

WRITTEN MINISTERIAL STATEMENT

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CONSUMERS AND POSTAL AFFAIRS; DEPARTMENT FOR BUSINESS,
INNOVATION AND SKILLS**

IMPROVING TRANSPARENCY AND CONFIDENCE IN PRE-PACKAGED SALES IN ADMINISTRATIONS (PRE PACKS)

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Everyone who is affected by insolvency is entitled to have confidence that insolvency procedures are used fairly and that insolvency practitioners deliver the best possible outcome in what are often difficult and challenging circumstances. It is particularly important that suppliers, who often extend credit on unsecured terms, have confidence in the insolvency regime, as a lack of confidence is likely to restrict the availability of credit.

I am today announcing measures to improve transparency and confidence in pre-packaged (pre-pack) sales in administration. These will help ensure that in these cases as much is fairly returned to creditors as possible. These measures are in line with the policies of this Government to drive balanced and sustainable growth and will provide real benefits to business.

The merits of pre-pack sales have continued to be the subject of much debate. In response to the concerns raised, the previous Government launched a consultation exercise in March 2010. The responses make it clear that the greatest cause for concern is where the business and assets are sold back to the current management or a connected party - something that is often referred to as "phoenixism".

I recognise that pre-pack sales offer a flexible and speedy means of rescue and can be the best way of maximising returns for creditors. I do not wish to outlaw them. But they must be done fairly and reasonably. Where such sales are at undervalue, creditors get less than they should. Competitors who pay their debts in full also suffer. I want to make sure that creditors have a fair chance to have their voice heard. I also want to enable others to scrutinise such transactions after the event to ensure that deals being struck are fair in the circumstances.

In order to inject greater transparency into the process I intend to require administrators to give notice to creditors where they propose to sell a significant proportion of the assets of a company or its business to a connected party, in circumstances where there has been no open marketing of the assets. This will enable creditors to express concerns, which the administrator would need to consider, or to make a higher offer for the assets, and in cases where the circumstances justify it, apply to the court for injunctive relief. These options can be exercised before the sale has taken place, and therefore reflect concerns raised by stakeholders in their responses to the consultation.

The new requirements will apply not just to pre-packs but to any sales back to connected parties in an administration where there has been no open marketing of the assets.

Administrators already need to provide a detailed explanation of why a pre-pack sale was undertaken to creditors in compliance with professional standard Statement of Insolvency Practice 16. These will in future need to be included in their administration proposals which are lodged at Companies House, making the information available to business as a whole, including, for example, credit reference agencies. This information may be of particular interest to suppliers and others considering doing business with the purchasing company. Administrators will also need to confirm that the sale price represents, in their view, best value for the creditors.

We are today also publishing a report on compliance with the Statement of Insolvency Practice 16 (a professional standard setting out what information must be disclosed to creditors in pre-packs) during 2010. Overall levels of compliance have increased, showing that in the great majority of cases necessary statements are now being given (after the event) to creditors. However in a minority of cases the information is insufficient, and in these cases the concerns have been reported to the relevant authorising body. My officials will be liaising with the various bodies to ensure that there is a consistent approach taken to lack of compliance.

A copy of the consultation and summary of responses, together with the report on compliance with the Statement of Insolvency Practice 16 can be found on The Insolvency Service's website at www.insolvency.gov.uk.