

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 (including list of stakeholders consulted)

Summary of Responses (including list of stakeholders consulted)

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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 (“LRRRA”) 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.

Summary of the Proposals:

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.

Websites

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. ICAEW 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 insolvent's 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. CUA 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.**

Annual meetings

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, Ayrshire, 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 as 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?