, except with the sanction of the court, during the period before the holding of the creditors' meeting under section 98 in Chapter IV.

(3) Subsection (2) does not apply in relation to the power of the liquidator—

(a) to take into his custody or under his control all the property to which the company is or appears to be entitled;

(b) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and

(c) to do all such other things as may be necessary for the protection of the company's assets.

(4) The liquidator shall attend the creditors' meeting held under section 98 and shall report to the meeting on any exercise by him of his powers (whether or not under this section or under section 112 or 165).

(5) If default is made—

(a) by the company in complying with subsection (1) or (2) of section 98, or

(b) by the directors in complying with subsection (1) or (2) of section 99,

the liquidator shall, within 7 days of the relevant day, apply to the court for directions as to the manner in which that default is to be remedied.

(6) “The relevant day” means the day on which the liquidator was nominated by the company or the day on which he first became aware of the default, whichever is the later.

(7) If the liquidator without reasonable excuse fails to comply with this section, he is liable to a fine.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 84.

Initial Commencement

To be appointed

To be appointed: this Act shall come into force on the day on which the Insolvency Act 1985, Pt III comes into force: see s 443.

Appointment

Appointment: 29 December 1986 (being the day on which the Insolvency Act 1985, Pt III came into force): see SI 1986/1924, art 3.
Amendment

Sub-s (1A): inserted by the Bankruptcy and Diligence etc (Scotland) Act 2007, s 155(1), (3).

Date in force: to be appointed: see the Bankruptcy and Diligence etc (Scotland) Act 2007, s 227(3).

Modification

Modified by the Building Societies Act 1986, s 90, Sch 15, and the Friendly Societies Act 1992, s 23, Sch 10.
The Limited Liability Partnerships Act 2000 provides for the creation of Limited Liability Partnerships (LLPs). The Limited Liability Partnerships Regulations 2001, SI 2001/1090 and the Limited Liability Partnerships (Scotland) Regulations 2001, SSI 2001/128, regulate LLPs by applying to them, with modifications, the appropriate provisions of this Act: see SI 2001/1090, reg 5, Sch 3 and SSI 2001/128, regs 4, 6, Schs 2, 3.

ANNEX F

LIST AND COPIES OF EXTRACTS FROM RELEVANT STATUTES

Legislation affected by the proposed Legislative Reform (Insolvency) (Advertising Requirements) Order 2009

The Insolvency Act 1986 (c. 45)

Other relevant legislation

The Insolvency Rules 1986 (SI 1986/1925)

The Scotland Act 1998 (c.46) – Section C2 of Schedule 5 (see extract below)

Extract from Schedule 5 to the Scotland Act 1998

Section C2

C2 Insolvency

In relation to business associations—

(a) the modes of, the grounds for and the general legal effect of winding up, and the persons who may initiate winding up,

(b) liability to contribute to assets on winding up,

(c) powers of courts in relation to proceedings for winding up, other than the power to resist proceedings,

(d) arrangements with creditors, and

(e) procedures giving protection from creditors.

Preferred or preferential debts for the purposes of the Bankruptcy (Scotland) Act 1985, the Insolvency Act 1986, and any other enactment relating to the sequestration of the estate of any person or to the winding up of business associations, the preference of such debts against other such debts and the extent of their preference over other types of debt.

Regulation of insolvency practitioners.

Co-operation of insolvency courts.

Exceptions

In relation to business associations—

(a) the process of winding up, including the person having responsibility for the conduct of a winding up or any part of it, and his conduct of it or of that part,

(b) the effect of winding up on diligence, and

(c) avoidance and adjustment of prior transactions on winding up.

[In relation to business associations which are social landlords, the following additional exceptions—

(a) the general legal effect of winding up,

(b) procedures for the initiation of winding up,

(c) powers of courts in relation to proceedings for winding up, and

(d) procedures giving protection from creditors,

but only in so far as they relate to a moratorium on the disposal of property held by a social landlord and the management and disposal of such property.]

Floating charges and receivers, except in relation to preferential debts, regulation of insolvency practitioners and co-operation of insolvency courts.

Interpretation

“Business association” has the meaning given in Section C1 of this Part of this Schedule, but does not include any person whose estate may be sequestrated under the Bankruptcy (Scotland) Act 1985 or any public body established by or under an enactment.

[“Social landlord” means a body which is—

(a) a society registered under the Industrial and Provident Societies Act 1965 which has its registered office for the purposes of that Act in Scotland and satisfies the relevant conditions, or

(b) a company registered under the Companies Act 1985 which has its registered office for the purposes of that Act in Scotland and satisfies the relevant conditions.

“The relevant conditions” are that the body does not trade for profit and is established for the purpose of, or has among its objects and powers, the provision, construction, improvement or management of—

(a) houses to be kept available for letting,

(b) houses for occupation by members of the body, where the rules of the body restrict membership to persons entitled or prospectively entitled (as tenants or otherwise) to occupy a house provided or managed by the body, or

(c) hostels,

“house” and “hostel” having the meanings given in section 338(1) of the Housing (Scotland) Act 1987.]

“Winding up”, in relation to business associations, includes winding up of solvent, as well as insolvent, business associations.